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# OHIO LEGISLATIVE SERVICE COMMISSION

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**H.B. 33**  
**135<sup>th</sup> General Assembly**

## Final Analysis

[Click here for LSC's fiscal analyses of H.B. 33](#)

**Primary Sponsor:** Rep. Edwards

**Effective date:** Operating appropriations effective July 4, 2023. Most other provisions effective October 3, 2023. Some provisions effective on other dates. Contains item vetoes; one vetoed item overridden.

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SECOND REVISED VERSION\*

### SUMMARY

This analysis is arranged by state agency in alphabetical order. Items that do not directly involve an agency are located under the agency that has regulatory authority over the item, or otherwise deals with the subject matter of the item. There is a chapter addressing changes to various boards and commissions.

Separate segments at the end address items affecting local government, revisions to the 9-1-1 emergency service law, revisions to adjudication procedures under the Administrative Procedure Act (R.C. Chapter 119), which apply across state government, and authority for state agencies to make electronic notifications and conduct meetings by electronic means.

The analysis concludes with a note on effective dates, expiration, and other administrative matters.

Within each agency and category, a summary of the items appears first (in the form of dot points) followed by a more detailed discussion.

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\* This version notes the General Assembly's override of vetoed item #24 (see page 645).

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## ACCOUNTANCY BOARD

### **Certified Public Accountant Education Assistance Fund**

- Eliminates the Certified Public Accountant Education Assistance Program.
- Expands the uses of the Certified Public Accountant Education Assistance Fund, requires the Accountancy Board to contract with a private organization to use the fund for specified purposes, and requires the organization to apply to the Education Assistance Committee to receive money from the fund.
- Requires the Board to ensure that, of the money disbursed from the fund in each fiscal year for approved expenditures, at least half is expended on workforce development and attraction programs.
- Codifies the \$30 surcharge for Ohio permit and registration fees, allows the Board to prorate the surcharge for permits or registrations issued for less than three years, and eliminates the range of surcharge fees the Board may charge based on the number of years for which a permit or registration is issued.

### **Residency requirement**

- Eliminates the requirement that an applicant for a certified public accountant certificate either be an Ohio resident, have a place of business in Ohio, or be regularly employed in Ohio to receive the certificate.

### **Electronic register of public accountants**

- Requires the Board to switch its register of licensed accountants from a printed to an electronic format, requires the electronic version to be publicly available and searchable, and modifies the information that must be included in the register.

### **Certified Public Accountant Education Assistance Fund**

(R.C. 4701.10 and 4701.26)

The act eliminates the Certified Public Accountant Education Assistance Program administered by the Accountancy Board. However, it retains and expands the uses of the Certified Public Accountant Education Assistance Fund. The act requires the Board to contract with an Ohio-based statewide membership organization representing Ohio certified public accountants (CPAs) to use the fund.

Under continuing law, the fund is used to provide scholarships to students enrolled in accounting education programs at Ohio colleges or universities. The act codifies a requirement, from administrative rule, that, to be eligible for a scholarship, a student be a U.S. citizen or

lawfully admitted for permanent residence, as defined in federal law.<sup>1</sup> It also expands the uses of the fund to include, subject to approval as described below, any of the following purposes:

- For efforts to increase the number of CPAs in Ohio, including efforts to engage with high school and college students, nontraditional students, and minority group members;
- To create and implement workforce development and attraction programs;
- To provide financial assistance to individuals who meet the educational requirements to obtain a CPA certificate for the costs associated with obtaining a CPA certificate, including study materials for, or fees to take, the CPA examination or a reexamination;
- To defray administrative costs incurred in carrying out the purposes described above.

### **Application and disbursement**

The act statutorily requires the Board to adopt rules to create the Education Assistance Committee. The Committee must meet at least once each calendar quarter. Before spending funds for any of the purposes listed above, an organization with which the Board has contracted must apply to the Committee. The organization must identify in the application the purposes for which the funds are to be used and the amount allocated for each purpose. If the Committee approves an application, the Board may disburse money from the fund to the organization to be spent only for the purposes listed above. The Committee, as a condition of approving an application, cannot require the organization to spend money before the organization applies for or receives money from the fund.

The Board has previously created the Education Assistance Committee in rule. Under the rule, the Committee advises the Board on matters relating to the Education Assistance Program. The Committee consists of three members, and the Board chair may appoint additional members.<sup>2</sup>

### **Fund allocation**

Of the amount of money disbursed from the fund in each fiscal year for expenditures the Board approves, the Board must ensure at least half of that amount is spent for workforce development and attraction programs. The Board, to the extent practicable, must ensure all money appropriated in each fiscal year to the fund is spent for the purposes listed above.

### **Ohio permit and registration surcharges**

Continuing law requires the Board to assess a surcharge on Ohio permit and registration fees that is used to fund the Certified Public Accountant Education Assistance Fund. The act sets the surcharge at \$30 and eliminates the range of surcharge amounts (previously capped at \$30) the Board could charge based on the number of years for which the permit or registration is

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<sup>1</sup> Ohio Administrative Code (O.A.C.) 4701-17-01 and 4701-17-02.

<sup>2</sup> O.A.C. 4701-1-10.

issued. Instead, the act allows the Board to prorate the surcharge for permits or registrations issued for less than three years.

## **Residency requirement**

(R.C. 4701.06, with a conforming change in R.C. 4701.17)

The act modifies eligibility requirements for an applicant to obtain a CPA certificate. It eliminates the requirement that the applicant be an Ohio resident, have a place of business in Ohio, or be regularly employed in Ohio. It also eliminates the Board's authority to determine by rule circumstances under which that residency requirement may be waived. Continuing law requires an applicant to pay a fee, be at least 18 years old, meet certain education and experience requirements, pass an examination, and comply with a criminal records check to receive the certificate.<sup>3</sup>

## **Electronic register of public accountants**

(R.C. 4701.13)

The act modifies the format of, and information the Board must include in, the register of public accountants that the Board must publish under continuing law. It requires the Board to maintain a publicly available and searchable electronic register, rather than an annual printed one as required under former law. The act expands the information the Board must include in the register to include, in addition to the names, the license numbers, license types, license status, and disciplinary history of all licensed public accountants as of the date the register is accessed. The act eliminates the requirement that the register include each CPA's or public accountant's business address.

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<sup>3</sup> R.C. 4701.08, not in the act.

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## ADJUTANT GENERAL

- Expressly requires the Adjutant General to manage the recruitment of individuals for service in the Ohio Organized Militia.
- Extends the death benefit entitlement, available to Ohio National Guard member beneficiaries under continuing law, to the beneficiaries of all members of the Ohio Organized Militia.
- Clarifies the Adjutant General's authority with respect to administration of the Ohio Cyber Reserve.

### Ohio Organized Militia recruitment

(R.C. 5913.01)

The act expressly requires the Adjutant General to manage the recruitment of individuals for service in the Ohio Organized Militia, which consists of the Ohio National Guard, the Ohio Naval Militia, the Ohio Military Reserve, and the Ohio Cyber Reserve.<sup>4</sup> Under continuing law, the Adjutant General is the commander and administrative head of the Ohio Organized Militia.

### Ohio Organized Militia death benefit

(R.C. 5923.12)

The act requires the Adjutant General to pay a death benefit of \$100,000 to the beneficiary or beneficiaries of a member of the Ohio Naval Militia, the Ohio Military Reserve, or the Ohio Cyber Reserve, who was ordered to state active duty by proclamation of the Governor, and who died while performing that duty. To be eligible, a beneficiary or beneficiaries must have been designated in writing on a form prescribed by the Adjutant General. Under prior law, a state active duty death benefit was available only to beneficiaries of Ohio National Guard members.<sup>5</sup> The act now expands the benefit to all members of the Ohio Organized Militia.

The Ohio Military Reserve and the Ohio Naval Militia are military and naval forces that the Governor, under law, is required to organize and maintain. The forces are trained to defend the state whenever the Ohio National Guard, or a part thereof, is employed out of state. It is not subject to induction into federal service.<sup>6</sup>

The Ohio Cyber Reserve is a civilian cyber security reserve force that the Governor is required by law to organize and maintain. It must be capable of being expanded and trained to

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<sup>4</sup> R.C. 5923.01, not in the act.

<sup>5</sup> R.C. 5919.33, not in the act.

<sup>6</sup> R.C. 5920.01, 5921.01, and 5921.12, not in the act.

educate and protect state, county, and local government entities, critical infrastructure, including election systems, businesses, and citizens of Ohio from cyber attacks.<sup>7</sup>

## **Ohio Cyber Reserve administration**

(R.C. 5922.01)

The act expressly authorizes the Adjutant General to provide appropriate training to current and potential members of the Ohio Cyber Reserve. Under continuing law, reserve members serve in an unpaid volunteer status while performing any drill or training. The act clarifies that this applies to both current and potential reserve members.

Additionally, the act clarifies that the Adjutant General is authorized to establish rates of pay for members of the Ohio Cyber Reserve. Further, it expressly authorizes the Adjutant General to pay from funds appropriated by the General Assembly the actual and necessary expenses incurred by the Ohio Cyber Reserve for its administration, training, or deployment. The act specifies that expenses for administration, training, and deployment may include permanent or temporary state employees or contractual internal or external administrative staff, travel and subsistence expenses, the purchase or rental of equipment, hardware, and local operational support.

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<sup>7</sup> R.C. 5922.01.

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## **DEPARTMENT OF ADMINISTRATIVE SERVICES**

### **Ban certain applications on state networks and devices (PARTIALLY VETOED)**

- Prohibits the download, installation, or use of TikTok, WeChat, or other Chinese-owned applications on state computers, networks, and devices.
- Allows use of these applications for law enforcement or security purposes.
- Would have limited the exception for “security purposes” to “information technology security purposes” (VETOED).
- Would have required the State Chief Information Officer to adopt rules to implement the prohibition (VETOED).

### **DAS and state agency purchasing**

- Modifies Department of Administrative Services (DAS) and state agency purchasing selection criteria and makes other changes and clarifications to state procurement law.

### **Opening of competitive bids**

- Requires DAS to open competitive sealed bids and competitive sealed proposals in the standardized system of electronic procurement, rather than publicly opened in the DAS office.
- Removes the requirement that a representative of the Auditor of State be present at and certify the opening of certain bids and proposals.

### **Competitive sealed proposals**

- Clarifies DAS authority to award a contract to multiple offerors whose competitive sealed proposals are determined to be most advantageous to the state.

### **State agency direct purchasing authority**

- Clarifies state agency direct purchasing authority.

### **Electronic procurement system (PARTIALLY VETOED)**

- Specifies that a purchase, by DAS or a state agency through the DAS electronic procurement system, constitutes a competitive selection procedure.
- Would have limited the application of the above to, if the contract for the supplies or services being procured was selected for inclusion in the electronic procurement system using one of the competitive selection methods defined in current law (VETOED).
- Removes an outdated provision requiring DAS to implement recommendations regarding electronic procurement from the “2000 Management Improvement Commission Report.”

## **Procuring PPE**

- Establishes the Ohio-based personal protective equipment (PPE) manufacturers program and requires a state agency to make certain qualifying purchases from an Ohio-based manufacturer.

## **State job classification plan**

- Codifies an administrative rule of the DAS Director related to qualifications in terms of experience, training, specific coursework, or other criteria, rather than in terms of academic degrees.
- Prohibits an appointing authority from requesting a minimum qualification that differs from the Director's classification specification if it is stated solely in terms of academic degrees.

## **Increased parental leave benefits**

- Increases parental leave benefits for certain state employees by eliminating the 14-day unpaid waiting period and tripling the former paid leave period, resulting in a total of 12 weeks of leave paid at the continuing rate of 70% of the employee's base rate.

## **Bereavement leave**

- Specifies that a permanent employee paid by OBM warrant must begin bereavement leave granted under continuing law not more than five days after the family member's death, or not more than five days before or after the funeral.
- Allows an employee to take bereavement leave on the basis of a miscarriage or the stillbirth of a child by providing appropriate medical documentation (in the case of a miscarriage) or a fetal death certificate (in the case of a stillbirth).
- Specifies that an employee who takes bereavement leave on the basis of a stillbirth is ineligible to take parental leave or benefits based on the same stillbirth.

## **DAS reports regarding public works**

- Repeals a requirement that the DAS Director make an annual report to the Governor related to public works expenses under the Director's supervision.
- Repeals law requiring the Director make other reports, at the Governor's request, regarding the condition and welfare of public works and related drainage, leaseholds, and water powers.

## **Professions Licensing System Fund**

- Eliminates the Professions Licensing System Fund and deposits transaction fees from the electronic issuance of licenses to the Occupational Licensing and Regulatory Fund instead.

## MARCS Steering Committee

- Modifies the membership of the Multi-Agency Radio Communications System (MARCS) Steering Committee.
- Repeals the uncodified law that originally created and modified the Committee in the 120<sup>th</sup> and 121<sup>st</sup> General Assemblies, clarifying that the most recent uncodified law governs the Committee’s membership, name, purpose, and responsibilities.

## Ban certain applications on state networks and devices (PARTIALLY VETOED)

(R.C. 125.183)

### Covered applications

In January 2023, Governor DeWine issued an executive order that prohibits the download and use of any social media application, channel, and platform that is owned by an entity in China on devices and networks that are owned or leased by the state.<sup>8</sup> Similarly, the act prohibits the download, installation, and use of covered applications on state agency computers, networks, and devices. A “covered application” is defined as:

- The TikTok application, or any successor application or service developed or provided by ByteDance;
- The WeChat application and service, or any successor application or service developed or provided by Tencent Holdings; or
- Any application or service owned by an entity located in China, including QQ International (QQi), Qzone, Weibo, Xiao, HongShu, Zhihu, Meituan, Toutiao, Alipay, Xiami Music, Tiantian Music, DingTalk Ding, Douban, RenRen, Youku/Tudou, Little Red Book, and Zhihu.

### Implementation

The act directs the State Chief Information Officer to require state agencies to remove any covered applications from equipment owned or leased by the state and take necessary measures to prevent the download, installation, and use of covered applications on state computers, networks, and devices. The Governor vetoed a provision that would have required the Officer to adopt administrative rules to effectuate those requirements.

### Scope

The act defines “state agency” as every organized body, office, or agency established by the state for the exercise of any function of state government. The General Assembly, any

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<sup>8</sup> “[Executive Order 2023-03D](#),” Governor Mike DeWine, which may be accessed on the Governor’s website: [governor.ohio.gov](http://governor.ohio.gov), under the “Media” tab by clicking “Executive Orders” and then searching for “2023-03D.”

legislative agency, and the Capitol Square Review and Advisory Board are included in this definition. The definition excludes any state-supported institution of higher education, the courts, or any judicial agency.

### **Exceptions**

The act makes an exception that allows qualified individuals to download, install, and use a covered application for law enforcement or security purposes. To do so, appropriate measures must be taken to mitigate security risks. The Governor vetoed a qualifier that would have limited the “security purposes” exception to matters involving information technology security.

### **DAS and state agency purchasing**

(R.C. 125.01, 125.09, 125.11, 153.54, 307.87, 307.90, and 3345.10; repealed R.C. 505.103 and 717.21)

The act modifies DAS and state agency purchasing preference selection criteria for awarding a contract. Instead of generally requiring the purchaser to select the lowest responsive and responsible bid, from among the bids that offer products produced or mined in the U.S. or Ohio, the act requires that the purchaser evaluate the bids and offers according to criteria and procedures for determining if a product is mined, excavated, produced, manufactured, raised, or grown in the U.S., is a Buy Ohio product, and if the bid or offer was received from a Buy Ohio supplier or a certified veteran-friendly business. The requirements must be applied where sufficient competition can be generated to ensure compliance with them will be in the state’s best interest unless otherwise prohibited. In that regard, continuing law requires bidders and offerors claiming a preference to designate that information in their bid or offer.

The act requires the DAS Director to adopt rules to establish criteria for applying a purchasing preference to bids received from certified veteran-friendly business enterprises. It also codifies administrative rule classifying “Buy Ohio” products, eligible for preference in state purchasing, to include products from a state bordering Ohio.<sup>9</sup>

The act eliminates the following provisions of the state purchasing law:

- A requirement that “insurance” is a type of supply expressly subject to certain state purchasing laws. Under continuing law, DAS generally must purchase any policy of insurance covering offices or employees of a state agency for which the annual premium is more than \$1,000.<sup>10</sup>
- A provision that DAS may require each bidder or offeror to provide sufficient information about the energy efficiency or energy usage of the bidder’s or offeror’s product, supply, or service.
- A requirement, regarding contracts for certain meat and poultry products, that DAS only accept bids from vendors under inspection of the U.S. Department of Agriculture or who

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<sup>9</sup> O.A.C. 123:5-1-01 and 123:5-1-06.

<sup>10</sup> R.C. 125.02(G), not in the act.

are licensed by the Ohio Department of Agriculture. Under current federal law, all meat sold commercially must be inspected for safety.

- A requirement that DAS award certain contracts to qualified nonprofit agencies under the Office of Procurement from Community Rehabilitation Programs. Continuing law requires state agencies to purchase supplies or services that are on the procurement list maintained by that Office.
- A requirement that the DAS Director publish a model act for use by political subdivisions in establishing a system of preferences for purchasing Buy Ohio products, and eliminates the authority for a board of county commissioners, a board of township trustees, or the legislative authority of a municipality to adopt the model system of preferences.

## **Opening of competitive bids**

(R.C. 125.10)

The act requires DAS to open competitive sealed bids and competitive sealed proposals in the standardized system of electronic procurement, rather than publicly opened in the DAS office. Continuing law requires that a sealed copy of each competitive sealed bid or competitive sealed proposal be filed with DAS before the time specified in the notice for opening of the bids or proposals. The act removes the requirement that a representative of the Auditor of State be present at and certify the opening of all such bids and proposals.

## **Competitive sealed proposals**

(R.C. 125.071)

Under continuing law, the DAS Director may make purchases by competitive sealed proposal whenever the Director determines that using competitive sealed bidding is not possible or not advantageous to the state. The act clarifies DAS authority to award a contract to multiple offerors whose proposals are determined to be the most advantageous to the state. Continuing law requires the contract file to contain the basis on which the award is made.

## **State agency direct purchasing authority**

(R.C. 125.01, 125.05, and 127.16)

The act clarifies that a state agency's direct purchasing authority under existing law, which authorizes the agency to make a purchase without competitive selection, requires the agency to use a selection process that complies with all applicable laws, rules, or regulations of DAS.

## **Electronic procurement system (PARTIALLY VETOED)**

(R.C. 125.01, 125.035, 125.05, and 125.073)

The act specifies that a purchase, by DAS or a state agency through the electronic procurement system established by DAS, constitutes a competitive selection procedure. The Governor vetoed a provision that would have additionally required that the contract for the supplies or services being procured had been selected for inclusion in the electronic procurement system using one of the competitive selection methods defined in current law. Under continuing law, competitive selection also includes purchases under the procedures outlined in

procurement law for competitive sealed bidding, competitive sealed proposals, and reverse auctions.

The act specifically authorizes a state agency that has been granted a release and permit from DAS to make the purchase by utilizing the electronic procurement system.

The act also removes an outdated law requiring DAS to implement recommendations concerning electronic procurement from the “2000 Management Improvement Commission Report to the Governor.”

## **Procuring PPE**

(R.C. 125.035 and 125.036)

The act requires the DAS Director to establish and maintain an Ohio-based personal protective equipment (PPE) manufacturers program. PPE is equipment worn to minimize exposure to hazards that cause workplace injuries and illnesses. Under the program, the Director must maintain a list of manufacturers qualified to fulfill purchase requests as a first requisite procurement program.

The act requires a state agency to make certain qualifying purchases from an Ohio-based PPE manufacturer if an Ohio-based manufacturer on the Director’s list is able to fulfill the purchase request. However, the Director may issue a release and permit for a foreign manufacturer, if purchasing from an Ohio-based manufacturer would result in the state agency paying a price that is 120% or higher than the foreign supplier’s price.

Under the act, “Ohio-based personal protective equipment manufacturer” means a manufacturer, at least two-thirds of the beneficial ownership of which is vested in residents of Ohio, and produces PPE in Ohio.

## **State job classification plan**

(R.C. 124.14)

The act codifies an administrative rule governing the state job classification plan established by the DAS Director under continuing law that does the following:

- Requires the Director to include in each classification specification a statement of the essential character of the work of the classification and the essential knowledge, abilities, skills, and qualifications required for a person to fill the position;
- Requires the Director to state qualifications in terms of experience, training, specific coursework, or other terms;
- Prohibits the Director from stating qualifications in terms of academic degrees unless the degrees are required by a specific statute or rule;

- Allows an appointing authority to request that the Director approve position-specific minimum qualifications that differ from those established by the Director.<sup>11</sup>

Additionally, an appointing authority is prohibited from requesting a minimum qualification that differs from the Director's classification specification if it is stated solely in terms of academic degrees.

Governor DeWine signed Executive Order 2023-10D on May 15, 2023,<sup>12</sup> to require DAS to develop a statewide policy on skills-based hiring that includes ensuring that all state agencies, departments, boards, and commissions are complying with the administrative rule codified by the act. Additionally, the Executive Order requires DAS to review the use of both position-specific minimum qualifications and preferred qualifications in hiring practices and ensure that the qualifications are not stated in terms of academic degrees.

## **Increased parental leave benefits**

(R.C. 124.136)

The act increases parental leave benefits for certain state employees. Former law provided six weeks of parental leave for those employees, including a 14-day unpaid waiting period followed by four consecutive weeks of leave paid at 70% of the employee's base rate of pay. The act eliminates the unpaid waiting period and triples the paid leave period. Thus, the act increases the benefits to a total of 12 weeks of parental leave paid at the 70% rate established in continuing law.

Law unchanged by the act provides that parental leave benefits may be granted to eligible state employees who satisfy either of the following criteria:

- They are the parent of a newly born or stillborn child and are listed as such on the birth certificate or fetal death certificate;
- They are the legal guardian of a newly adopted child who resides in their household, and they have not elected to receive the \$5,000 lump sum for adoption expenses in lieu of the parental leave benefits.

To be eligible for parental leave benefits under continuing law, a state employee must fall into a category described below:

- A full- or part-time employee paid in accordance with the exempt salary schedule (generally, those who are subject to the state job classification plan but are exempt from collective bargaining);<sup>13</sup>

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<sup>11</sup> O.A.C. 123:1-7-04.

<sup>12</sup> "[Executive Order 2023-10D](#)," Governor Mike DeWine, which may be accessed on the Governor's website: [governor.ohio.gov](http://governor.ohio.gov), under the "Media" tab by clicking "Executive Orders" and then searching for "2023-10D."

<sup>13</sup> R.C. 124.152, not in the act.

- Unclassified employees of the Office of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General who are exempt from collective bargaining;
- Legislative employees and employees of the Legislative Service Commission, the Supreme Court, and the Office of the Governor;
- Employees of the Bureau of Workers' Compensation whose compensation is established by the Administrator of Workers' Compensation; and
- Employees who hold a position for which the authority to determine compensation is given by law to an individual entity other than the DAS Director.

Continuing law allows employees to use balances of other forms of paid leave to supplement benefits during the parental leave period, thus enabling them to attain 100% of their base rate. The paid parental leave must be taken within one year of the birth, stillbirth, or placement for adoption of a child.

## **Bereavement leave**

(R.C. 124.387)

Under continuing law, each full-time permanent and part-time permanent employee paid by OBM warrant is entitled to three days of paid bereavement leave due to the death of an immediate family member. The act requires an employee to begin the leave during one of the following time periods:

- Not more than five days after the family member's death;
- Not more than five days before or five days after the funeral.

The act also allows an employee entitled to bereavement leave to use the leave on the basis of a miscarriage or the stillbirth of a child. The employee must produce appropriate medical documentation (in the case of a miscarriage) or a fetal death certificate (in the case of a stillbirth). If an employee who is eligible for parental leave (which includes leave for a stillbirth) takes bereavement leave on the basis of a stillbirth, the employee is ineligible for parental leave based on the same stillbirth.

## **DAS reports regarding public works**

(Repealed R.C. 123.14)

The act repeals a requirement that the DAS Director make an annual report to the Governor "containing a statement of the expenses of the public works under the director's supervision during the preceding year, setting forth an account of moneys expended on each of the public works during the year, and such other information and records as the director deems proper." The report also had to contain "a statement of the moneys received from all sources and an estimate of the appropriations necessary to maintain the public works and keep them in repair," as well as "a list of all persons regularly employed, together with the salary, compensation, or allowance paid each."

This information generally may now be found at [checkbook.ohio.gov](http://checkbook.ohio.gov) (see R.C. 113.71, not in the act).

The act repeals other law requiring the DAS Director to make “such other reports as are proper, touching on the general condition and welfare of the public works and the drainage, leaseholds, and water powers incident thereto” when the Director deems it necessary, or when called upon by the Governor.

## **Professions Licensing System Fund**

(R.C. 125.18)

The act eliminates the Professions Licensing System Fund, which received transaction fees from the electronic issuance of a license or registration. Instead, those fees are to be deposited into the existing Occupational Licensing and Regulatory Fund.

## **MARCS Steering Committee**

(Sections 610.10 and 610.20)

The act modifies the membership of the Multi-Agency Radio Communications System (MARCS) Steering Committee. Specifically, it authorizes either the Directors of DAS, DPS, DNR, ODOT, DRC, and OBM, or their designees, to serve as members. Prior law authorized only the Directors’ designees to serve, rather than the Directors themselves (with the exception of the State Fire Marshal).

Additionally, the act adds the following members, with the Governor appointing the first four:

1. A representative of the Ohio Chapter of the Association of Public Safety Communications Officials;
2. A representative of the Buckeye State Sheriff’s Association;
3. A representative of the Ohio Chiefs of Police Association;
4. A representative of the Ohio Fire Chiefs Association;
5. Two members of the House (one majority party, one minority party), appointed by the Speaker; and
6. Two members of the Senate (one majority party, one minority party), appointed by the Senate President.

Finally, the act repeals the uncodified laws that originally created and modified the Committee in the 120<sup>th</sup> and 121<sup>st</sup> General Assemblies (1993-1996).<sup>14</sup> Doing so clarifies that the most recent uncodified law that continues the Committee’s existence governs its membership, name (it was once renamed a “Council”), purpose, responsibilities, and use of funding.

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<sup>14</sup> Section 21 of H.B. 790 of the 120<sup>th</sup> General Assembly, as amended by Section 11 of H.B. 670 of the 121<sup>st</sup> General Assembly.

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## DEPARTMENT OF AGING

### Board of Executives of Long-Term Services and Supports

- Expands eligibility for the consumer member of the Board of Executives of a Long-Term Services and Supports (BELTSS) to include the representative of a consumer in a long-term services and supports setting.
- Adds an exception to the prohibition that complaints made to BELTSS are confidential and not subject to discovery in any civil action, permitting BELTSS to use the information in administrative hearings and in court pursuant to the Rules of Evidence.

### Nursing home quality initiative projects

- Requires the Department of Aging to provide infection prevention and control services as a quality initiative improvement project.

### Residential care facility shared bathrooms (VETOED)

- Would have prohibited the Department from denying certification to a residential care facility seeking to participate in the Assisted Living Program on the basis that the facility permitted two residents to share a bathroom, so long as the shared bathroom arrangement met specified requirements (VETOED).
- Would have required the Department of Medicaid to seek a waiver from the U.S. Centers for Medicare and Medicaid Services (CMS) to implement this provision (VETOED).
- Would have prohibited the Department of Aging from implementing the above provision until CMS granted approval (VETOED).

### Performance-based PASSPORT reimbursement

- Authorizes the Department to design a payment method for PASSPORT administrative agency operation that includes a pay-for-performance incentive component.

### HHA and PCA training

- Prohibits the Department from requiring more hours of pre-service training and annual in-service training than required by federal law for home health aides (HHAs) providing services under the PASSPORT Program.
- Prohibits the Department from requiring more than 30 hours of pre-service training and six hours of annual in-service training for personal care aides (PCAs) providing services under the PASSPORT Program.
- Permits a licensed practical nurse to supervise an HHA or PCA providing services under the PASSPORT Program.

### Long-term Care Ombudsman representative training

- Reduces training requirements for nonvolunteer representatives of the Office of the State Long-term Care Ombudsman.

## **Ohio Advisory Council for the Aging**

- Specifies a new purpose for the Ohio Advisory Council for the Aging – to advise the Department as directed by the Governor and on the objectives of the federal Older Americans Act.
- Eliminates obsolete provisions regarding the date by which certain members must have been first appointed.

## **Golden Buckeye Card**

- Expands the formats possible for the Golden Buckeye Card to include physical or electronic cards, as well as endorsements on cards for one or more programs.

## **Board of Executives of Long-Term Services and Supports**

### **Membership**

(R.C. 4751.02)

Regarding the Board of Executives of Long-Term Services and Supports (BELTSS), the act expands eligibility criteria for one member of the 11-member board. Continuing law requires one member to be a consumer of services offered in a long-term services and supports setting. Under the act, a person who represents such a consumer also is eligible for the consumer-member role.

### **Confidentiality of complaints**

(R.C. 4751.30)

Ohio law prohibits complaints made to BELTSS from being subject to discovery in any civil action. The act deems the complaints as confidential, but establishes an exception to the confidentiality – it permits the complaints to be used by BELTSS in administrative hearings. Any entity that receives a complaint pursuant to an administrative hearing must maintain the complaint's confidentiality in the same manner as BELTSS. The act also permits confidential complaints to be admitted in a judicial proceeding, but only in accordance with the court's Rules of Evidence, and requires the court to take precautionary measures to ensure the confidentiality of any identifying information in the records.

## **Nursing home quality initiative projects**

(R.C. 173.60)

Regarding the nursing home quality initiative program to promote person-centered care in nursing homes, the act requires the Department of Aging to include infection prevention and control efforts as a component of the program. It requires the quality initiative program component to include facility technical assistance including services, programs, and content expertise, subject to the availability of funds. The infection prevention and control component must be included in a list of quality improvement projects that nursing homes may use to meet inspection and licensure requirements.

## **Residential care facility shared bathrooms (VETOED)**

(R.C. 173.394 (primary), 173.39, and 173.391; Section 333.340)

The Governor vetoed a provision that would have prohibited the Department from denying certification to a residential care facility seeking to participate in the Assisted Living Program on the basis that the facility permitted two residents to share a bathroom that includes a toilet, sink, and shower or bathtub. To be eligible for certification, a residential care facility that permitted two residents to share a bathroom would have been required to satisfy the following requirements:

- The shared full bathroom must have been accessible from the living quarters of each resident's unit, not required one resident to pass through another's living quarters, and allowed each resident to lock both bathroom doors while it was in use.
- In addition to the shared bathroom, the facility also must have offered the use of at least one other full bathroom that was accessible from a single door directly off of the hallway and not connected to any resident's individual unit.
- The bathrooms must have satisfied the accessibility requirements of the federal Americans with Disabilities Act.
- The facility must have informed residents of the shared bathroom arrangement prior to their admission and obtained the residents' written consent.

The Governor also vetoed a provision that would have required the Department of Medicaid, by December 2, 2023, to apply for a waiver from the U.S. Centers for Medicare and Medicaid Services (CMS) to implement the above-mentioned provisions. The Department of Aging could not have implemented these provisions until receiving CMS approval.

## **Performance-based PASSPORT reimbursement**

(Section 209.20)

In order to improve health outcomes among populations served by PASSPORT administrative agencies, the act authorizes the Department to design a payment method for PASSPORT administrative agency operation that includes a pay-for-performance incentive component earned by a PASSPORT administrative agency when defined consumer and policy outcomes are achieved.

If the Department opts to implement the payment method, it must do so through rules adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119). Before filing a proposed rule with a pay-for-performance incentive component with the Joint Committee on Agency Rule Review, the Department must submit a report to the Joint Medicaid Oversight Committee outlining the payment method.

## **HHA and PCA training**

(R.C. 173.525)

The act prohibits the Department from requiring personal care aides (PCAs) providing services under the PASSPORT Program to receive more than 30 hours of pre-service training and six hours of annual in-service training. The Department determines what training is acceptable. The Department may not require home health aides (HHAs) providing services under the PASSPORT Program to receive more pre-service training and annual training than required by federal law. The act also permits a licensed practical nurse to supervise an HHA or PCA, in addition to a registered nurse under continuing law.

Under federal regulations, HHAs providing services through Medicare or Medicaid must receive 75 hours of pre-service training and 12 hours of annual in-service training. Additionally, federal regulations require that an HHA providing Medicare or Medicaid services be supervised by a registered nurse or other appropriate professional, such as a physical therapist, speech-language pathologist, or occupational therapist.<sup>15</sup>

## **Long-term Care Ombudsman representative training**

(R.C. 173.21)

The act reduces the number of specified training hours required for a nonvolunteer representative of the Office of the State Long-term Care Ombudsman. The reduction is accomplished as follows:

- Reducing hours of basic instruction required before the representative can handle cases without supervision, from 40 to 36;
- Eliminating a requirement that an additional 60 hours of instruction must be completed within the first 15 months of employment;
- Eliminating an internship of 20 hours that includes instruction and observation of basic nursing care and long-term care procedures;
- Eliminating observation of either a Department certification survey of a nursing facility or a licensing inspection of a residential facility by the Department of Mental Health and Addiction Services.

Instead, the act gives the Department of Aging the option to adopt rules regarding additional training, which may include an internship, in-service training, or continuing education. Under prior law, the Department was required to establish continuing education.

The act also eliminates law providing a training exemption for persons serving as an ombudsman for at least six months prior to June 11, 1990.

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<sup>15</sup> 42 Code of Federal Regulations (C.F.R.) 484.80.

## **Ohio Advisory Council for the Aging**

(R.C. 173.03)

The act revises the law governing the Ohio Advisory Council for the Aging in two ways. First, it specifies that the Council's purpose is to advise the Department on the objectives of the federal Older Americans Act of 1965 and as directed by the Governor, rather than requiring the Council, as under prior law, to carry out its role as defined under the Older Americans Act. Second, it eliminates obsolete provisions regarding the deadline for initial appointments to the Council.

## **Golden Buckeye Card**

(R.C. 173.06)

Regarding the Golden Buckeye Card program, the act authorizes new formats beyond a physical card, which was the only option prior to the act. Under the act, the Department may provide Golden Buckeye cards as physical or electronic cards, and the cards can be an endorsement on a card that includes one or more programs. Related to this change, the act eliminates a requirement that a card must contain the card holder's signature.

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## DEPARTMENT OF AGRICULTURE

### Amusement ride reinspections

- Adds to the reasons why an amusement ride owner must pay a reinspection fee by requiring the owner to pay the fee if rules adopted by the Director of Agriculture require reinspections for the ride's safe operation.
- Allows the Department of Agriculture to charge a fee for a supplemental reinspection of a temporary amusement ride when the inspection is required by rules governing a ride's safe operation.

### Agricultural commodity handlers

- Revises several of the circumstances under which claims may be reimbursed at 100% from the Agricultural Commodity Depositors Fund when an agricultural commodity handler fails to pay an agricultural commodity depositor.
- If a commodity depositor's loss involves circumstances other than when 100% payment for the loss is required, reduces the fund's liability to 75% of the loss, rather than 100% of the first \$10,000 of losses and 80% of the remaining dollar value of losses under former law.

### Internet sales exemption from auction laws (VETOED)

- Would have revised an exemption from the auction law so that a person who sold any real or personal property via an auction mediation company on the internet was exempt, if the company provided fraud protection or a money-back guarantee to the buyer.

### Auctioneer continuing education exemption (VETOED)

- Would have stipulated that the continuing education requirements for licensed auctioneers established under continuing law did not apply to a licensed auctioneer who:
  - Was licensed as an apprentice auctioneer under law repealed by H.B. 321 of the 134<sup>th</sup> General Assembly on September 13, 2022; and
  - Completed the apprenticeship prior to that date.

### Legume inoculators

- Eliminates the legume inoculator's annual license (\$5 fee), which authorized a person to apply legume inoculants to seed for sale.

### Amusement ride reinspections

(R.C. 993.04)

The act adds to the reasons why an amusement ride owner must pay a reinspection fee by requiring the owner to pay the fee if rules adopted by the Director of Agriculture require

reinspections for the safe operation of the ride. Under continuing law, the Director also may require an amusement ride owner to pay a reinspection fee if:

1. The reinspection was conducted at the owner's request;
2. The reinspection is required because of an accident; or
3. The reinspection is required because the amusement ride is unsafe and in violation of the law governing safe operations of rides.

Under continuing law, ride reinspections are required based on the size, complexity, nature of the ride, and the number of days the ride is in operation during the year. Reinspection fees range from \$5 to \$1,200 depending on the ride. However, under prior law, the Director was not authorized to charge a fee for a reinspection when the reinspection was conducted in accordance with rules governing the safe operation of the ride.

The act also allows the Department of Agriculture to charge a fee for a supplemental reinspection of a temporary amusement ride when the inspection is required by rules governing the safe operation of a ride.

## **Agricultural commodity handlers**

(R.C. 926.18)

### **Background**

The law governing agricultural commodities provides for the licensure and regulation of agricultural commodity handlers (commonly known as grain elevators). All licensed handlers must remit fees established by the Director on each bushel of an agricultural commodity deposited with the handler. The Director must deposit these fees in the Agricultural Commodities Fund. The fund is used to pay claims made by agricultural commodity depositors when the handler, for a variety of reasons, is unable to pay the depositor for the deposited commodity. An agricultural commodity is corn, soybeans, or wheat, and the Director may add additional commodities by rule.<sup>16</sup>

### **Claims**

The act revises several of the circumstances under which claims must be paid from the fund to a depositor who has not received payment from an agricultural commodity handler. Ohio law establishes circumstances under which a depositor receives 100% of the depositor's loss. Losses incurred outside of those circumstances are paid at 100% of the first \$10,000 of loss and 80% of the remaining dollar value of that loss.

The act first revises the circumstances under which a depositor is paid 100% of the depositor's loss by doing the following:

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<sup>16</sup> R.C. 926.01, 926.16, and 926.17, not in the act.

1. If the commodity handler's license is suspended and the handler failed to pay for the commodities by the date on which the suspension occurred, increasing the number of days by which the commodities had to be priced prior to the suspension from 30 days to 45 days;

2. If the commodity handler's license is suspended and there is a deferred payment agreement between the depositor and the handler, doing all of the following:

a. Increasing the number of days by which the commodities had to be priced prior to the suspension from 90 days to 365 days;

b. Increasing the number of days by which payment for the commodity must be made pursuant to the deferred payment agreement from 90 days to 365 days following the date of delivery; and

c. Requiring that the deferred payment agreement between the handler and depositor be signed.

3. Adding a new circumstance that requires payment of 100% of the depositor's loss when the commodities were delivered and marketed under a delayed price agreement up to two years prior to the commodity handler's license suspension. The delivery date as marked on the receipt tickets is used to determine the two-year period. The act stipulates that the fund has no liability if the delayed price agreement was entered more than two years prior to the commodity handler's license suspension.

The act retains two additional circumstances in which a depositor must receive 100% of the depositor's loss from the fund. The first circumstance is when the deposited commodities were stored under a bailment agreement. The second circumstance is when payment for the commodities was tendered, but the payment was subsequently denied (e.g., a check written on an account with insufficient funds).

If a commodity depositor's loss involves circumstances other than those when 100% payment is required, the act decreases the fund's liability to 75% of the loss, rather than 100% of the first \$10,000 and 80% of the remaining dollar value.

## **Internet sales exemption from auction laws (VETOED)**

(R.C. 4707.02)

The Governor vetoed a provision that would have revised an exemption from the auction law for internet auction sales made via an auction mediation company by doing all of the following:

1. Eliminating the \$10,000 annual sales cap that applies to a person's sales of personal property via the auction mediation company;

2. Eliminating the requirement that the person is either selling the property of another and does not receive any compensation for that sale, or the person is selling the person's own personal property; and

3. Applying the exemption to real property in addition to personal property as under continuing law.

The effect of these changes would have been to exempt a person from the auction law when selling any real or personal property via an auction mediation company, without any conditions other than requiring the auction mediation company to provide fraud protection or a money-back guarantee to the buyer.

### **Auctioneer continuing education exemption (VETOED)**

(R.C. 4707.101)

The Governor vetoed a provision that would have provided that the continuing education requirements for licensed auctioneers do not apply to a licensed auctioneer who:

1. Was licensed as an apprentice auctioneer under law repealed by H.B. 321 of the 134<sup>th</sup> General Assembly on September 13, 2022; and
2. Completed the apprenticeship prior to that date.

H.B. 321, which took effect September 13, 2022, eliminated the apprentice auctioneer license. It also required licensed auctioneers and auction firm managers of licensed auction firms to complete eight hours of continuing education every two years.

### **Legume inoculators**

(R.C. 907.27 and 907.32; repealed R.C. 907.30)

The act eliminates the legume inoculator's annual license. The license authorized a person to apply legume inoculants to seed for sale. Former law required an applicant for a license to include specified information with an application (along with a \$5 application fee), including the brand name of the legume inoculant to be used.

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## AIR QUALITY DEVELOPMENT AUTHORITY

- Authorizes the Ohio Air Quality Development Authority to enter into an arrangement with a municipality, township, or special improvement district to fund commercial or industrial energy or energy efficiency projects (often referred to as a PACE or “property assessed clean energy” project).
- Authorizes the municipality, township, or special improvement district to impose and remit to the Authority special assessments on property benefitting from the PACE.

### Property assessed clean energy project financing

(R.C. 503.59, 727.01, 1710.06, 3706.01, 3706.051, and 3706.12; Section 803.20)

The act authorizes the Ohio Air Quality Development Authority (AIR) to enter into an agreement with a local partner – either a municipal corporation, township, or special improvement district (SID) – to fund a privately owned commercial or industrial “special energy improvement” that reduces air pollution, i.e., a solar, geothermal, or customer-generated energy facility or energy efficiency improvement. Pursuant to this agreement, AIR will issue bonds and remit the proceeds to either the local partner or the private owner. The local partner will levy a special assessment against the project property, and remit the proceeds of that assessment to AIR to service the bonds. This type of financing arrangement is commonly referred to as a PACE, or “property assessed clean energy,” project.

Under continuing law and pursuant to its existing bonding authority, AIR may use its bond proceeds to fund commercial and industrial special energy improvement projects directly. AIR also may enter into agreements with local governments to fund such projects owned by the local government. The act authorizes two separate PACE funding models. One to be used when the local partner is a SID or municipality that is a SID member acting in furtherance of the SID’s objectives, the other to be used when the local partner is a township or municipality operating independently and not through a SID.

#### SID PACE model

Under continuing law, SIDs and both municipalities and townships that are SID members acting in accordance with SID objectives may impose special assessments on property to fund special energy improvement projects, provided the projects are approved by every property owner to be assessed. (A SID is a district formed by one or more municipalities and townships for the purpose of levying special assessments to provide certain services or develop certain improvements within the district.)

Under the act, a SID, or a member municipality or township, may enter into an agreement with AIR whereby AIR remits bond proceeds to the SID, municipality, or township, which then remits those funds to a private property owner to fund special energy improvement projects. It also allows AIR to remit those funds directly to the private property owner. In turn, the SID, municipality, or township imposes a special assessment on the benefitted property and assigns and remits the assessment proceeds to AIR, which uses them to service project bonds.

The act prohibits this model from being construed to apply to any AIR bonds or SID special assessments issued or levied before October 3, 2023.

### **Municipal and township PACE model**

While SIDs and municipalities that are SID members have existing authority to levy special assessments to fund special energy improvement projects, municipalities acting outside of a SID and townships do not have that authority.

The act grants specific authority for these municipalities and townships to levy special assessments to fund special energy improvement projects. However, they may be levied only if the property owner proposing the project petitions for them and the municipality or township enters into an agreement with AIR. Pursuant to this agreement, AIR will remit bond proceeds to the property owner to fund the project, and the municipality or township will pledge and remit the special assessments to AIR to service those bonds. (In contrast, the bond proceeds in the SID model are remitted to the local partner, and not the property owner.)

The act also requires a municipal corporation or township that is part of a SID that develops and implements plans for special energy improvement projects to notify the SID of both:

1. The agreement between AIR and the municipal corporation or township; and
2. The air quality facility that is to be funded with property assessments.

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## ARCHITECTS BOARD

- Amends the structure of the Architects Board to include a public member and reduces the required years of architect licensure experience required for service on the Board.

### Board membership

(R.C. 4703.01; Section 747.10)

The act amends the structure of the Architects Board by replacing one architect member with one public member who is not an architect. It also reduces from ten to five the number of years of active architect practice required for service on the Board.

Board members serving on October 3, 2023 (the act's effective date), may continue to hold office until their terms expire, unless removed under law. The Governor must appoint the nonarchitect member of the general public when the Board's next vacancy occurs.

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## **ATTORNEY GENERAL**

### **State involvement in legal actions**

- Specifies that the General Assembly and each chamber may intervene as a matter of right at any time in any civil action or proceeding in state or federal court that involves a challenge to the validity, applicability, or constitutionality of the Ohio Constitution or the laws of Ohio.
- Creates exceptions to the law that requires the Attorney General to represent a state agency in any legal action.
- Allows the Speaker of the House and the Senate President to retain their own legal counsel to represent the House, the Senate, or the General Assembly.
- Allows the Governor to retain separate legal counsel in any matter, action, or proceeding the Governor deems to be necessary and proper to protect the interests of the Office of the Governor.

### **Large Settlements and Awards Fund (VETOED)**

- Would have created a Large Settlements and Awards Fund and directed the proceeds of any court order, judgment, settlement, or compromise exceeding \$2 million to the fund (VETOED).
- Would have required the Attorney General to send a report to the Senate President and House Speaker if the Attorney General could not cover legal costs from money received from an order, judgment, settlement, or compromise, or from an available appropriation (VETOED).

### **Parental notification by social media operators**

- Beginning January 15, 2024, requires operators of certain online websites, services, and products that target children, or are reasonably anticipated to be accessed by children, to obtain consent from a parent or legal guardian before entering a contract with a person under age 16.
- Describes the methods by which an operator may obtain parental consent and requires the operator to subsequently confirm it with the child's parent or legal guardian.
- Requires an operator to provide the parent or legal guardian with a list of features of the website, service, or product related to censoring and moderating content.
- Gives the Attorney General exclusive authority to enforce the requirements and specifies civil penalties for violations.
- Requires the Attorney General to give operators in "substantial compliance" with the requirements notice of alleged violations and an opportunity to cure such violations before commencing a civil action.
- Prohibits a private cause of action for any violation of the requirements.

## **Victims of Human Trafficking Fund**

- Transfers administration of Ohio's Victims of Human Trafficking Fund from the Department of Job and Family Services to the Attorney General.

## **Sexual assault examination kits**

- Defines "victim" as a person from whom a sexual assault examination kit was collected.
- Permits a victim to request certain information to be delivered in writing, by electronic mail, or by telephone, as specified by the victim.
- Requires the appropriate official with custody of the kit to inform the victim when there is any change in the status of the case, including if the case has been closed or reopened.
- Permits a victim to request written notice of the destruction or disposal date of the kit and requires delivery of that notice at least 60 days before the intended destruction or disposal.
- Permits a victim to request that the victim's sexual assault examination kit or its probative contents be preserved beyond the intended destruction or disposal date for up to 30 years.
- Requires the appropriate official with custody of the kit to also provide the victim with information about the victim's right to apply for a reparations award.
- Requires government evidence-retention entities to submit annual reports regarding sexual assault examination kit inventory to the Attorney General.
- Requires the Attorney General to compile data from the annual reports into a summary report, including a list of all governmental evidence-retention entities that failed to participate in the report's preparation.
- Requires the annual summary report to be made public on the Attorney General's website, and to be reported to the Governor, the Speaker of the House, and the Senate President.

## **State involvement in legal actions**

(R.C. 101.55, 107.13, and 109.02)

### **Intervention by the General Assembly or the Governor**

The act specifies that the General Assembly, the House of Representatives, and the Senate individually, and the Governor may intervene as a matter of right (that is, become a party to a court case) at any time in any civil action or proceeding that involves a challenge to the Ohio Constitution or the laws of Ohio and that is an important matter of statewide concern. However, continuing law prohibits any public official from entering into a legal agreement that nullifies, suspends, enjoins, alters, or conflicts with any provision of the Revised Code.

In intervening in a case, the Speaker may act on behalf of the House, the Senate President may act on behalf of the Senate, and the Speaker and the President may act jointly on behalf of the General Assembly. Intervention must be in accordance with the Ohio Rules of Civil Procedure or the Federal Rules of Civil Procedure, as applicable.<sup>17</sup>

### **Special counsel**

The act also creates exceptions to the law that requires the Attorney General to represent a state agency in any legal action, either through the Attorney General's office or by appointing special counsel, and that prohibits agencies from obtaining other counsel.

### **General Assembly**

First, the act allows the Speaker of the House and the Senate President to retain their own legal counsel, other than from the Attorney General, to intervene in a judicial proceeding, as described above, on behalf of the House, the Senate, or the General Assembly. The Speaker and the President, individually or jointly, also may retain attorneys to provide advice and counsel to them on matters that affect the official business of the General Assembly. The House and the Senate may do so only in a civil proceeding, not in any criminal proceeding.

The Speaker and the President, as applicable, must approve all terms of representation and authorize payment for all financial costs incurred. Payment must be from the House's or Senate's operating expenses appropriation line item or from a separate appropriation made for those costs. But, the House, the Senate, or the General Assembly, as applicable, may rescind the retention of a particular legal counsel in a particular matter by adopting a resolution by a simple majority vote.

These provisions do not limit any authority of the General Assembly or its members that is granted under the Ohio Constitution or other provisions of the Revised Code. The act also specifies that the provisions described above do not constitute a waiver of the legislative immunity or legislative privilege of the Speaker, the President, or any member, officer, or staff of either house.

The concepts of legislative privilege and immunity come from the Speech and Debate Clause of the Ohio Constitution, which provides that, "for any speech, or debate, in either House, . . . [Senators and Representatives] shall not be questioned elsewhere." The courts have interpreted this clause to mean that members of the General Assembly, and to some extent their staff, may not be prosecuted or sued for their legitimate legislative activities and that members of the General Assembly and sometimes their staff enjoy an evidentiary privilege that prevents certain legislative activities from being used in court as evidence against them.<sup>18</sup>

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<sup>17</sup> See R.C. 9.58, not in the act; [Rule 24 of the Ohio Rules of Civil Procedure \(PDF\)](#), available at [supremecourt.ohio.gov](http://supremecourt.ohio.gov) under "Ohio Rules of Court"; and [Rule 24 of the Federal Rules of Civil Procedure \(PDF\)](#), available at [uscourts.gov](http://uscourts.gov) under "Rules & Policies."

<sup>18</sup> Ohio Constitution, Article II, Section 12. See also *Hicksville v. Blakeslee*, 103 Ohio St. 508 (1921) and *Dublin v. State of Ohio*, 138 Ohio App.3d 753 (10<sup>th</sup> Dist. Ct. App. 2000).

## **Governor**

Similarly, the act allows the Governor to retain legal counsel, other than from the Attorney General, to intervene in a judicial proceeding, as described above, or to provide advice and counsel to the Governor on matters that affect the official business of the Office of the Governor. The Governor may do so only in a civil proceeding, not in any criminal proceeding.

The Governor must approve all terms of representation and authorize payment for all financial costs incurred from the Governor's operating expenses appropriation line item or from a separate appropriation made for those costs. A representation agreement entered into under the act is not subject to continuing-law requirements that agencies follow DAS contracting procedures and receive Controlling Board approval before awarding a contract worth \$50,000 or more without competitive bidding.<sup>19</sup>

These provisions do not limit any authority of the Governor that is granted under the Ohio Constitution or other provisions of the Revised Code. Finally, the act specifies that it does not constitute a waiver of any executive privilege of the Governor or any executive officer or staff. Although the Ohio Constitution and the Revised Code do not mention executive privilege, the Ohio Supreme Court has recognized that a limited executive privilege applies under the common law. Under certain circumstances, executive privilege protects the confidentiality of communications between the Governor and executive agencies, and might also protect the confidentiality of documents and other materials related to the deliberative process by which the Governor formulates policies and makes decisions.<sup>20</sup>

## **Large Settlements and Awards Fund (VETOED)**

(R.C. 109.11, 109.111, 109.112, and 109.113; Section 812.12)

The Governor vetoed a provision that, beginning in 2024, would have modified the disbursements of settlement and award funds received by the state. Settlements or awards under \$2 million would have been deposited into the Attorney General Court Order and Settlement Fund (currently called the Attorney General Court Order Fund) and then disbursed by the Attorney General to a fund determined by the OBM Director. For settlements or awards of \$2 million or more, the Attorney General would have been required to transfer the funds to the Large Settlements and Awards Fund, which the act would have created in the state treasury. The veto preserves the law requiring that all amounts the Attorney General receives as reimbursement for legal services and other services, or as reimbursement for costs and fees associated with representation, be paid into the Attorney General Reimbursement Fund.

Also beginning in 2024, the act would have required the Attorney General, when seeking an order or judgment of a court or when entering into a settlement agreement or other compromise of claims on behalf of the state, to seek to secure payment of all costs, expenses, and contractual obligations related to the legal services and other services provided, unless those items were to be paid with available funds. If unable to secure payment of those items, the

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<sup>19</sup> See R.C. 125.05 and 127.16.

<sup>20</sup> *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364 (2006).

Attorney General would have been required to file a report with the Senate President and the House Speaker detailing the costs, expenses, and obligations incurred and the efforts made to secure payment, including a description of any cost sharing arrangements with other state attorneys general.

## **Parental notification by social media operators**

(R.C. 1349.09)

The act establishes several new requirements for operators of online websites, services, or products that target children, or are reasonably anticipated to be accessed by children. For this purpose, the act defines “child” as any consumer under age 16 who is not emancipated.

The Attorney General is required to investigate alleged noncompliance with the act’s requirements. If it appears that a violation has occurred, the Attorney General may bring a civil action against the operator, and a court may impose a temporary restraining order, preliminary or permanent injunction, civil penalty, or other appropriate remedy. The requirements and the associated enforcement mechanisms apply beginning January 15, 2024.

### **Scope**

The act applies only to operators of online websites, services, or products that (1) have users in Ohio, (2) target children or are reasonably anticipated to be accessed by children, and (3) allow users to do all of the following:

- Interact socially with other users;
- Construct a public or semipublic profile;
- Populate a list of other users with whom the user shares a social connection;
- Create or post content viewable by other users (including on message boards, video channels, and chats).

The act lists several factors that may be considered as evidence that an online website, service, or product targets children or is reasonably anticipated to be accessed by a child. These include subject matter, language, visual and audio content, design elements, use of animated characters or child-oriented activities and incentives, age of models, presence of child celebrities or celebrities who appeal to children, advertisements, empirical evidence of audience composition, and evidence regarding the operator’s intended audience.

The act’s requirements do not apply to e-commerce reviews, comments on news stories, cloud storage or computing services, broadband internet access services, or search engine services.

### **Parental consent**

The operator of an online website, service, or product subject to the act’s requirements must obtain verifiable consent from a parent or legal guardian before entering a contract with a child, including terms of service to register, sign up, or otherwise create a unique username to access the website, service, or product. The operator may obtain such consent by requiring a parent or legal guardian to do any of the following:

- Sign and return a form consenting to the terms of service by postal mail, fax, or email;
- Use, in connection with a monetary transaction, a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder;
- Call a toll-free telephone number implemented by the operator and staffed by trained personnel;
- Connect to the operator's trained personnel via videoconference;
- Submit a form of government-issued identification that the operator must check against databases of such information.

If an operator obtains consent through submission of government-issued identification, the operator must delete the parent's or guardian's identification from its records promptly after verification is complete.

### **Content moderation features**

In addition to obtaining verifiable consent, the operator must provide the child's parent or guardian with a list of features of the online website, service, or product related to censoring or moderating content, including features that can be disabled for a particular profile. The operator must also provide the parent or guardian a website link that may be used to access and review the list of features at another time.

### **Confirmation**

After obtaining verified parental or legal guardian consent, the operator must send written confirmation of the consent to the parent or legal guardian via email, postal mail, or fax. If the operator made every reasonable effort but cannot secure the necessary contact information to send the written confirmation, the operator instead may verify consent via telephone.

### **Termination of access**

If the parent or legal guardian fails to give consent or refuses to give consent to the terms of service, the operator must deny access or use of the online website, service, or product to the child. If the parent or legal guardian receives confirmation of consent but determines the consent was given in error, or chooses to withdraw consent, the parent or guardian may notify the operator, and the operator must terminate the child's use of or access to the website, service, or product within 30 days of receiving the notification.

### **Enforcement**

Enforcement of the act's parental consent requirements is exclusively under the authority of the Attorney General. The act does not allow a private right of action. Instead, it requires the Attorney General to investigate an operator's noncompliance in the same manner, by the same means, and with the same jurisdiction, powers, and duties that apply to investigations of alleged violations of security breach disclosure requirements under continuing law.

The act authorizes the Attorney General to bring a civil action against a noncompliant operator for appropriate relief, including a temporary restraining order, preliminary or permanent injunction, and civil penalties. If a court finds that an online operator entered into a contract with a child without parental or legal guardian consent, the operator is liable to the Attorney General for the Attorney General's costs in conducting an investigation and bringing the civil action. In addition, the court must impose a civil penalty up to \$1,000 for each day the operator failed to comply with the act's requirements. If the violation continues past 60 days, the court must impose a civil penalty up to \$5,000 for each day starting on the 61<sup>st</sup> day of the continued violation. If the violation continues past 90 days, the court must impose a civil penalty up to \$10,000 for each day starting on the 91<sup>st</sup> day that the violation continues. The civil penalties must be deposited to the Consumer Protection Enforcement Fund, the proceeds of which are used to pay for expenses incurred by the Consumer Protection Section of the Attorney General's office.

If a violation is alleged against an operator that is otherwise in substantial compliance with the act's requirements, the Attorney General must provide written notice of the alleged violation to the operator before initiating a civil action. If the operator cures the alleged violation within 90 days after the notice is sent, and provides the Attorney General written documentation of that cure and of sufficient measures taken to prevent future violations, the act prohibits the Attorney General from commencing a civil action and prohibits a court from imposing a civil penalty for that cured violation.

## **Victims of Human Trafficking Fund**

(R.C. 5101.87)

The act transfers administration of the Victims of Human Trafficking Fund from the Department of Job and Family Services to the Attorney General.

## **Sexual assault examination kits access and information**

(R.C. 109.42, 109.68, 2933.82, and 2933.821)

The act defines "victim," in reference to the statewide sexual assault examination kit tracking system, as meaning a person from whom a sexual assault examination kit was collected. A victim may request that the appropriate official with custody of the kit provide the following information in writing, by electronic mail, or by telephone, as designated by the victim:

- Information regarding the testing date and results of the kit;
- Whether a DNA profile was obtained from the kit;
- Whether a match was found to that DNA profile in state or federal databases;
- The estimated destruction date of the kit.

If a victim requests information regarding tracking the victim's sexual assault examination kit, the act requires the appropriate official with custody of the kit to inform the victim when there is any change in the status of the case, including if the case has been closed or reopened. A victim may request written notification of the destruction or disposal date of the kit and must

receive that notice at least 60 days before the date of the intended destruction or disposal. Additionally, a victim may request further preservation of the kit or its probative contents beyond the intended destruction or disposal date for up to 30 years.

In responding to a victim's request for information regarding tracking the victim's sexual assault examination kit, the appropriate official with custody of the kit must also provide the victim with information about the victim's right to apply for an award of reparations.

Under the act, all governmental evidence-retention entities must submit annual reports regarding sexual assault examination kit inventory to the Attorney General. The report must contain the following information:

- The total number of all tested and untested sexual assault examination kits in the possession of each governmental evidence-retention entity, and for each untested kit whether the sexual assault was reported to law enforcement or whether the victim chose not to file a report with law enforcement;
- If the governmental evidence-retention entity is a medical facility, the date each untested kit was reported to law enforcement, if applicable, and the date the kit was delivered to the medical facility;
- If the governmental evidence-retention entity is a law enforcement agency, the date each untested kit was received from a medical facility, the date the kit was submitted to a crime laboratory, or for any kit not submitted to a crime laboratory, the reason the kit was not submitted;
- If an untested kit belongs to another jurisdiction, the date that jurisdiction was notified and the date the kit was retrieved by that jurisdiction, if applicable;
- If the governmental evidence-retention entity is a crime laboratory:
  - The date each kit was received from law enforcement and from which agency it was received;
  - The date the kit was tested, if applicable;
  - The date the kit test results were entered into the combined DNA index system maintained by the Bureau of Criminal Identification and Investigation or other relevant state or local DNA databases, if applicable, or if a DNA profile has not been created, the reason it was not created;
  - For untested kits, the reason the kit has not been tested;
  - The total number of kits in possession of the entity for more than 30 days;
  - The total number of kits destroyed and the reason for the destruction.

The Attorney General will compile the data from all of the reports into a summary report, which will include a list of all governmental evidence-retention entities that failed to participate in preparing the report. The annual summary report must be made public on the Attorney General's website, and submitted to the Governor, the Speaker of the House, and the Senate President.

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## **AUDITOR OF STATE**

### **Fraud-reporting system and training (PARTIALLY VETOED)**

- Requires the Auditor of State to promptly notify the prosecuting attorney or similar chief legal officer of a municipal corporation if a report received under the fraud-reporting system involves probable theft or fraud by a public office or official, unless the chief legal officer is the perpetrator.
- Requires the Auditor to create training material detailing Ohio's fraud-reporting system and the means of reporting fraud, waste, and abuse.
- Requires the Department of Administrative Services to administer the training material to each state employee, statewide elected official, and General Assembly member in a manner prescribed by the Auditor.
- Requires the Auditor to administer the training material to elected officials and employees of a political subdivision.
- Would have required certain persons to make a timely report on the fraud-reporting system after becoming aware of fraud, theft in office, or misuse or misappropriation of public money (VETOED).
- Would have specified that a prosecuting attorney or similar chief legal officer of a municipal corporation, or employees of the officer, are not required, and do not have an express statutory duty, to report a violation to the Auditor's fraud-reporting system (VETOED).
- Would have exempted a person who serves as legal counsel, or who is employed as legal counsel, for a public office from being required to report fraud, theft in office, or misuse or misappropriation of public money if it concerns any communication received from a client in an attorney-client relationship (VETOED).
- Permits the Office of Internal Audit to consult with the Auditor regarding any written report the Office receives regarding those violations and to share those reports with the Auditor upon request.

### **Audit records**

- Permits the Auditor to refer a public records request to an originating public office when the record was provided to the Auditor for purposes of an audit, and the original public office has asserted to the Auditor that the record is not a public record.

### **Auditor's Innovation Fund**

- Replaces the Leverage for Efficiency, Accountability, and Performance (LEAP) Fund with the Auditor's Innovation Fund.

- Authorizes the Auditor's Innovation Fund to be used for innovative audit, accounting, or local government assistance services that improve the quality or increase the range of services offered to local governments and school districts.
- Removes law describing the uses of the LEAP funds, including (1) making loans to state and local entities for performance audits and (2) paying the costs of performance audits and feasibility studies.

### **Auditor feasibility study**

- Permits the Auditor to conduct a feasibility study requested by a state agency or local public office at the Auditor's discretion, rather than as LEAP funds are allowed and available.

### **Cause of action by Auditor**

- Specifies that, when there is a cause of action set forth from a report of the Auditor, the amount payable from that action is a final and certified claim, under the law regarding collecting amounts due to the state, upon submission to the Attorney General.
- Specifies that the amount payable may be satisfied under an existing process that allows a person's tax refund to be applied to a debt to the state or a political subdivision.

### **Performance audits**

- Modifies the timeframe for a state agency or institution to implement the recommendations of a performance audit and the related reporting requirement.
- Modifies the content and submission date of the Auditor's annual report.
- Removes the cost limitations on performance audits of state universities.

### **Access to public records (VETOED)**

- Would have required state agencies and institutions of higher education that are subject to a performance audit to give the Auditor access to the agency's or institution's employees, books, accounts, reports, vouchers, correspondence files, contracts, money, property, electronic data, and other records (VETOED).
- Would have allowed the Auditor to examine the records upon request (VETOED).
- Would have required the agency or institution to provide records to the Auditor in the format the Auditor requested (VETOED).
- Would have required the Auditor to maintain the confidential nature of a document, data, or information (VETOED).
- Would have required the Auditor to provide a data sharing agreement to govern the use of restricted data if the Auditor determines it necessary (VETOED).

## **School district fiscal distress performance audits**

- Removes the Office of Budget and Management from the performance audit consultation process for school districts under fiscal caution, in a state of fiscal watch, or in fiscal emergency.
- Removes the requirement that the Auditor prioritize performance audits of school districts in fiscal distress.

## **ODJFS audit (VETOED)**

- Would have permitted the Auditor to conduct audits of the Department of Job and Family Services and any program it administers, and to charge the Department for the cost of an audit (VETOED).

## **Department of Medicaid audit (VETOED)**

- Would have required the Auditor to conduct audits of the Department of Medicaid and the programs it administers and to periodically report the results of these audits to the Joint Medicaid Oversight Committee (VETOED).
- Would have permitted the Auditor to charge the Department for the cost of an audit (VETOED).
- Would have specified that the Auditor may determine the subject and scope of these audits, which may include specified topics (VETOED).

## **Fraud-reporting system and training (PARTIALLY VETOED)**

(R.C. 117.103)

### **Fraud-reporting system**

The act requires the Auditor of State to promptly notify the prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation if a report received under the fraud-reporting system involves probable theft or fraud, including misuse or misappropriation of public money by any public office or public official, unless the attorney, director, solicitor, or chief legal officer is the perpetrator.

### **Fraud-reporting training**

The act requires the Auditor to create training material detailing Ohio's fraud-reporting system and the means of reporting fraud, waste, and abuse. The training material must be as concise as practicable. Under continuing law, the Auditor must establish and maintain a system for reporting fraud, including misuse and misappropriation of public money by any public office or official. The system must allow residents and employees of any public office to make anonymous complaints using a toll free telephone number, the Auditor's website, or by mail to the Auditor's office. The Auditor must review all complaints in a timely manner.

Additionally, the act requires the Department of Administrative Services to administer the training material to each state employee, statewide elected official, and General Assembly member. The Auditor must administer the training material to employees and elected officials of political subdivisions. Current employees and elected officials must complete the training within 90 days of a date the Auditor specifies unless there is good cause for noncompliance. Each new employee or elected official must confirm receipt of the training material on a form model provided by the Auditor within 30 days after taking office or beginning employment.

The training is required every four years for each employee or elected official. Under former law, a public office was required to provide employees with information about Ohio's fraud reporting system within 30 days upon employment with a public office and was satisfied if the public office provides the information in an employee handbook and requires an employee's signature for receipt of the handbook.

### **Persons required to report fraud and abuse (VETOED)**

(R.C. 4113.52)

The Governor vetoed a provision that would have required the following persons who, during the person's term of office or course of employment, become aware of fraud, theft in office, or misuse or misappropriation of public money to timely notify the Auditor through the fraud reporting system or other means:

- The person is elected to public office;
- The person is appointed to or within a public office;
- The person has a fiduciary duty to a public office;
- The person holds a supervisory position within a public office;
- The person is employed in the department or office responsible for processing any expenses of the public office.

The Governor vetoed a provision that would have specified that the duty of those persons to notify the Auditor is an express statutory duty of the officers and employees of a public office. However, a prosecuting attorney or similar chief legal officer of a municipal corporation, or employees of the officer, are not required, and do not have an express statutory duty, to report a violation to the Auditor's fraud-reporting system.

Additionally, the Governor vetoed a provision that would have exempted a person who serves as legal counsel, or who is employed as legal counsel, for a public office from being required to report fraud, theft in office, or misuse or misappropriation of public money if it concerns any communication received from a client in an attorney-client relationship.

The Governor vetoed a provision that would have specified that nothing in the act should be construed to limit the authority of an auditor, including the Auditor, to make inquiries or interview state or local government employees or officials or otherwise perform audit procedures related to fraud during the course of an audit or attestation engagement.

Continuing law requires a person to orally notify the person's supervisor or other responsible officer if the person becomes aware, in the course of employment, of a violation of any state or federal statute or any ordinance or regulation of a political subdivision that the person's employer has the authority to correct, and the person reasonably believes the violation is a criminal offense that is likely to cause imminent harm or hazard to public health and safety, a felony, or improper solicitation for contribution. Additionally, the person must file a written report with that supervisor or officer that provides sufficient detail to identify and describe the violation. If the violation is not corrected within 24 hours or a reasonable and good faith effort was not made to correct the violation, the person may file a written report with the prosecuting attorney, a peace officer, the inspector general if within its jurisdiction, the fraud-reporting system, or any other appropriate public official or agency.

### **Office of Internal Audit**

(R.C. 126.47)

Additionally, the act permits the Office of Internal Audit (within the Office of Budget and Management) to consult with the Auditor regarding any written report the office receives. The Office may share the written reports with the Auditor upon request and those reports are not a public record under Ohio's Public Records Law. Continuing law permits an employee of the classified or unclassified civil service to file a written report identifying violations of state or federal statutes, rules, or regulations, or misuse of public resources with the employee's Office of Internal Audit, in addition to or instead of with the employee's supervisor or appointing authority or the fraud-reporting system. The Office directs internal audits of state agencies or divisions of state agencies to improve their operations in areas of risk management, internal controls, and governance.<sup>21</sup>

### **Audit records**

(R.C. 149.43)

The act modifies Public Records Law to authorize the Auditor, in the following circumstance, to direct a public records requestor to another public office. Under the act, when the Auditor receives a request to inspect or to make a copy of a record that was provided to the Auditor for purposes of an audit, but the original public office has asserted to the Auditor that the record is not a public record, the Auditor may handle the request by directing the requestor to the original public office that provided the record to the Auditor.

### **Auditor's Innovation Fund**

(R.C. 117.47, with conforming changes in R.C. 117.46; repealed R.C. 117.471 and 117.472)

The act eliminates the Leverage for Efficiency, Accountability, and Performance (LEAP) Fund, and creates the Auditor's Innovation Fund.

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<sup>21</sup> R.C. 149.43; R.C. 124.341 and 126.45, not in the act.

It permits the Auditor to use the Auditor's Innovation Fund for "innovative audit, accounting, or local government assistance services that improve the quality or increase the range of services offered to local governments and school districts." The fund consists of money appropriated to it.

The act repeals law permitting loans to be made with LEAP funds. Under the law, the Auditor had to use LEAP funds to make loans to state agencies, local public offices, and state institutions of higher education for conducting performance audits if the Auditor approved their applications. The amount loaned was charged by the Auditor for a performance audit. In addition, LEAP funds were used for conducting feasibility studies requested by state agencies or local public offices. Under the repealed law, 50% of the money in the LEAP Fund had to be used for loans and paying the costs of performance audits, and 50% for feasibility studies.

The act repeals law containing the terms and conditions of LEAP Fund loans to entities that receive them, and provisions describing the consequences of defaulting on those loans.

Under the former law, the LEAP Fund consisted of appropriated money, plus repayments of principal and interest made on LEAP Fund loans.

### **Auditor feasibility study**

(R.C. 117.473)

The act permits the Auditor to conduct a feasibility study at the Auditor's discretion, rather than require the Auditor to conduct feasibility studies as LEAP funds are allowed and available. Under former law, the Auditor had to conduct the requested feasibility studies as funds were allowed and available from the LEAP Fund, no more than 50% of which could be used to conduct those feasibility studies.

Continuing law permits a state agency or local public office to request that the Auditor conduct a feasibility study to determine if it could realize greater efficiency or cost savings by sharing services or facilities with other agencies or offices.

### **Cause of action by Auditor**

(R.C. 117.34)

The act specifies that, when there is a cause of action set forth from a report of the Auditor, the amount payable from that action is a final and certified claim, under the law<sup>22</sup> regarding collecting amounts due to the state, upon submission to the Attorney General.

Under continuing law, if an amount owed to the state is not paid within 45 days after payment is due, the officer responsible for collecting it must certify the amount due to the Attorney General, who must give immediate notice to the party indebted of the nature and amount of the indebtedness. The Attorney General and the officer must agree on the time a payment is due, which may be an appropriate time determined by them based on statutory requirements or ordinary business processes. The law requires the AG to follow this process on

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<sup>22</sup> See R.C. 113.02, not in the act.

behalf of state agencies, and also on behalf of state institutions of higher education and of political subdivisions.

Additionally, the act specifies that the amount payable may be satisfied under the law<sup>23</sup> that allows a person's tax refund to be applied to a debt to the state or a political subdivision.

## **Performance audits**

(R.C. 117.462 and 117.463; repealed R.C. 117.464 and 117.465; Section 701.50)

The act makes changes to the Auditor's performance audit process, including the timeframe for implementation, the annual report, and cost limitations.

### **Timeframe for implementation**

Continuing law requires the Auditor to conduct at least four performance audits each biennium. At the conclusion of each audit, the Auditor must give recommendations to the state agency or state institution of higher education. Formerly, an agency or institution that had not begun implementing the recommendations within three months had to: (1) file a report explaining its failure to do so with the Governor, Auditor, Senate President and Minority Leader, and Speaker and Minority Leader of the House, and (2) provide testimony to the appropriate Senate and House committees. The act makes three changes:

- First, the act requires each agency or institution to develop an "implementation plan" within two months.
- Second, it extends the time an agency or institution has to begin implementing the recommendations – from three months to four months.
- Finally, the agency or institution must "request an opportunity to provide" testimony to the Senate and House committees, instead of requiring the testimony.

Under continuing law, an agency or institution that fails to implement every recommendation within a year must file a report justifying why the recommendation has not or will not be implemented. Formerly, the report was filed with the Governor, Auditor, Senate President and Minority Leader, and Speaker and Minority Leader of the House. Under the act, the report is filed with the Auditor and the Governor or governing authority of the agency or institution. Then, after considering the report, the agency director or the governing authority must submit a letter in writing to the Auditor, Senate President and Minority Leader, and Speaker and Minority Leader of the House outlining the status and plan for implementing the recommendations.

### **Annual report**

Under continuing law, the Auditor must submit an annual report to the Governor, Senate President and Minority Leader, and Speaker and Minority Leader of the House. Instead of requiring information about whether agencies and institutions implemented the Auditor's

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<sup>23</sup> See R.C. 5747.12, not in the act.

recommendations, the act requires information about the progress agencies and institutions have made in implementing the recommendations. And, the act requires the report to include information about other operational and programmatic improvements or efficiencies that have been achieved as a result of implementation. Finally, the act changes the submission date from March 30 to November 1.

### **Cost limitations**

The act removes the cost limitations on performance audits of state universities and removes a related provision that allowed the Auditor and a university to agree to exceed that limitation.

### **Access to public records (VETOED)**

(R.C. 117.092)

The Governor vetoed a provision that would have given the Auditor and the Auditor's authorized representatives access to all employees, books, accounts, reports, vouchers, correspondence files, contracts, money, property, or other records of a state agency or institution of higher education subject to a performance audit, including access to all electronic data. Every officer or employee of an agency or institution having the records or property under their control would have been required to permit access to and examination of those records upon request. The act would have required that all information requested by the Auditor for the purposes of an audit be promptly provided in the format prescribed by the Auditor, along with all items necessary to interpret the requested information, including data. The Auditor would have been required to comply with all restrictions imposed by law on documents, data, or information deemed confidential or otherwise restricted. The Auditor would have been required to provide a data sharing agreement to govern the use of restricted data if the Auditor determined an agreement was necessary to ensure compliance with restrictions imposed by law.

### **School district fiscal distress performance audits**

(R.C. 3316.042)

The act removes the Office of Budget and Management from the performance audit consultation process for school districts under fiscal caution, in a state of fiscal watch, or in fiscal emergency. However, the Auditor must continue to consult with the Department of Education and Workforce in conducting performance audits. The act also removes the requirement that the Auditor prioritize performance audits of school districts that are in fiscal distress.

Under continuing law, the Auditor has discretion to conduct performance audits of school districts under a fiscal caution, in a state of fiscal watch, in a state of fiscal emergency, or in fiscal distress. These audits consist of the review of any programs or areas of operation in which the Auditor believes that greater operational efficiencies or enhanced program results can be achieved, but do not include review or evaluation of the school district's academic performance. The costs of performance audits are paid by the Auditor with funds appropriated from the General Assembly.

## **ODJFS audit (VETOED)**

(Section 701.100)

The Governor vetoed a provision that would have permitted the Auditor to conduct an audit of the Department of Job and Family Services (ODJFS) and any program it administers. The subject and scope of an audit would have been determined by the Auditor and could have included:

- Management and operation of ODJFS;
- Economy, efficiency, and transparency of ODJFS programs;
- Goals, outcomes, or impacts of ODJFS programs;
- Systems and processes used to determine eligibility for program recipients and providers;
- ODJFS program integrity and payment accuracy;
- Contract management and subrecipient monitoring practices.

The vetoed provision would have permitted the Auditor to charge ODJFS with the total cost of any audit the Auditor conducts under this provision.

## **Department of Medicaid audit (VETOED)**

(Section 701.110)

The Governor vetoed a provision that would have required the Auditor to conduct audits of the Department of Medicaid (ODM) and any program it administers. The subject and scope of an audit would have been determined by the Auditor, and could have included:

- Management and operation of ODM;
- Economy, efficiency, and transparency of ODM programs;
- Goals, outcomes, or impacts of ODM programs;
- Systems and processes used to determine eligibility for program recipients and providers;
- ODM program integrity and payment accuracy;
- Contract management and subrecipient monitoring practices.

The Auditor would have been required to periodically report findings of audits conducted to the Joint Medicaid Oversight Committee. The Auditor would have been permitted to charge ODM the total cost of an audit conducted under this provision.

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## BOARDS AND COMMISSIONS

### Abolishment of boards

- Abolishes the following boards:
  - Clean Ohio Council (also abolishes the associated brownfield cleanup remediation program, and requires the Department of Development to assume the Council's obligations);
  - Co-op/internship Advisory Committee;
  - Manufactured Homes Advisory Council;
  - Third Frontier Governing Board.

### Board appointment deadline

- Extends the deadline for legislative appointments to certain boards until 45 days after the first regular session of each General Assembly.

### Commission on Eastern European Affairs

- Establishes the Commission on Eastern European Affairs and specifies its membership and duties.
- Establishes the Office of Eastern European Affairs, which reports to the Commission, and specifies its duties.

### New African Immigrants Commission

- Establishes the Office of New African Immigrant Affairs to assist the New African Immigrants Commission in fulfilling its duties.
- Creates the New African Immigrants Grant and Gift Fund in the state treasury.
- Adds four nonvoting members to the Commission to be appointed by the Speaker of the House and the Senate President, two of whom are General Assembly members.

### Commission on Minority Health

- Expands the Commission on Minority Health to 22 members by adding the Director of Aging or the Director's designee.

### General Assembly appointments

- Removes General Assembly appointments from the following boards:
  - Broadcast Educational Media Commission;
  - Child Support Guideline Advisory Council;
  - Chiropractic Loan Repayment Advisory Board;
  - Commission on Hispanic-Latino Affairs;

- Dentist Loan Repayment Advisory Board;
- Historical Boilers Licensing Board;
- Ohio Coal Development Office Technical Advisory Committee;
- Second Chance Trust Fund Advisory Committee.
- Eliminates the requirement for the Speaker of the House and the Senate President to recommend individuals for appointment to the New African Immigrants Commission.

### **OWDA member salary increase**

- Increases, from \$5,000 to \$7,500, the annual salary of the five members of the Ohio Water Development Authority who are appointed by the Governor.

### **Abolishment of boards**

The act abolishes the following boards:

- Clean Ohio Council (see “**Clean Ohio Council**,” below);
- Co-op/internship Advisory Committee (Repealed R.C. 3333.731; R.C. 3333.74);
- Manufactured Homes Advisory Council (Repealed R.C. 4781.02);
- Third Frontier Governing Board (repealed R.C. 184.03; R.C. 184.02, 184.20, and 183.19).

### **Clean Ohio Council**

(Repealed R.C. 122.65, 122.651, 122.652, 122.653, 122.654, 122.655, 122.656, 122.657, 122.658, 122.659, 122.99, and 3745.40; conforming changes in R.C. 151.01, 151.40, 164.23, 164.24, 317.08, 725.01, 3745.015, 3746.13, 4313.02, and 5301.80; Section 525.50)

The act abolishes the Clean Ohio Council and the associated brownfield cleanup remediation program, and requires the Department of Development to assume the Council’s obligations. Any business commenced, but not completed by the Council must be completed by the Department. This will require the Department to oversee to completion any remaining active projects. All records of the Council must be transferred to the Department as well as all of its other assets and liabilities.

The act eliminates the Clean Ohio Revitalization Fund, and specifies that any obligations, which under former law were deposited into that fund, must instead be deposited into the General Revenue Fund.

### **Board appointment deadline**

(R.C. 101.34, 101.84, 103.51, 103.60, 103.65, 103.71, 123.20, 3379.02, 3505.061, 3701.78, and 3702.92; Section 737.40)

The act allows 45 days after the commencement of the first regular session of a General Assembly, for an appointing authority (generally the Speaker of the House, the Senate President, or the Governor), to make appointments of members to the following boards:

- Joint Legislative Ethics Committee;
- Sunset Review Committee;
- Legislative Task Force on Redistricting, Reapportionment, and Demographic Research;
- Rare Disease Advisory Council;
- Ohio Health Oversight and Advisory Committee;
- Correctional Institution Inspection Committee;
- Ohio Facilities Construction Commission;
- Ohio Arts Council;
- Ohio Ballot Board;
- Commission on Minority Health.

Under former law, appointments to these boards were required to be made by an earlier date.

The act also requires the Joint Legislative Ethics Committee to conduct its first meeting 60 days after the first day of the first regular session of each General Assembly. Under former law, the Committee was required to conduct its first meeting 30 days after that date.

The act modifies the dates of appointment and schedule of terms for the Dentist Loan Repayment Advisory Board. (See “**Dentist Loan Repayment Advisory Board**,” below under “**General Assembly Appointments**.”)

## **Commission on Eastern European Affairs**

### **Membership**

(R.C. 107.22)

The act establishes the Commission on Eastern European Affairs, which consists of the following members:

- Three members appointed by the Governor, with the advice and consent of the Senate, for a one-year term;
- Four members appointed by the Governor, with the advice and consent of the Senate, for a two-year term;
- Two members appointed by the Governor, with the advice and consent of the Senate, for a three-year term;
- One member, who is a private citizen, appointed by the Speaker of the House for a three-year term;
- One member, who is a private citizen, appointed by the Senate President for a three-year term;

- Two nonvoting members who are members of the General Assembly, each of whom is appointed by the presiding officers of their chamber.

Following the initial appointments, the term of office for each voting member will be three years. Voting members must remain in their post until a successor is appointed or until 30 days after the end of their term, whichever occurs first. The term of a nonvoting member expires when the nonvoting member is no longer a member of the General Assembly. A vacancy must be filled in the same manner in which the original appointment was made.

The Commission must meet at least six times per year. At its first meeting, the voting members must elect from amongst themselves a chairperson, vice-chairperson, and other officers. The members must also prescribe rules to govern the Commission. Six voting members constitute a quorum and no action may be taken without the affirmative vote of six voting members. Finally, the act allows voting members of the Commission to be compensated for “actual and necessary” expenses incurred and for each day that a member is engaged in the duties of the Commission, but not more than one day per month.

To be eligible to serve as a voting member of the Commission, a person must self-identify as being representative of one of various geographical regions of Eastern European people, proportionally representative of the Eastern European composition of Ohio, and must also be all of the following:

- A person of Eastern European origin, as defined in the act, or allied to such people;
- A U.S. citizen;
- A lawful and permanent resident of Ohio.

Finally, to serve on the Commission, the act requires each person to affirm the territorial sovereignty and integrity of Ukraine, relative to its territorial holdings before Russia’s annexation of Crimea in 2014 and subsequent invasion in 2022, as well as the territorial sovereignty and integrity of other countries.

## **Duties**

(R.C. 107.23)

The act specifies the duties of the Commission, which include:

- Gather and disseminate information and conduct hearings, conferences, investigations, and special studies on issues and programs concerning Eastern European people;
- Secure appropriate recognition of accomplishments and contributions of Eastern European people to Ohio;
- Promote public awareness of the issues facing Eastern European people by conducting a program of public education;
- Develop, coordinate, and assist other public and private organizations that serve Eastern European people, including conducting training programs for community leadership and service project staff;

- Advise the Governor, General Assembly, and state agencies regarding the nature, magnitude, and priorities of the issues of Eastern European people;
- Advise the Governor, General Assembly, and state agencies on the special needs of Eastern European people regarding education, employment, energy, health, housing, welfare, and recreation, and develop and implement policies and programs to address those needs;
- Propose new programs concerning Eastern European people to public and private agencies and evaluate any existing programs within agencies;
- Review and approve grants from federal, state, or private funds that are administered or subcontracted by the Office of Eastern European Affairs;
- Review and approve the annual report prepared by the Office;
- Coordinate and provide information regarding available state services to meet the needs of Eastern European people;
- Appoint a Director to the Office.

The act defines “Eastern European people” to mean a person who self-identifies as possessing ancestry relative to any of the following: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czechia, Estonia, Georgia, Hungary, Latvia, Lithuania, Montenegro, North Macedonia, Poland, Republic of Moldova, Romania, Russia, Serbia, Slovakia, Slovenia, and Ukraine.

### **Office of Eastern European Affairs**

(R.C. 107.24)

The act establishes the Office of Eastern European Affairs to assist the Commission in fulfilling its duties. As previously noted, the Commission must appoint a Director of the Office to serve at the Commission’s pleasure. The Director must appoint employees as necessary to assist in fulfilling the Office’s duties. Employees appointed by the Director serve at the pleasure of the Director.

The duties of the Office include the following:

- Provide information and advise the Commission on proposed solutions to problems of Eastern European people;
- Serve as a clearinghouse to review and comment on all proposals to meet the needs of Eastern European people that are submitted to the Office by public and private agencies;
- Apply for and accept grants and gifts from government and private sources to be administered by the Office or subcontracted to local agencies, as long as the local agencies use the grants and gifts for the public purpose intended;
- Monitor and evaluate all programs subcontracted to local agencies by the Commission and ensure that any grants and gifts from the government are being used for the public purpose intended;

- Endeavor to ensure that Eastern European people have access to decision-making bodies in all state and local government departments and agencies;
- Submit to the Commission a written annual report of the Office's activities, accomplishments, and recommendations;
- Establish advisory committees for special subjects, as needed, to facilitate and maximize community participation in the operation of the Commission. An advisory committee must be made up of persons representing community organizations, charitable institutions, public officials, and other persons as determined by the Office;
- Establish relationships with local governments, state governments, and private businesses that promote and ensure equal opportunity for Eastern European people in government, education, and employment.

## **New African Immigrants Commission**

(R.C. 4112.32)

The act removes the requirement that the Speaker of the House, the Senate President, and the Minority Leaders of each chamber recommend members to the New African Immigrants Commission. Under former law, the Speaker and President each recommended to the Governor two individuals, and the Minority Leaders of each chamber recommended to the Governor one individual.

The act adds four nonvoting members to the Commission. The Speaker must appoint two nonvoting members, one of whom must be a member of the House and one of whom must be a private citizen. The President must appoint the remaining two nonvoting members, one of whom must be a member of the Senate and one of whom must be a private citizen. Each nonvoting member's term of office is four years. For a nonvoting member who is also a member of the General Assembly, the term of office expires at the end of the member's term in the General Assembly or after four years, whichever occurs first.

Under former law, all members of the Commission were required to be of sub-Saharan African origin and must have been either U.S. citizens or lawful, permanent, resident aliens. Members were also required to be from urban, suburban, and rural geographical areas representative of sub-Saharan African people with a numerical and geographical balance of the sub-Saharan African population throughout Ohio. The act specifies that these qualifications apply only to voting members of the Commission.

## **Office of New African Immigrant Affairs**

(R.C. 4112.33)

The act establishes the Office of New African Immigrant Affairs to assist the Commission in fulfilling its duties. The Commission must appoint a Director of the Office, who will serve at the pleasure of the Commission. The Director, pending approval from the Commission, must appoint employees as necessary to assist the Office in its duties. Employees must serve at the pleasure of the Director.

## **New African Immigrants Grant and Gift Fund**

(R.C. 4112.34)

The act also creates the New African Immigrants Grant and Gift Fund in the state treasury. The fund consists of grants and gifts received by the Commission, as well as funds transferred or appropriated by the General Assembly. The Commission must use the fund to support its duties, including operating the Office. Investment earnings of the fund must be credited to the fund.

## **Commission on Minority Health**

(R.C. 3701.78)

The act adds the Director of Aging or the Director's designee to the Commission on Minority Health, bringing the Commission's membership to 22. The Directors of Health, Mental Health and Addiction Services, Developmental Disabilities, Job and Family Services, and Medicaid, or their designees, were already members.

## **General Assembly appointments**

The act removes General Assembly appointments from the following boards.

### **Broadcast Educational Media Commission**

(R.C. 3353.02)

The act eliminates the four members of the General Assembly from the Broadcast Educational Media Commission, two from the House and two from the Senate, who under former law served as nonvoting members on the Commission. Under continuing law, the Commission includes 11 voting members, nine who are representatives of the public, and the Director of Education and Workforce and the Chancellor of Higher Education, or their designees, who serve ex officio.

The nine public members, who are appointed by the Governor, must be selected from among leading citizens with a demonstrated interest in educational broadcast media through service in certain specified sectors. The act adds that these members may include individuals who are public officials or employees, with consideration given to leading Ohio citizens who have demonstrated interest in educational broadcast media through service or experience in broadcast media, education, or government administration.

### **Child support guideline advisory councils**

(R.C. 3119.023)

The act removes the requirement that the Speaker of the House and the Senate President each appoint three members to a child support guideline advisory council. Continuing law requires the Department of Job and Family Services, every four years, to review the basic child support schedule issued by the Department to determine whether child support orders adequately provide for the needs of children who are subject to the child support orders. For each review, the Department must establish a child support guideline advisory council to assist it with completing its reviews and reports. Continuing law requires each council to consist of the following:

- Obligors;
- Obligees;
- Judges of courts of common pleas who have jurisdiction over domestic relations and juvenile court cases that involve the determination of child support;
- Attorneys whose practice includes a significant number of domestic relations or juvenile court cases that involve the determination of child support;
- Representatives of child support enforcement agencies;
- Other persons interested in the welfare of children.

### **Chiropractic Loan Repayment Advisory Board**

(R.C. 3702.987)

The act removes the requirement that the Speaker of the House and the Senate President each appoint one member of their respective chambers to the Chiropractic Loan Repayment Advisory Board. Under continuing law, the Board consists of the following members:

- A representative of the Department of Higher Education, appointed by the Chancellor;
- The Director of Health or an employee of the Department of Health designated by the Director;
- Three representatives of the chiropractic profession, appointed by the Governor.

The purpose of the Board is to assist the Department of Health in administering the Chiropractic Loan Repayment Program, which provides loan repayment on behalf of individuals who agree to provide chiropractic services in areas designated as resource shortage areas.

### **Commission on Hispanic-Latino Affairs**

(R.C. 121.31)

The act removes all four of the nonvoting members of the Commission on Hispanic-Latino Affairs. The four nonvoting members were members of the General Assembly, two appointed by the House Speaker (one from each political party) and two appointed by the Senate President (one from each political party). The 11 voting members, under continuing law, must each be appointed by the Governor. To be eligible to serve as a voting member, an individual must be all of the following:

- Capable of speaking Spanish;
- Of Spanish-speaking origin;
- A U.S. citizen or lawful, permanent, resident alien.

Furthermore, the Commission must consist of individuals from urban, suburban, and rural areas representative of Spanish-speaking people with a numerical and geographical balance of the Spanish-speaking population throughout Ohio.

## **Dentist Loan Repayment Advisory Board**

(R.C. 3702.92; Section 737.40)

The act removes the requirement that the House Speaker and the Senate President each appoint two members to the Dentist Loan Repayment Advisory Board. The remaining members of the Board include:

- A representative of the Department of Higher Education designated by the Chancellor;
- The Director of Health or an employee of the Department of Health designated by the Director;
- Four representatives of the dental profession, appointed by the Governor from persons nominated by the Ohio Dental Association.

The purpose of the Board is to assist the Department of Health in administering the Dental Loan Repayment Program, which provides loan repayment on behalf of individuals who agree to provide dental services in resource shortage areas.

The act also adjusts the term of the Board members who are representatives of the dental profession appointed by the Governor, to begin on February 28 rather than January 28. The act makes no change to the two-year length of their terms. Finally, the act clarifies that a person who is a member of the Board before this provision's effective date may complete the term to which the person was appointed.

## **Historical Boilers Licensing Board**

(R.C. 4104.33; Section 741.20)

The act transfers to the Governor the Speaker of the House's and the Senate President's authority to appoint members to the Historical Boilers Licensing Board. Under former law, the Speaker and President each appointed two members and the Governor appointed the remaining three. The act requires the Governor to appoint all seven members. Under continuing law, members must include the following:

- One employee of the Division of Boiler Inspection in the Department of Commerce;
- One independent mechanical engineer who is not involved in selling or inspecting historical boilers;
- One active member of an association that represents managers of fairs or festivals;
- Four members who each own a historical boiler, have at least ten years of experience in their operation, and reside in different regions of Ohio.

A current member of the Board who was appointed by the Speaker or President may complete their term. Upon the expiration of their terms, the Governor must make the necessary appointments.

## **Ohio Coal Development Office Technical Advisory Committee**

(R.C. 1551.35)

The act removes the four members of the General Assembly from the Ohio Coal Development Office Technical Advisory Committee. Under former law, the Speaker of the House and the Senate President each appointed one member of their respective chambers, and the Minority Leaders of each chamber each appointed one member from their respective chambers.

The remaining members include the following, appointed by the Director of Development:

- One member of the Public Utilities Commission;
- One representative of coal production companies;
- One representative of United Mine Workers of America;
- One representative of electric utilities;
- Two individuals with a background in coal research and development technology, one of whom is employed at the time of the member's appointment by a state university.

The Director of Environmental Protection must also serve as an ex officio member of the Committee.

## **Second Chance Trust Fund Advisory Committee**

(R.C. 2108.35)

The act reduces the membership of the Second Chance Trust Fund Advisory Committee from 13 to 11 by removing two members of the General Assembly. Under former law, the chairpersons of the standing committees of the House and Senate to which health-related matters were generally referred served as ex officio members.

The act makes additional changes removing the limit on the number of terms the remaining members may serve and revising the method for selecting the Committee's chairperson. These changes are discussed in the **DEPARTMENT OF HEALTH** chapter.

## **OWDA member salary increase**

(R.C. 6121.02)

The act increases, from \$5,000 to \$7,500, the annual salary of the five members of the Ohio Water Development Authority (OWDA) who are appointed by the Governor. Under continuing law, each appointed member of the OWDA receives the annual salary in monthly installments and is entitled to health care benefits comparable to those generally available to state officers and employees.

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## OFFICE OF BUDGET AND MANAGEMENT

### **Budget Stabilization Fund (PARTIALLY VETOED)**

- Increases, from 8.5% to 10%, the amount of the GRF revenues for the preceding fiscal year intended to be maintained in the Budget Stabilization Fund (BSF).
- Would have required that investment earnings of the BSF be credited to the GRF rather than the BSF itself (VETOED).
- Would have required that the first \$650 million of BSF investment earnings credited to the GRF be used to reduce income tax withholding rates (VETOED).

### **State appropriation limitation (VETOED)**

- Would have modified how the state appropriation limitation (SAL) is calculated by requiring the inclusion of certain non-GRF appropriations in the SAL calculation.
- Would have established a standard annual growth rate of 3.0% for SAL and eliminated the alternative growth factor.
- Would have eliminated the exemption for appropriations of gifts of money from inclusion in the SAL calculation.
- Would have eliminated the General Assembly's authority to exceed the SAL in response to an emergency proclamation by the Governor.
- Would have required the Governor to itemize all non-GRF appropriation line items that are subject to the SAL as part of the Governor's biennial budget submissions.

### **Medicaid Caseload and Expenditure Forecast report**

- Requires the OBM Director, in consultation with the Department of Medicaid, to develop and submit to the Governor a Medicaid Caseload and Expenditure Forecast each biennium.
- Requires the Governor to submit the new report to the General Assembly as part of the executive budget proposal each biennium.

### **Health and Human Services Reserve Fund (VETOED)**

- Would have required the OBM Director to transfer \$600 million cash from the Health and Human Services Reserve Fund to the BSF.
- Would have permitted the Medicaid Director, if needed to meet the state's Medicaid program obligations in FY 2024 or FY 2025, to request the Controlling Board to transfer money from the HHS Fund to GRF item 651525, the main Medicaid appropriation item.

## Support services for boards and commissions

- Eliminates the Central Service Agency within the Department of Administrative Services, which provided routine support services to various boards and commissions, and transfers its duties to OBM.

## Fraud analysis

- Requires OBM to conduct a statewide assessment of financial fraud and financial crimes on state programs.
- Requires OBM and other state agencies to submit a report to the Governor, Senate President, and House Speaker by June 30, 2024.

## OBM reporting

- Eliminates various reporting requirements for agencies to submit information to OBM and removes OBM as a recipient of certain reports.
- Eliminates the requirement that the OBM Director furnish to legislative leaders a report, each April and October, of various funds and line items not having a current year appropriation, but having open encumbrances.
- Changes the name of a report the OBM Director and the Ohio Turnpike and Infrastructure Commission must each issue from a “comprehensive annual financial report” to an “annual comprehensive financial report.”

## Budget Stabilization Fund (PARTIALLY VETOED)

(R.C. 131.43 and 131.44)

The act increases, from 8.5% to 10%, the minimum amount of the GRF revenues for the preceding fiscal year intended to be maintained in the Budget Stabilization Fund (BSF) and used in the calculation for the BSF’s required year-end balance.

The Governor vetoed a provision that would have required investment earnings of the BSF to be credited to the GRF, rather than to the BSF itself.

The Governor also vetoed a requirement that the first \$650 million of BSF investment earnings be credited to the GRF, to be used to reduce income tax withholding rates. Each fiscal year, until the \$650 million threshold was met, the OBM Director would have been required to certify the amount credited in that year to the Tax Commissioner by the following July 10 (see “**Withholding rate adjustments,**” below).

## **State appropriation limitation (VETOED)**

(R.C. 107.032, 107.033, 107.034 (repealed), 107.035, 131.56, 131.57, and 131.58; Section 701.40)

### **SAL calculation**

The Governor vetoed provisions that would have changed how the state appropriation limitation (SAL) is calculated in FY 2028 (starting July 1, 2027) and beyond. Generally, the SAL limits the growth of GRF spending to a designated percentage each biennium. For more background on the SAL, please see [LSC's Guidebook for Ohio Legislators, Chapter 8 \(PDF\)](#), available on LSC's website at [www.lsc.ohio.gov](http://www.lsc.ohio.gov).

### **Non-GRF appropriations to be included in SAL calculation**

The vetoed provisions included in the meaning of "aggregate GRF appropriations" any appropriations made indirectly from any non-GRF fund that is supported by cash transfers from the GRF.

Under continuing law, an appropriation that originates in the GRF is included in the SAL calculation even if that appropriation is subsequently moved to a non-GRF account. The act would have designated any tax revenue credited to the GRF during FYs 2024 through 2027 as a GRF tax source funding GRF appropriations for the succeeding fiscal year even if the tax revenue is later credited to a non-GRF account.

### **SAL growth factor**

The act would have reduced the SAL growth factor from 3.5% to 3% and eliminated the alternative growth factor based on inflation and population growth.

### **Gifts of money included**

The act would have eliminated an exemption excluding appropriations of money received as gifts from being included in the SAL calculation.

### **Elimination of SAL exception for emergency proclamation**

The act would have eliminated an exception permitting the General Assembly to exceed the SAL if the excess appropriations are made in response to a Governor's emergency proclamation and the appropriations are used for that emergency.

### **List of non-GRF appropriation items subject to SAL**

Finally, the act would have required the Governor to include in the executive budget proposal a table itemizing all non-GRF appropriation line items that are subject to the SAL for the current fiscal year and each fiscal year covered by the upcoming budget proposal.

## **Medicaid Caseload and Expenditure Forecast report**

(R.C. 107.03, 126.021, and 126.023)

The act requires the OBM Director, in consultation with the Department of Medicaid, to submit a Medicaid Caseload and Expenditure Forecast report to the Governor, alongside the biennial budget estimates currently required. The report must be submitted to the Governor by January 1 of each odd-numbered year, near the start of a new General Assembly.

## Submission to General Assembly

The report, in turn, must be submitted to the General Assembly as part of Governor's executive budget proposal, as a supplemental budget document. In most years, this means the report must be submitted by the fourth week after the new General Assembly organizes; in a year following a new Governor's inauguration, it must be submitted by March 15.

### Report components

The act prescribes requirements that the new report must meet. The report must provide a part-to-whole mapping of the state and federal shares of the Medicaid appropriation item, GRF 651525, Medicaid Health Care Services, or any equivalent GRF item, and break down the information by the following categories: eligibility group and subgroup, service delivery system, Medicaid provider, and program. For each of these categories, the report must clearly distinguish proposed policy changes from continuing law or administrative policy. It also must indicate whether the data used throughout the report is proposed, estimated, or actual data for the current or proposed biennium.

The act identifies specific, required components to be included, as follows:

- A complete Medicaid budget broken down by the agency administering each component of the program, fund, appropriation item, and whether the spending is for services or administration;
- A summary of Medicaid service spending by eligibility group and subgroup and service delivery system and a detailed mapping into individual appropriation items, including state and federal shares of each item;
- A complete description of each policy proposal, including assumed start date and cost projection broken down by fiscal year, appropriation item, state and federal shares, eligibility group and subgroup, and service delivery system;
- The Medicaid caseload broken down by eligibility group and subgroup and service delivery system;
- The percentage of total Medicaid enrollment that is comprised of Medicaid recipients enrolled under the care management system and the percentage of total Medicaid spending that the care management system comprises;
- A detailed accounting of both the care management system component and the fee-for-service component of the Medicaid budget by eligibility group and subgroup, including spending, member months, and per member per month capitation rates or costs;
- Historical spending data by service delivery system and Medicaid provider and program, including at least the following provider categories:
  - Hospital;
  - Pharmacy;
  - Waiver;
  - Nursing;

- Home health care;
  - Professional medical and clinic;
  - Nursing facility;
  - Behavioral health care;
  - Intermediate care facility for individuals with intellectual disabilities (ICF/IID)
- A detailed accounting of the Medicare Buy-In and Part D components of the Medicaid budget by eligibility group and subgroup, including spending, average monthly premiums, and average rates;
  - A summary of projected spending for each fiscal year broken down by forecast component and by baseline and policy proposals;
  - Detailed calculations demonstrating the effects of the following hypothetical scenarios:
    - A \$1 increase in Medicaid home and community-based services wages for direct care providers for each fiscal year, broken down by provider, appropriation item, and state and federal shares;
    - A one percentage point increase in provider franchise fee revenue for each fiscal year;
    - A \$1 increase in nursing facility and ICF/IID per Medicaid day payment rates.
  - A detailed explanation of how the Governor’s Medicaid budget recommendations satisfy the law requiring the Medicaid Director to implement cost savings reforms to the Medicaid program;<sup>24</sup>
  - The most recent Medicaid cost containment report;<sup>25</sup>
  - Any other information the OBM or Medicaid directors deem to be useful to facilitate a better understanding of the Governor’s Medicaid budget recommendations.

For almost all components, the report must include Medicaid proposed, estimated, or actual program data for each fiscal year of the upcoming budget biennium and the current fiscal biennium. The OBM and Medicaid directors are permitted to include additional years’ data as well.

## **Health and Human Services Reserve Fund (VETOED)**

(Section 516.20)

The act would have required the OBM Director to transfer \$600 million cash from the Health and Human Services (HHS) Reserve Fund to the BSF, on or shortly after July 1, 2023. Additionally, during FYs 2024 and 2025, the vetoed provisions would have permitted the Medicaid Director, after determining that there were insufficient funds to pay the state’s

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<sup>24</sup> R.C. 5162.70.

<sup>25</sup> R.C. 5162.131, not in the act.

Medicaid program obligations, to request the Controlling Board to approve a cash transfer from the HHS Fund to the GRF, specifically to item 651525 (the primary Medicaid appropriation item), to fund the needed increase, up to \$600 million total over the biennium.

## **Support services for boards and commissions**

(R.C. 126.25 and 126.42; Sections 516.10 and 525.10)

The act eliminates the Central Service Agency located within DAS, which provided routine support services to various boards and commissions. Those services will be provided by OBM instead. The act adds “human resources and personnel services” as a routine support service and removes language specifying that initiating or denying personnel or fiscal actions is not considered routine support services.

## **Fraud analysis**

(Section 701.70)

The act requires OBM, with help from DAS, to establish and coordinate a statewide assessment of financial fraud and financial crimes in state programs, specifically including those under the jurisdiction of the Department of Taxation, the Bureau of Workers’ Compensation, and the Department of Job and Family Services. OBM must establish and coordinate an effort to implement a statewide initiative to identify and recover state funds from private sector banking institutions and digital payment networks that hold funds associated with fraudulent disbursements. Additionally, OBM must coordinate an effort to prevent state funds from being dispersed fraudulently by utilizing banking institution financial crime data with the state agency fraud analytics.

By June 30, 2024, OBM and other state agencies as determined by OBM must submit a financial report to the Governor, the Senate President, and the House Speaker demonstrating the prevention and recovery of funds associated with fraudulent disbursements from state agencies.

## **OBM reporting requirements**

(R.C. 126.30, 131.02, 153.17, 3333.021, 5123.0412, 5727.28, 5727.42, and 5727.91; repealed R.C. 131.38)

The act eliminates the following reporting requirements for agencies to submit certain information to OBM:

- Interest charges paid related to an agency’s purchase or lease of goods or services;
- Unpaid amounts due to the state that an agency is unable to collect;
- Information on segregated custodial funds maintained by an agency;
- Notification, by the owner of a public work, of execution of a takeover contract for the takeover of a defaulted public works contract; and
- Tax refunds to certain entities.

The act also removes OBM from the recipients to which the Chancellor of Higher Education must send a fiscal analysis prior to implementing any action or adopting a rule with an expected fiscal effect. Finally, it removes OBM as a recipient for a Department of Development Disabilities' report on use of the Department of Developmental Disabilities Administration and Oversight Fund.

## Appropriation report to General Assembly

(Repealed R.C. 126.231)

The act eliminates a requirement that the OBM Director furnish to the Senate President and Senate Minority Leader, the Speaker of the House and the House Minority Leader, and the Chairpersons of the Finance committees in both chambers a report, each April and October, of the following appropriation information:

Details of eliminated OBM report	
Report	Line items or funds included in the report
Both October and April	Line items without current year appropriation, but with remaining open encumbrances.
	Dedicated purpose funds that have more than 100% of their appropriation in cash on hand.
October only	Funds that had no expenditures in the immediately preceding fiscal year, but had remaining cash balances.
	Funds that have spent less than half of their preceding fiscal year appropriations.
April only	Funds that had no expenditures in the current fiscal year, but had remaining cash balances.
	Funds that spent or encumbered less than half of their current appropriations through December of that fiscal year.

## Annual comprehensive financial reports

(R.C. 126.21, 126.46, and 5537.17)

The act changes the name of the state report the OBM Director must issue from a "comprehensive annual financial report" to an "annual comprehensive financial report." Under continuing law, this financial report of the state must cover all funds handled by OBM, including basic financial statements and required supplementary information prepared in accordance with generally accepted accounting principles, as well as any other information required by the Director. The act also makes a conforming change in the State Audit Committee Law, which under continuing law must review and comment on OBM's report preparation process.

The act changes the name of a report the Ohio Turnpike and Infrastructure Commission must issue from a “comprehensive annual financial report” to an “annual comprehensive financial report.” Under continuing law, the report must outline the complete operating and financial statement covering the Commission’s operations and funding of any turnpike projects and infrastructure projects for each year.

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## CASINO CONTROL COMMISSION

### Sports gaming involuntary exclusion list

- Allows the Ohio Casino Control Commission to prohibit a person from participating in sports gaming in Ohio if the person has threatened violence or harm against a person who is involved in a sporting event, where that threat was related to sports gaming with respect to that sporting event.

### Type C sports gaming license and liquor permits

- Allows a brewery, winery, or distillery that operates a bar or restaurant on-site (A-1-A liquor permit holder) or a micro-brewery (A-1c permit holder) to apply for a type C sports gaming host license.

### Child and spousal support withheld from winnings

- Requires a casino operator or sports gaming proprietor to transmit withheld child and spousal support to the Department of Job and Family Services by electronic means.

### Study Commission on the Future of Gaming in Ohio

- Expands the membership and duties of the Joint Committee on Sports Gaming and renames it the Study Commission on the Future of Gaming in Ohio.
- Requires the Study Commission to examine the status of the statewide lottery, sports gaming, casino gaming, and horse racing in Ohio and the future of those industries and to make recommendations to the General Assembly.
- Requires the Study Commission to submit a report of its findings and recommendations to the General Assembly by June 30, 2024.
- Specifies that the Study Commission ceases to exist after it submits its report, extending the Joint Committee's previous expiration date of March 23, 2024.

### Sports gaming involuntary exclusion list

(R.C. 3772.01 and 3772.031)

The act allows the Ohio Casino Control Commission (OCCC) to prohibit a person from participating in sports gaming in Ohio if, before, during, or after a sporting event, the person has threatened violence or harm against a person who is involved in the sporting event, where that threat was related to sports gaming with respect to that sporting event.

For this purpose, a person is considered to be involved in a sporting event if the person is an athlete, participant, coach, referee, team owner, or sports governing body with respect to the sporting event; any agent or employee of such a person; or any agent or employee of an athlete, participant, or referee union with respect to the sporting event. This is the same as the list of

persons who, under continuing law, may not participate in sports gaming because of their involvement in sporting events.<sup>26</sup>

Under continuing law, OCCG may add a person to its sports gaming involuntary exclusion list for a number of reasons, including past gaming law violations, a reputation for dishonest gaming activities, or posing a threat to the safety of a sports gaming facility's patrons or employees. A person who is added to the involuntary exclusion list is entitled to notice and an opportunity for a hearing before being excluded.

## **Type C sports gaming license and liquor permits**

(R.C. 3775.01 and 3775.07)

The act allows a brewery, winery, or distillery that operates a bar or restaurant on-site (A-1-A liquor permit holder) or a micro-brewery (A-1c permit holder) to apply to OCCG for a type C sports gaming host license after receiving a recommendation from the State Lottery Commission. Prior law allowed only D-1, D-2, and D-5 permit holders (bar or restaurant that serves beer or intoxicating liquor for on-premises consumption) to receive a type C sports gaming host license in that manner. A type C sports gaming host may offer lottery sports gaming through a type C sports gaming proprietor using self-service or clerk-operated sports gaming terminals located at the liquor permit premises.

## **Casino and sports gaming winnings**

(R.C. 3123.90)

The act modifies the law concerning withholding of past due child and spousal support from casino and sports gaming winnings, by requiring a casino operator or sports gaming proprietor to transmit the money to the Department of Job and Family Services by electronic means.

## **Study Commission on the Future of Gaming in Ohio**

(Sections 610.90 and 610.91 (amending Section 5 of H.B. 29 of the 134<sup>th</sup> General Assembly))

The act expands the membership and duties of the Joint Committee on Sports Gaming created under H.B. 29 of the 134<sup>th</sup> General Assembly, which legalized sports gaming, and renames it the Study Commission on the Future of Gaming in Ohio. No members had been appointed to the Joint Committee under H.B. 29.

Under the act, the membership of the Study Commission is increased from six to 11 members:

- Three members of the House appointed by the Speaker;
- One member of the House appointed by the House Minority Leader;
- Three members of the Senate appointed by the Senate President;

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<sup>26</sup> R.C. 3775.13(F), not in the act.

- One member of the Senate appointed by the Senate Minority Leader;
- The chairperson of the State Lottery Commission or the chairperson's designee;
- The chairperson of the OCCC or the chairperson's designee;
- The chairperson of the State Racing Commission or the chairperson's designee.

Prior law specified that the Joint Committee consisted of three members of the House appointed by the Speaker and three members of the Senate appointed by the Senate President, with not more than two members appointed from each chamber being members of the same political party. Under continuing law, the Speaker and the Senate President must designate co-chairpersons of the Study Commission.

The act requires the Study Commission to do the following:

- Examine the current status of the Ohio Lottery and the future of the lottery industry and make recommendations to the General Assembly concerning the Ohio Lottery;
- Examine the implementation of sports gaming under H.B. 29 and the future of the sports gaming industry and make recommendations to the General Assembly concerning sports gaming in Ohio (H.B. 29 required the Joint Committee to monitor the implementation of sports gaming and report its recommendations, if any, to the General Assembly);
- Examine the current status of casino gaming in Ohio and the future of the casino gaming industry and make recommendations to the General Assembly concerning casino gaming in Ohio;
- Examine the current status of horse racing in Ohio and the future of the horse racing industry and make recommendations to the General Assembly concerning horse racing in Ohio.

Under continuing law, any expense incurred in furtherance of the Study Commission's objectives must be paid from, or out of, the Casino Control Commission Fund or other appropriation provided by law. Members of the Study Commission serve without compensation, but are reimbursed for actual and necessary expenses incurred in the performance of their official duties.

The act requires the Study Commission to submit a report of its findings and recommendations to the General Assembly by June 30, 2024. After it submits its report, the Study Commission ceases to exist. Prior law specified that the Joint Committee would cease to exist on March 23, 2024.

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## DEPARTMENT OF CHILDREN AND YOUTH

### Creation of the Department

- Creates the Department of Children and Youth to serve as the state's primary children's services agency and establishes the position of Director of Children and Youth.
- Requires the Department to facilitate and coordinate the delivery of children's services in Ohio.
- Requires the Directors of Children and Youth, Job and Family Services (ODJFS), Education and Workforce, Health, Developmental Disabilities, Medicaid (ODM), Mental Health and Addiction Services (OhioMHAS), and Development to develop a plan to transfer children's services duties, functions, programs, and staff resources to the new department by January 1, 2025.
- Transfers various programs and duties from ODJFS, Education and Workforce, Health, Developmental Disabilities, and OhioMHAS to the Department of Children and Youth on January 1, 2025, and makes conforming changes throughout the Revised Code.
- Accelerates the requirement for transferring agencies to complete their regulatory restriction reductions relating to children and youth to be completed before January 1, 2025, instead of June 30, 2025, which is the deadline for other agencies under continuing law.

### Residential infant care center services

- Beginning in FY 2024, requires the Department, in coordination with ODM, to establish a bundle of funding for nonmedical maternal and child health programmatic services provided by residential infant care centers to infants born substance-exposed and their families.
- Not later than June 30, 2025, requires the Department and ODM to establish a permanent reimbursement model for services provided by residential infant care centers.

### Department of Children and Youth

(R.C. 5180.01 and 5180.02 (primary), 121.02, 121.03, 121.35, 121.37, 121.40, 3109.15, 3109.16, 3109.17, 3109.179, 5101.34, 5101.341, and 5101.342; Sections 130.10 to 130.16 and 423.10 to 423.140)

The act creates the Department of Children and Youth to serve as the state's primary children's services agency and establishes the position of Director of Children and Youth as a member of the Governor's cabinet. The Department must facilitate and coordinate the delivery of children's services in Ohio, including services provided by government programs that focus on the following:

- Adoption, child welfare, and foster care services;

- Early identification and intervention regarding behavioral health, including early intervention services, early childhood mental health initiatives, multi-system youth services, and family support services administered through the Ohio Family Children First Cabinet Council, Ohio Commission on Fatherhood, and Children’s Trust Fund Board;
- Early learning and education, including child care and preschool licensing, early learning assessments, Head Start, preschool special education, publicly funded child care, and the Step Up to Quality program;
- Maternal and child physical health, including infant vitality, home visiting, maternal and child health, maternal and infant support, and Medicaid-funded child health services.

### **Administering the Department**

The Director of Children and Youth, the Department’s chief executive and appointing authority, must administer the Department and implement the delivery of children’s services, including by doing the following:

- Adopting rules in accordance with state law;
- Approving and entering into contracts, agreements, and other business arrangements on the Department’s behalf;
- Making appointments to the Department and approving actions related to departmental employees and officers, including their hiring, promotion, termination, discipline, and investigation;
- Directing the performance of employees and officers;
- Applying for grants and allocating any funds awarded;
- Any other action as necessary to implement the act’s provisions.

As part of administering the Department and implementing the delivery of children’s services, the act grants the Director the authority to organize the Department for its efficient operation, including by creating divisions or offices within it. The Director also may establish procedures for the Department’s governance and performance, employee and officer conduct, and the custody, preservation, and use of departmental books, documents, papers, property, and records. The act requires the Director or Director’s designee to fulfill any duty or perform any action that, by law, is imposed on or required of the Department.

The act also requires each state and local agency involved in the delivery of children’s services to comply with any directive issued by the Director and to collaborate with the Department.

If a law permits or requires the Director to adopt an administrative rule, the act requires the Director to do so in accordance with the Administrative Procedure Act (APA), unless the authorizing law specifies a different procedure. There are two general statutory rulemaking procedures, one in the APA and the other in R.C. 111.15. The primary difference between the two is that the APA requires notice and a public hearing before adopting a proposed rule; R.C. 111.15 does not.

## **Children’s Trust Fund Board, Commission on Fatherhood, and Family and Children First Cabinet Council**

The act maintains the Children’s Trust Fund Board and Ohio Commission on Fatherhood, but transfers them from the Department of Job and Family Services (ODJFS) to the Department of Children and Youth. It also includes the Director of Children and Youth in the membership of the Ohio Family and Children First Cabinet Council.

### **Transitional language related to transfer**

The act addresses the transfer of duties, functions, and programs to the Department as well as other issues relating to its creation, including by doing the following:

- Requiring the Directors of Children and Youth, ODJFS, Education and Workforce, Health, Developmental Disabilities, Medicaid (ODM), Mental Health and Addiction Services (OhioMHAS), and Development or their designees to identify duties, functions, programs, and staff resources related to children’s services within their departments;
- Requiring the Directors to develop a detailed organizational plan to implement the transfer of the identified duties, functions, programs, and resources to the new department by January 1, 2025, and enter into a memorandum of understanding regarding the transfer;
- Specifying that any business commenced but not completed by January 1, 2025, within the other departments that is slated to be transferred to the new department is to be completed by the new Department or its Director in the same manner, and with the same effect, as if completed by the other departments;
- Transferring all employees and staff resources identified by the Directors on January 1, 2025, or an earlier date chosen by them, and specifying that they retain their same positions and benefits;
- Authorizing the Directors to jointly or separately enter into contracts for staff training and development to facilitate the transfer;
- Specifying that no validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer but is to be administered by the Department of Children and Youth;
- Specifying that no action or proceeding pending on the date of the transfer is affected by the transfer and is to be prosecuted or defended in the name of the Department or Director;
- Specifying that all rules, orders, and determinations relating to children’s services programs made or undertaken before the transfer continue in effect as rules, orders, and determinations of the new Department until modified or rescinded by it;
- Transferring to the new Department all records, documents, files, equipment, assets, and other materials of the transferred programs and staff resources;

- Requiring the OBM Director to make budget and accounting changes to implement the transfer of duties, programs, and functions.

### **Collective bargaining**

The act specifies that the creation of the new Department and transfer of programs, duties, and employees are not appropriate subjects for public employees' collective bargaining.

### **Authority regarding employees**

The act authorizes the Director of Children and Youth to establish, change, and abolish positions for the Department and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote employees who are not subject to state law governing public employees' collective bargaining.

This authority includes assigning or reassigning an exempt employee to a bargaining unit classification if the Director determines that the bargaining unit classification is the proper classification for that employee. If an employee in the E-1 pay range is to be assigned, reassigned, classified, reclassified, transferred, reduced, or demoted to a position in a lower classification, the Director, or in the case of a position transferred outside of the Department, the Director of Administrative Services, must assign the employee to the appropriate classification and place the employee in Step X. The employee is not to receive any increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation.

Actions of the Director of Children and Youth taken under this authority are not subject to appeal to the State Personnel Review Board.

### **Retirement incentive plan**

The act authorizes the Directors included in the transition workgroup, with the approval of OBM, to establish a retirement incentive plan for employees of the departments who are members of the Ohio Public Employees Retirement System and whose job duties will be transferred to the new Department. Any such plan must remain in effect until December 31, 2024.

### **Transferring and renumbering administrative rules**

The act requires the Directors transferring children's services duties and programs to the new Department to complete, before January 1, 2025, a reduction in regulatory restrictions related to children's services. The reduction is required under continuing law and formerly was to be completed no later than June 30, 2025. The act prohibits a transferring Director from treating a transfer to the new Department as a reduction for purposes of satisfying the requirement.

Under continuing law, a "regulatory restriction" is any part of an administrative rule that requires or prohibits an action. Rules that include the words "shall," "must," "require," "shall not," "may not," and "prohibit" are considered to contain regulatory restrictions.<sup>27</sup>

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<sup>27</sup> R.C. 121.95.

On and after January 1, 2025, if necessary to ensure the integrity of the numbering of the Administrative Code, the Legislative Service Commission Director must renumber the rules related to children's services programs transferred to the Department to reflect the transfer.

From the date the reduced rules related to children's services are transferred to the new Department until June 30, 2025, the Department must comply with the regulatory reduction requirements that apply to all cabinet-level and certain other agencies under continuing law. These include a requirement that the Department not adopt a regulatory restriction unless it simultaneously removes two or more existing regulatory restrictions (known as the "two-for-one rule"). The law also requires these agencies to reduce their number of regulatory restrictions in accordance with a statutory schedule.

Beginning July 1, 2025, continuing law prohibits these agencies, including the new Department, from adopting a new regulatory restriction if adoption would cause a statewide cap on such restrictions calculated by JCARR to be exceeded. Under the act, JCARR is to include the reduced rules transferred to the new Department, minus any reductions achieved by the Department between January 1, 2025, and June 30, 2025, when calculating the statewide cap.

Like all agencies subject to the reduction requirements, beginning July 1, 2025, the new Department must contact JCARR before submitting a proposed rule containing a regulatory restriction. JCARR must determine whether adopting the restriction would cause the state to exceed the cap. If JCARR determines that adopting the restriction would cause the cap to be exceeded, the Department may not adopt it.

### **Conforming amendments**

In Sections 130.12 to 130.16, the act makes extensive conforming changes throughout the Revised Code to reflect the transfer of the following children's services programs to the Department of Children and Youth effective January 1, 2025:

- Adoption;
- Child care;
- Child welfare, including foster care;
- Early childhood education (note that the Department of Education and Workforce retains authority over preschool teachers and staff, but the Department of Children and Youth will license preschool programs);
- Early intervention services under Part C of the federal Individuals with Disabilities Education Act;<sup>28</sup>
- Help Me Grow and home visiting;

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<sup>28</sup> 20 United States Code (U.S.C.) 1431 *et seq.* and regulations implementing that part in 34 Code of Federal Regulations (C.F.R.) part 303.

- Maternal and infant vitality, including the Commission on Infant Mortality, shaken baby syndrome education, and safe sleep screening and education;
- Preschool special education.

It also adds the Director of Children and Youth to various boards and commissions involving children's services, such as the Child Care Advisory Council, the Commission on Infant Mortality, and the Ohio Home Visiting Consortium.

### **Delegation of legislative authority**

There are a number of Ohio programs and duties impacting children and youth that are not expressly transferred to the new Department by the act. Examples include child support and paternity establishment, the Youth and Family Ombudsman's office, the Children's Health Insurance Program, the Program for Medically Handicapped Children, child fatality and fetal-infant mortality review boards, and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), among others.

With regard to the workgroup of directors described above and the organizational plan and memorandum of understanding to transfer children's services programs to the new Department, it is unclear to what extent that plan could assign other children's services programs and duties not included in this act to the new Department without amending the Revised Code. Under the Ohio Constitution, legislative authority is vested in the General Assembly.<sup>29</sup>

### **Residential infant care center services**

(Section 423.20)

Beginning in FY 2024, the act requires the Department of Children and Youth, in coordination with ODM, to establish a bundle of funding for nonmedical maternal and child health programmatic services provided by residential infant care centers to infants born substance-exposed and their families. Additionally, not later than June 30, 2025, the Department and ODM must establish a permanent reimbursement model for services provided by residential infant care centers. The permanent model must include reimbursement for nonmedical services described above and medical services.

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<sup>29</sup> Ohio Const., art. II, secs. 1 and 26.

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## DEPARTMENT OF COMMERCE

### Medical marijuana

- Creates the Division of Marijuana Control (DMC) within the Department of Commerce (COM) and requires the State Board of Pharmacy (PRX) and COM to transfer the Medical Marijuana Control Program to DMC by December 31, 2023.
- Establishes a Superintendent of Marijuana Control to oversee DMC.
- Specifies that no pending action or proceeding is affected by the transfer.
- Specifies that any reference to PRX in any document related to the administration of the program is deemed to refer to the DMC, the COM Director, or COM, as appropriate.
- Provides for the transfer of certain PRX employees who perform duties related to the program to COM.
- Authorizes COM to contract with private or public entities for staff training and development to facilitate the transfer of staff and duties.
- Specifies that licenses and registrations issued by COM and PRX remain in effect for the remainder of their term and that forms of medical marijuana approved by PRX remain approved unless that approval is later revoked by DMC.
- Specifies that COM and PRX rules related to the program remain in effect until repealed or amended by DMC, but requires DMC to review and propose revisions to existing rules on retail dispensaries by March 1, 2024.
- Requires the Legislative Service Commission (LSC) to renumber the PRX rules involving medical marijuana to reflect the transfer of the program to COM.
- Allows DMC to investigate alleged violations of the Medical Marijuana Law, including by subpoenaing documents and witnesses.
- Requires PRX, upon receipt of a request, to provide DMC with information from the Ohio Automated Rx Reporting System (OARRS) relating to an individual or entity being investigated by DMC.
- Requires the OBM Director to make budget and accounting changes as necessary to facilitate the transfer.
- Allows holders of a provisional medical marijuana dispensary license that missed their initial operation deadline until December 31, 2023, to demonstrate compliance with dispensary operational requirements and begin operations.
- Specifies that any disciplinary actions levied against these provisional license holders for failure to begin operations in a timely manner are suspended until January 1, 2024.
- Specifies that any such disciplinary actions are to be dismissed if the license holder obtains a certificate of operation on or before the December 31, 2023, deadline.

- Clarifies that, if the license holder does not obtain a certificate of operation by that date, any such disciplinary actions are to be completed by DMC.

## **Division of Financial Institutions**

- Replaces the requirement that the Superintendent of Financial Institutions obtain a criminal records check in relation to a person who controls a bank, or has a substantial interest in or participates in managing a bank, with a requirement that the Superintendent request a criminal records check of a person who exercises “control” of a bank.
- Defines “control” as the power to vote, directly or indirectly, at least 25% of the voting shares or interests or the power to elect or appoint a majority of executive officers or directors.
- Rebuttably presumes a person to exercise control when the person holds the power to vote, directly or indirectly, at least 10% of the voting shares or interests.

## **State Fire Marshal**

- Eliminates the Underground Storage Tank Revolving Loan Program under which the State Fire Marshal issued loans to political subdivisions to assist in removing underground storage tank systems that store petroleum and hazardous substances.
- Repeals the law establishing the Underground Storage Tank Revolving Loan Fund, which was used for the program.

## **Division of Industrial Compliance**

### **Elevator safety**

- Aligns the law governing the fee for issuing or renewing a certificate of operation for an elevator with the law governing the intervals for inspection.
- Extends the maximum interval between required Elevator Safety Review Board meetings.

### **Out-of-state specialty contractors**

- Prevents the December 29, 2023, scheduled elimination of the Ohio Construction Industry Licensing Board’s ability to issue specialty contractor licenses without examination in accordance with reciprocity agreements entered into with other states.
- Exempts a contractor who obtains a license through a reciprocity agreement from the requirement, effective December 29, 2023, that an out-of-state applicant must pass an examination to obtain a license.

### **Manufacturing and Construction Mentorship Program**

- Expands the Manufacturing Mentorship Program to expose minors to construction occupations through temporary employment, in addition to manufacturing occupations as under continuing law.
- Renames the program as the “Manufacturing and Construction Mentorship Program.”

- Requires, to be eligible for employment under the expanded program, a minor who is 16 or 17 years of age to possess a valid driver's license.
- Allows an employer of a minor under the program to require the minor to take a drug test in accordance with the employer's drug testing policy.

## **Real property**

### **Ohio fire and building codes (PARTIALLY VETOED)**

- Would have required the State Fire Marshal to exclude an exterior patio that has a means of egress on at least three sides, or within 50 feet of an open side, and that is compliant with the Americans with Disabilities Act, in establishing occupant load for a building (VETOED).
- Would have required the COM Director, the State Fire Marshal, the Board of Building Standards, and a representative of local building departments to develop guidelines for enforcing the Ohio Building Code and Fire Code in a coordinated manner (VETOED).
- Allows a retail establishment to obtain a temporary fire permit lasting 14 days in the event the local fire code official is unavailable to conduct an inspection or issue a permit for longer than five business days.
- Allows a retail establishment to obtain a temporary building permit lasting 14 days in the event the state or local building official is unavailable to conduct an inspection or issue a permit for longer than five business days.

### **Right-to-list home sale agreements**

- Prohibits "right-to-list" home sale agreements that purport to run with the land, bind future owners, or create a lien, encumbrance, or other security interest in residential real estate.
- Specifies that right-to-list home sale agreements entered into, modified, or extended after October 3, 2023 (the act's effective date) are void and unenforceable.
- Requires county recorders to refuse to record right-to-list home sale agreements.
- Stipulates that a person, other than the property owner, who seeks to enter a right-to-list home sale agreement commits an unfair and deceptive practice under the Consumer Sales Practices Act.

### **Self-service storage facilities**

- Establishes that if a rental agreement limits the value of property that may be stored in a self-service storage facility, that limit is the maximum value of the stored property.
- Prohibits a rental agreement from limiting the value of stored property to less than \$1,000.
- Specifies that an occupant's claim for damages is not limited when those damages are the result of negligence by, or on behalf of, the owner of the storage facility.

## **Division of Liquor Control**

### **B-1 liquor permit holders and craft beer exhibitions**

- Allows a brewery's distributor (B-1 permit holder) to supply the brewery's beer for a craft beer exhibition authorized by an F-11 liquor permit.

### **Liquor permit premises: outdoor sales area**

- Codifies and makes permanent a law that was set to expire December 31, 2023, that allows a qualified liquor permit holder to expand the area in which it may sell alcoholic beverages to the following areas (under certain circumstances):
  - In any area of the permit holder's property that is outdoors and where sales were not previously authorized, including the permit holder's parking area;
  - In any outdoor area of public property that is immediately adjacent to the permit holder's premises and that is owned by a municipal corporation or township, with the public property owner's permission;
  - In any outdoor area of private property that is immediately adjacent to the permit holder's premises, with the private property owner's permission.

### **Duplicate liquor permits**

- Requires all liquor permit holders that may serve alcohol for on-premises consumption, rather than only certain permit holders as in former law, to obtain a duplicate permit in order to serve alcohol from an additional bar at the permit premises beyond the two bars authorized by the original permit; and
- Requires the duplicate permit fee for each added bar to be the higher of \$100 or 20% of the fee payable for the original permit issued for the premises, rather than specific fee amounts depending on the type of permit issued as in prior law.

### **Liquor permit cancellations**

- Allows, rather than requires, the Liquor Control Commission to cancel liquor permits for certain reasons, including the permit holder's death or bankruptcy.

### **Sale of spirituous liquor by agency store**

- Stipulates that the statute requiring the Division of Liquor Control to procure, upon request of a person, a specific variety or brand of spirituous liquor that is out of stock at an agency store is subject to the statutes governing the agency store system and the equitable distribution of spirituous liquor brands and varieties that are in high demand.

## **Division of Real Estate and Professional Licensing**

### **Real estate brokers**

- Modifies the prerequisites to take the real estate broker's examination by:
  - Requiring that an applicant have worked as a licensed real estate broker or salesperson for at least two of the five years preceding the application; and

- Removing the requirement that the applicant have worked as a licensed real estate broker or salesperson for an average of 30 hours per week.
- Requires the Superintendent of Real Estate and Professional Licensing to forward any identifying information to the Attorney General if a person fails to pay a civil penalty for certain unlicensed or unregistered activity.

### **Disciplinary actions**

- Limits to state or federally chartered institutions where a person holding a real estate broker or salespersons license must, for the purpose of receiving escrow funds and security deposits, or for the purpose of depositing and maintaining funds in the course of real property management on the behalf of others, maintain a special or trust bank account.
- Permits the Superintendent to take disciplinary action against a license holder for having been judged incompetent in any capacity, as opposed to simply for the purpose of holding a real estate license.

### **Administration of funds**

- Creates the Cemetery Registration Fund and requires burial permit fees to be deposited into the new fund, instead of to the Division generally, but with the same purpose.
- Eliminates the Cemetery Grant Fund and redirects deposits to the Cemetery Registration Fund, and eliminates a restriction on the total value of grants that may be issued in a single fiscal year.
- Eliminates the Real Estate Education and Research Fund, Manufactured Homes Regulatory Fund, Home Inspectors Fund, and Real Estate Appraiser Operating Fund, and redirects deposits going to these funds to the Division of Real Estate Operating Fund.
- Expands the purposes for which the Real Estate Operating Fund may be used to include the purposes for which the eliminated funds could be used.
- Allows, instead of requires, the Ohio Real Estate Commission to use operating funds (instead of the Real Estate Education and Research Fund) for education and research.
- Allows, instead of requires, the Superintendent to collect a service fee from the Real Estate Recovery Fund to defray the cost of administering the fund.

### **Confidentiality of investigatory information**

- Expands the Division of Real Estate and Professional Licensing's ability to share investigatory information with the Division of Securities, Division of Industrial Compliance, and law enforcement agencies.

### **Ohio Home Inspector Board**

- Requires the Ohio Home Inspector Board to elect a chair and vice chair from among its membership by majority vote annually.

- Requires the Board to meet at least once quarterly.
- Specifies that a quorum consists of a majority of the members of the Board and requires a quorum in order for the Board to conduct its business.

## **Division of Securities**

### **Securities registration (VETOED)**

- Would have required all securities registered under the federal Securities Act of 1933 to be registered in Ohio by coordination (VETOED).
- Would have specified that the registration procedures, evaluation standards, and general oversight provisions for a registration by description or registration by qualification do not apply to a registration by coordination (VETOED).
- Would have required business development companies (BDCs) to file a notice with the Division of Securities before conducting business in Ohio, and would have permitted a BDC, after filing the notice, to sell an indefinite amount of securities in Ohio (VETOED).

## **Division of Unclaimed Funds**

- Specifies that only when the holder acts in good faith and in compliance with the Unclaimed Funds Law will the holder be held harmless by the state for any legal claim related to the transfer of the funds to the state, and only to the extent of the value of the unclaimed funds remitted by the holder to the COM Director.
- Requires that if any legal proceedings are initiated against the holder related to the unclaimed funds, the holder must notify the Director within 14 days of any service of process on the holder.
- Allows, rather than requires, the Director to defend the lawsuit against the holder.
- Provides that if the Director does not assume the defense, and judgment is entered against the holder for any amount paid to the Director, the Director must reimburse the organization for the amount paid, or modify any agreement to reflect satisfaction of the judgment.
- Specifies that no person has a claim against the state, the holder, or a transfer agent, registrar, or other person acting for or on behalf of a holder for any change in the market value of the unclaimed funds occurring after delivery by the holder to the Director, or after the sale of the property by the Director.

## **Uniform Commercial Code**

- Allows a person that offers or displays online personal property owned by the person for lease-purchase to disclose electronically, rather than affixing the information to property, the price of the property, amount of the lease payment, and the total number of lease payments necessary to acquire ownership.

- Requires mandated disclosures to be made electronically if the property offered for lease-purchase is not owned by the lessor, regardless of whether the property is offered or displayed online.

## Medical marijuana

(R.C. 121.04, 121.08, 3796.02, 3796.03, 3796.032, 3796.04 (repealed), 3796.05, 3796.06, 3796.061, 3796.08, 3796.10, 3796.11, 3796.12, 3796.13, 3796.14, 3796.15, 3796.16, 3796.17, 3796.19, 3796.20, 3796.22, 3796.23, 3796.27, 3796.30, 4729.80, and 4776.01; Section 525.20; conforming changes in R.C. 109.572, 1321.37, 1321.53, 1321.64, 4729.86, 4735.143, 4763.05, 4764.06, 4764.07, 4768.03, and 4768.06)

### **Transfer to Division of Marijuana Control (DMC)**

The act consolidates oversight of the Medical Marijuana Control Program within the Division of Marijuana Control (DMC), which it creates within the Department of Commerce (COM). To oversee DMC, the act establishes a Superintendent of Marijuana Control who reports to the COM Director. Prior to the act, oversight of the program was split between COM and the State Board of Pharmacy (PRX), with COM being responsible for licensing and oversight of cultivators, processors, and testing laboratories, and PRX being responsible for licensing and oversight of medical marijuana patients, caregivers, and dispensaries. The act transfers all assets, liabilities, records, and obligations of COM and PRX related to medical marijuana to DMC.

The act requires the transfer to be complete by December 31, 2023. Until then, PRX and COM retain their respective marijuana licensing and oversight responsibilities. Persons seeking registration as a medical marijuana patient or caregiver must apply to PRX until April 1, 2024. After that, they must submit applications must to DMC. Consequently, PRX will continue to receive applications for patient and caregiver registrations for three months after the program is fully transferred to DMC. PRX will, presumably, send those applications to DMC for processing.

The act specifies that medical marijuana licenses and registrations issued by PRX and COM continue in effect for the remainder of their term. If a license or registration expires before the program transfer is complete, the original issuer (PRX or COM) may renew it in the same manner as under prior law. Forms of medical marijuana previously approved by PRX remain approved unless DMC later revokes that approval by rule.

The act specifies that no pending action or proceeding is affected by the transfer of the Medical Marijuana Control Program to DMC. The Superintendent of Marijuana Control, COM Director, or COM must continue prosecution or defense of a pending action or proceeding after the transfer is complete. Any reference to PRX in any document related to the program's administration is deemed to refer to DMC, the COM Director, or COM, as appropriate.

The act authorizes the Office of Budget and Management (OBM) to make any budget and accounting changes necessary for the transfer of the program to DMC. Furthermore, it requires the PRX Executive Director and the COM Director to identify employees who administer the program, and transfer them to COM. From July 1, 2023, to January 1, 2024, COM may alter the positions and duties of program employees as needed, other than those employees subject to

collective bargaining. The act specifies that such actions are not subject to collective bargaining. The act authorizes COM to enter into one or more contracts to provide for training of program employees.

## **Rules**

DMC must adopt rules, standards, and procedures for the Medical Marijuana Control Program. The topics of those rules closely mirror those mandated for COM and PRX under former law. COM and PRX rules continue in effect unless they are repealed or amended by DMC. However, the act requires DMC to review and propose revisions to the PRX rules concerning medical marijuana retail dispensaries by March 1, 2024. Additionally, the Director of the Legislative Service Commission (LSC) must renumber PRX rules pertaining to the program to reflect the transfer of the program to DMC.

## **Investigations**

The act allows DMC to initiate and conduct an investigation, and subpoena witnesses and documents, whenever there appears to be a violation of the Medical Marijuana Law, or when DMC otherwise believes it to be in the best interest of medical marijuana patients or the general public. A person that fails to comply with a DMC order or subpoena may be held in contempt by a court of common pleas of appropriate jurisdiction.

## **Drug database usage**

The act requires PRX, upon receipt of a request from a designated representative of DMC, to provide to the representative information from the Ohio Automated Rx Reporting System (OARRS) relating to an individual who, or entity that, is the subject of an active DMC investigation. OARRS is a drug database used by PRX to prevent the misuse of controlled substances and other dangerous drugs.

## **Provisional dispensary license**

(Section 737.50)

The act allows the holder of a provisional medical marijuana dispensary license issued by PRX as part of its second request for applications (commonly referred to as “RFA II”) until December 31, 2023, to demonstrate compliance with dispensary operational requirements and begin operations. Current administrative rules require holders to commence operations within 270 days after the provisional dispensary license is issued. Failure to meet the operation deadline may result in an administrative action by PRX, with consequences up to and including license revocation. PRX may grant a variance from the deadline if doing so is in the public interest, no party will be injured as a result, and the deadline is unreasonably and unnecessarily burdensome as applied to the holder.<sup>30</sup>

The act grants an extension to all RFA II provisional license holders that missed the initial operation deadline, and further specifies that any disciplinary action levied as a result of missing the deadline is suspended until January 1, 2024. Any such disciplinary actions must be dismissed

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<sup>30</sup> O.A.C. 3796:6-2-04(L) and 3796:6-4-10.

if the holder obtains a certificate of operation by the act's December 31, 2023, deadline. In that case, the holder is not considered to have undergone discipline, been the subject of a disciplinary action, entered into a settlement to resolve a disciplinary action, or been fined for missing the operations deadline.

If the provisional license holder does not obtain a certificate of operation by the new deadline, DMC must complete any related disciplinary actions.

## **Division of Financial Institutions**

### **Criminal records checks**

(R.C. 1121.23)

The act replaces the requirement that the Superintendent of Financial Institutions obtain a criminal records check in relation to a person who directly or indirectly controlled a bank, or had a substantial interest in or participated in the management of a bank, with a requirement that the Superintendent request a criminal records check of a person who exercises "control" of a bank. The act defines "control" as the power to vote, directly or indirectly, at least 25% of outstanding voting shares or voting interests of a licensee or person in control of a licensee, or the power to elect or appoint a majority of executive officers or directors.

The act creates a presumption that a person exercises control when that person holds the power to vote, directly or indirectly, at least 10% of outstanding voting shares or voting interests of a licensee or a person in control of a licensee. However, this presumption can be rebutted by establishing that the person is a passive investor by a preponderance of the evidence. To determine the percentage of voting shares or voting interests controlled by any person, that person's interest is aggregated with any other immediate family members. This includes a spouse, parents, children, siblings, in-laws, and any other person who shares the person's home.

The act also defines several terms for purposes of this provision.

**"Director"** means an individual elected to serve as the director of a for-profit corporation or a nonprofit corporation.

**"Executive officer"** means president, treasurer, secretary, any individual at or above the senior vice-president level or its functional equivalent, any individual at the vice-president level or its functional equivalent if the organization does not have senior vice-presidents, and "manager" as that term is defined in the Ohio Revised Limited Liability Company Act (LLC Law) (a person designated by the LLC or its members with the authority to manage all or part of the activities or affairs of the LLC on its behalf, regardless of their title).

**"Incorporator"** has the same meaning as in Ohio's General Corporation Law: a person who signed the original articles of incorporation.

**"Organizer"** has the same meaning as in the LLC Law: a person executing the initial articles of organization.<sup>31</sup>

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<sup>31</sup> R.C. 1701.01, 1701.55, 1702.26, and 1706.01, not in the act.

Because continuing law requires the Superintendent to request a criminal records check for someone to serve as an organizer, incorporator, director, or executive officer, the act adds these definitions to clarify precisely who is included in this context.

## **State Fire Marshal**

### **Underground Storage Tank Revolving Loan Program**

(R.C. 3737.02, 3737.88, and 3737.882; Repealed R.C. 3737.883)

The act eliminates the Underground Storage Tank Revolving Loan Program and the accompanying Underground Storage Tank Revolving Loan Fund. The program allowed a political subdivision to apply for a loan from the State Fire Marshal to assist with the costs of removing underground storage tank systems that stored petroleum and hazardous substances. The loans were directed to sites where a responsible party was unknown or unable to pay for removing the storage tank. The fund used to make the loans had no cash balance when the act was enacted.

## **Division of Industrial Compliance**

### **Elevator safety**

#### **Inspection interval**

(R.C. 4105.17)

The act aligns the law governing the fee for issuing or renewing a certificate of operation for an elevator with the law governing the intervals for inspection. Continuing law requires elevators to be inspected twice every 12 months, and sets the fee for a certificate of operation at \$220 plus \$12 for each floor serviced by the elevator. The act retains the same fee amount, but changes the interval at which it is assessed from “once every six months” to “twice every twelve months.” This change makes the interval at which the fee is assessed identical to the interval at which an inspection is required.

#### **Elevator Safety Review Board meetings**

(R.C. 4785.09; Section 110.40)

Former law required the Elevator Safety Review Board to meet at least once per month. The act extends the maximum period between meetings to once per quarter.

### **Out-of-state specialty contractors**

(R.C. 4740.05 and 4740.08; Sections 125.20 to 125.26)

The act prevents the December 29, 2023, scheduled elimination of the Ohio Construction Industry Licensing Board’s ability to issue specialty contractor licenses without examination in accordance with reciprocity agreements with other states. An individual issued a license through a reciprocity agreement is not subject to the requirement, effective December 29, 2023, that an out-of-state applicant must pass an examination to obtain the license.

Thus, under the act, an individual licensed in another state that has a reciprocity agreement with Ohio remains eligible for an Ohio license without taking an examination. A licensee from a state that does not have a reciprocity agreement with Ohio may take the

examination after providing proof that the individual meets requirements specific to out-of-state licensees. Alternatively, such an individual may apply to take the examination in the same manner as an individual seeking an initial license.<sup>32</sup>

## **Manufacturing and Construction Mentorship Program**

(R.C. 4109.05 and 4109.22)

The act expands the “Manufacturing Mentorship Program” to include construction occupations, and renames the program the “Manufacturing and Construction Mentorship Program.” The program exposes minors in Ohio who are 16- or 17-years old to both construction occupations (under the act) and manufacturing occupations (under continuing law) through temporary employment. An employer employing a minor under the program must:

- Determine the duration of the minor’s employment;
- Assign a mentor to provide direct and close supervision while the minor is engaged in any workplace activity;
- Provide the minor with the training described under “**Mentorship program training,**” below;
- Encourage the minor to participate in a career-technical education program after the minor’s employment ends, if the minor is not participating in such a program when the minor begins employment;
- Comply with all state and federal laws and regulations relating to the employment of minors.

As with manufacturing occupations under continuing law, the act allows a minor who is employed under the program to work in any construction occupation that is not prohibited for minors of that age by Ohio’s Minor Labor Law or rules adopted under the Law.

For purposes of the program, a “construction occupation” is employment consisting of the construction, reconstruction, enlargement, alteration, repair, remodeling, renovation, demolition, or painting of a building or other structure, road, bridge, or other work, and includes preparing a site for new construction.

### **Mentorship program training**

The act requires an employer to provide a minor employed in a construction occupation under the program with training that includes the following:

- A ten-hour course in construction or general industry safety and health hazard recognition and prevention approved by the U.S. Department of Labor’s Occupation Safety and Health Administration (OSHA) (the minor may participate in an OSHA-approved 30-hour course if the minor has already successfully completed a ten-hour course);

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<sup>32</sup> See R.C. 4740.06, not in the act.

- Instructions on how to operate the specific tools the minor will use during the minor's employment;
- The general safety and health hazards that the minor may be exposed to at the minor's workplace;
- The value of safety and management commitment;
- Information on the employer's drug testing policy.

The employer must pay any costs associated with providing a minor in a construction occupation with the training.

As with manufacturing employers that employ minors under the program, a construction employer participating in the program is not required to provide the training described above if the minor presents proof of completing the training during the six-month period immediately before employment.

### **Driver's license and drug testing**

The act requires a participating minor to possess a valid driver's license to be eligible for employment in manufacturing or construction under the program.

The act also allows a participating employer to require a participating minor to take a drug test in accordance with the policy on which the employer provided the minor with information. This practice appears to have been permissible before the act's enactment.

### **List of approved tools**

The act requires the COM Director, in consultation with construction employers, to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119) listing the tools that a 16- or 17-year old minor who is employed in a construction occupation under the program may operate during the minor's employment. The Director must use the "Field Operations Handbook" issued by the U.S. Department of Labor's Wage and Hour Division for guidance in developing the list. The act does not require the Director to include a tool on the list if the federal Fair Labor Standards Act<sup>33</sup> (FLSA) hazardous occupation orders and Ohio's Minor Labor Law or rules adopted under it specifically permit 16- or 17- year olds to operate the tool. These requirements are similar to the requirements for manufacturing under the program.

### **Prohibitions**

The act, similar to the law for manufacturing, prohibits an employer from:

1. Permitting a 16- or 17-year old minor to operate a tool a minor of that age is permitted to operate under the rules described in "**List of approved tools**" above unless the minor is employed under the program;

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<sup>33</sup> 29 U.S.C. 201 *et seq.*

2. Permitting a 16- or 17-year old minor who is employed under the program to operate a tool that a minor of that age is prohibited from using by the FLSA and Ohio's Minor Labor Law or rules adopted under it.

### **Penalty for violation**

Under continuing law, the Director must designate enforcement officials to enforce Ohio's Minor Labor Law. An enforcement official who discovers a violation of the Law must notify the offending employer of the violation, then file a complaint against the employer in any court of competent jurisdiction. If the court finds the employer violated the Law, the employer is assessed a penalty, which is paid into the fund of the school district in which the violation was committed.

An employer who violates the act's prohibitions is assessed a civil penalty of up to \$1,730 for each violation.<sup>34</sup>

### **Hazardous occupations prohibited for minors**

Continuing law requires the COM Director, after consulting with the Director of Health, to adopt rules prohibiting the employment of minors in occupations that are hazardous or detrimental to the health and well-being of minors. The COM Director must consider the hazardous occupation orders issued pursuant to the FLSA when adopting the rules. The act prohibits the COM Director from adopting any rule that would prohibit a minor who is 16- or 17-years old and employed under the mentorship program from being employed in a construction occupation if the hazardous occupation orders issued pursuant to the FLSA permit the minor's employment in the construction occupation.

### **Interaction between federal and state minor labor laws**

An employer or employee may be subject to the FLSA, Ohio's Minor Labor Law, or both laws, depending on the employer type and size and whether the employer or employee engages in interstate commerce. In a situation where an employer or an employee is subject to both federal and Ohio law and the laws differ, the law that provides the most protection for the minor applies.<sup>35</sup> For example, federal and Ohio law prohibit a minor from using hammering machines such as a power hammer.<sup>36</sup> If Ohio law were amended to permit the minor to use a hammering machine that is prohibited under the FLSA, the federal law would control because it is more restrictive of the minor's activity. Therefore, it appears that a minor's employment would be limited in certain occupations that are prohibited under the federal law, even if Ohio law were amended to permit the minor's employment in those occupations.

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<sup>34</sup> R.C. 4109.13 and 4109.99, not in the act.

<sup>35</sup> 29 U.S.C. 218 and 29 C.F.R. 570.50.

<sup>36</sup> 29 C.F.R. 570.59 and O.A.C. 4101:9-2-11.

## **Real property**

### **Ohio fire and building codes**

#### **Exterior patios (VETOED)**

(R.C. 3737.83; Sections 110.20 to 110.22)

The Governor vetoed a provision that would have required the State Fire Marshal to establish in the state Fire Code that the occupant load of a building does not include an exterior patio that has a means of egress on at least three sides, or within 50 feet of an open side, and in which each means of egress is compliant with standards established by the Americans with Disabilities Act. To be compliant under the vetoed provision, each means of egress would have needed to provide a continuous and unobstructed way of travel to an area of refuge, a horizontal exit, or a public way.<sup>37</sup> Continuing law, unchanged by the act, requires that structures adhere to occupant load limits and other safety requirements in the Ohio Fire Code and the Ohio Building Code. Occupant load refers to the number of people permitted in a building at one time based on the building's floor space and function – the number of people for which the means of egress is designed.<sup>38</sup>

#### **Coordinated enforcement (VETOED)**

(R.C. 3781.062)

The Governor vetoed a provision that would have required the COM Director, in collaboration with the State Fire Marshal, the Board of Building Standards, and representatives of local building departments, to develop guidelines for the enforcement of the Ohio Building Code and state Fire Code in a coordinated manner, including the interaction of exemptions from one code with the requirements of the other code.

#### **Temporary fire and building permits**

(R.C. 3737.833 and 3781.032)

Under continuing law, changed in part by the act, permits provided under the Ohio Fire Code must be granted by the State Fire Marshal or a local fire code official (usually the fire chief for municipalities and townships that have fire departments). Similarly, the Ohio Building Code requires permits to be granted by the relevant building official from a department or agency of the state, or a political subdivision, which has jurisdiction to enforce state and local building codes. Building officials are responsible for administering and enforcing both the Ohio Building Code and any local building regulations adopted in accordance with the state law.<sup>39</sup>

Under the act, if the local fire code official or state or local building official is unable to conduct an inspection or issue a permit required by the state fire or building codes for more than

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<sup>37</sup> International Building Code § 1007.1 (2003).

<sup>38</sup> O.A.C. 1301:7-7-10 and 4101:1-10-01.

<sup>39</sup> O.A.C. 1301:7-7-01, Sections 105.1.1, 104.1, and 104.2; O.A.C. 4101:1-1-01, Sections 105.1, 104.1, and 104.2; R.C. 3781.01, not in the act.

five business days, the owner, operator, or developer of a retail establishment may obtain a temporary fire or building permit from *any* fire or building code official authorized to conduct that inspection or issue that permit elsewhere in Ohio. In the event that a retail establishment does receive a temporary permit, that permit is valid for only 14 days, after which time the establishment must obtain the permit from the local fire code or building official.

The act defines a “retail establishment” as a place of business open to the general public for the sale of goods or services, including establishments currently under construction and not yet open to the public.

### **Right-to-list home sale agreements**

(R.C. 317.13, 4735.01, 4735.18, and 5301.94)

The act prohibits “right-to-list” home sale agreements, where the owner of residential real estate agrees to provide another person the exclusive right to list the real estate for sale at a future date, in exchange for monetary consideration or something else of value. The prohibition applies to agreements entered into, modified, or extended after October 3, 2023 (the act’s effective date), that meet one or both of the following criteria:

- The agreement states that it runs with the land, or otherwise purports to bind future owners;
- The agreement purports to be a lien, encumbrance, or other real property security interest.

Under the act, right-to-list agreements are void and unenforceable. Furthermore, county recorders must refuse to record such an agreement. However, the act clarifies that county recorders do not have a duty to evaluate every document presented to determine whether or not the document is a right-to-list agreement.

Under the act, any person other than the property owner that seeks to enter a right-to-list agreement commits an unfair and deceptive practice under the Consumer Sales Practices Act. Such a person is subject to a lawsuit brought by either the Attorney General or the property owner.<sup>40</sup> Furthermore, real estate agents or brokers who are found to have entered into a right-to-list agreement are subject to the following sanctions:

- Revocation of license;
- Suspension of license;
- A fine of no more than \$2,500;
- A public reprimand;
- Additional continuing education.<sup>41</sup>

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<sup>40</sup> R.C. 1345.07 and 1345.09, not in the act.

<sup>41</sup> R.C. 4735.051, not in the act.

## **Self-service storage facilities**

(R.C. 5322.06)

The act specifies that if a rental agreement between an owner and occupant of a self-service storage space contains a provision that limits the value of personal property stored in the storage space, that limit is the maximum value of the stored property. In other words, the value recovered in an insurance claim or civil action against the facility's owner or operator for loss of or damage to stored property cannot exceed the maximum value stated in the rental agreement. However, a rental agreement may not limit the value of property stored in a storage space to less than \$1,000. Furthermore, the limit does not apply to an occupant's claim for damages based on negligence by, or on behalf of, the facility's owner.

The provision of the rental agreement that contains this maximum limit must be printed in bold type or underlined. The limit stated in the rental agreement may be increased with the written permission of the owner of the storage space.

## **Division of Liquor Control**

### **B-1 liquor permit holders and craft beer exhibitions**

(R.C. 4303.2011)

The act allows a brewery's distributor (B-1 liquor permit holder) to supply the brewery's beer for a craft beer exhibition authorized by an F-11 liquor permit. Continuing law allows an F-11 permit holder to sell at an exhibition beer that it has purchased from breweries (A-1 and A-1c permit holders) that are participating in the exhibition.

### **Liquor permit premises: outdoor sales area**

(R.C. 4301.62 and 4303.188; Sections 610.70 and 803.120)

The act codifies and makes permanent a law that was set to expire on December 31, 2023. The codification takes effect January 1, 2024. The law allows a qualified liquor permit holder to expand the area in which it may sell beer, wine, mixed beverages, or spirituous liquor (alcoholic beverages) by the individual drink for consumption to personal consumers in the following areas:

1. In any area of the permit holder's property that is outdoors and where sales are not currently authorized, including the permit holder's parking area;

2. In any outdoor area of public property that is immediately adjacent to the permit holder's premises and that is owned by a municipal corporation or township, with the public property owner's written permission in accordance with the act;

3. In any outdoor area of private property that is immediately adjacent to the permit holder's premises, with the private property owner's permission.

A qualified permit holder is a large or small brewery (A-1 or A-1c liquor permit holder); a brewery, winery, or small distillery that operates a bar or restaurant (A-1-A permit holder); a winery (A-2 or A-2f permit holder); or a bar or restaurant (D class permit holder). A personal consumer is someone who is at least 21 and who intends to use a purchased alcoholic beverage only for personal consumption and not for resale or other commercial purposes.

If a qualified permit holder sells alcoholic beverages in the outdoor area, the permit holder must clearly delineate the area where personal consumers may consume alcoholic beverages.

For the act's purposes, a qualified permit holder must obtain the written consent of either of the following:

1. If the public property is located in a municipal corporation, the executive officer of the municipal corporation or the executive officer's designee. If the executive officer or designee denies consent, the permit holder may appeal to the municipal corporation's legislative authority. The legislative authority may adopt a resolution requesting the executive officer to reconsider the denial.

2. If the public property is located in the unincorporated area of a township, the township's legislative authority by adoption of a resolution consenting to the sale of alcoholic beverages in the outdoor area.

In addition, a qualified permit holder that intends to sell alcoholic beverages by the individual drink in an outdoor area must notify the Division of Liquor Control and the Department of Public Safety's Investigative Unit of the area in which the permit holder intends to sell the alcoholic beverages. The permit holder must provide the notice within ten days of the commencement of the sales.

A qualified permit holder or the holder's employee must deliver each alcoholic beverage sold to a personal consumer in an outdoor area.

### **Duplicate liquor permits**

(R.C. 4303.30)

The act requires all liquor permit holders, rather than only certain ones, that serve alcohol for on-premises consumption to obtain a duplicate permit if the permit holder wishes to add an additional bar at the permit premises beyond the two bars authorized by the original permit. Under former law, the liquor permit holders solely subject to this requirement were the D-2, D-3, D-3a, D-4, D-4a, D-5, D-5a, D-5b, D-5e to D-5o, and D-6 permit holders. A D-1, D-2x, or D-3x permit holder was not required to obtain a duplicate permit if the additional bar was exclusively used for the sale of beer. Further a D-3x permit holder was not required to obtain a duplicate permit if the additional bar was exclusively used for the sale of wine. An A-1-A permit holder had to obtain a duplicate bar permit for an additional bar only if the permit holder obtained a D-6 permit (Sunday sales of alcohol).

The act also revises the per-bar permit fee for a duplicate permit as follows (the revised fee is the higher of \$100 or 20% of the original fee):

Permit	Former law	The act
A-1-A with a D-6	\$781.20	\$781.20
A-1	Not authorized	\$781.20

Permit	Former law	The act
A-1c	Not authorized	\$200
A-2/A-2f	Not authorized	\$100
A-5	Not authorized	\$200
B-1	Not authorized	\$625
B-2	Not authorized	\$100
B-2a	Not authorized	\$100
B-3	Not authorized	\$100
B-4	Not authorized	\$100
B-5	Not authorized	\$312.60
D-1	Not authorized	\$100
D-2	\$100	\$112.80
D-2x	Not authorized	\$100
D-3	\$400	\$150
D-3x	Not authorized	\$100
D-3a	\$400	\$187.60
D-4	\$200	\$100
D-4a	Not authorized	\$150
D-5	\$1,000	\$468.80
D-5a	\$1,000	\$468.80
D-5b	\$1,000	\$468.80
D-5c	\$400	\$312.60
D-5d	Not authorized	\$468.80
D-5e	\$650	\$243.80

Permit	Former law	The act
D-5f	\$1,000	\$468.80
D-5g	\$375	\$375
D-5h	\$375	\$375
D-5i	\$468.80	\$468.80
D-5j	\$468.80	\$468.80
D-5k	\$375	\$375
D-5l	\$468.80	\$468.80
D-5m	\$468.80	\$468.80
D-5n	\$4,000	\$4,000
D-5o	\$1,000	\$468.80
E	Not authorized	\$100
F class	Not authorized	\$100 to \$340

## Liquor permit cancellations

(R.C. 4301.26)

The act allows, rather than requires, the Liquor Control Commission to cancel a liquor permit for any of the following reasons (except as provided in the rules of the Division of Liquor Control relative to transfers of a permit):

1. In the event of the permit holder's death or bankruptcy;
2. The making of an assignment for the benefit of the permit holder's creditors; or
3. The appointment of the permit holder's property.

## Sale of spirituous liquor by agency store

(R.C. 4301.19)

The act stipulates that the statute requiring the Division of Liquor Control to procure, on request, a specific variety or brand of spirituous liquor that is out of stock at an agency store is subject to both of the following:

1. The statute requiring the Division to operate a system for the sale of spirituous liquor at agency stores; and

2. The statute allowing the Superintendent of Liquor Control to establish rules for the equitable distribution of spirituous liquor for brands and varieties that are in high demand.

## **Division of Real Estate and Professional Licensing**

### **Real estate brokers**

#### **Licensure**

(R.C. 4735.07)

The act modifies the work requirements to take the real estate broker's examination. Continuing law requires an applicant to have been a licensed real estate broker or salesperson for at least two years. Additionally, under prior law, the applicant must have worked as a licensed real estate broker or salesperson for an average of 30 hours per week during at least two of the five years preceding their application.

The act requires only that the applicant have been a licensed real estate broker or salesperson for two of the five years preceding the application. Therefore, applicants for the examination must have two years of recent experience, but the number of hours worked each week during those two years is no longer a factor.

#### **Civil penalty**

(R.C. 4735.052)

If a person fails to pay a civil penalty assessed by the Ohio Real Estate Commission for certain unlicensed or unregistered activities, the act requires the Superintendent of Real Estate and Professional Licensing to forward to the Attorney General that person's identifying information. Under continuing law, the Superintendent also must forward the person's name and the amount of the penalty, for collection purposes. The Commission may impose a civil penalty up to \$1,000 per violation, with each day constituting a separate violation.

### **Brokerage trust accounts**

(R.C. 4735.18(A)(26) and (27))

Continuing law requires licensed real estate brokers to maintain separate special or trust bank accounts in an Ohio depository for deposit and maintenance of (1) rents, security deposits, escrow funds, and other moneys received by the broker in a fiduciary capacity in the course of managing real property, and (2) escrow funds, security deposits, and other moneys received by the broker in a fiduciary capacity, except those related to managing real property. The act requires the accounts to be maintained at an Ohio depository that is state or federally chartered. Continuing law permits the Superintendent of Real Estate and Professional Licensing to take disciplinary actions against a license holder who fails to maintain these accounts.

### **Other disciplinary actions**

(R.C. 4735.18(A)(33) and (39))

The act permits the Superintendent to take disciplinary action against a licensed real estate broker or salesperson for having been judged incompetent by a court in any capacity.

Former law allowed disciplinary action to be taken only when a license holder had been judged incompetent for the purpose of holding the license.

The act also permits disciplinary action against a licensed real estate broker or salesperson who enters into a right-to-list home sale agreement, which is prohibited by the act. See “**Right-to-list home sale agreements**,” above.

### **Administration of funds**

(R.C. 3705.17, 4735.03, 4735.06, 4735.09, 4735.12, 4735.13, 4735.15, 4735.211, 4763.15, 4763.16, 4764.18, 4767.03, 4767.10, 4768.14, 4768.15, 4781.17, and 4781.54)

The act consolidates several funds that held fees collected by the Division of Real Estate and Professional Licensing. Under continuing law, when obtaining a burial permit, a funeral director or other person must pay the local registrar or sub-registrar a \$3 fee. From this fee, the registrar or sub-registrar keeps 50¢, and the remaining \$2.50 goes to the Division for purposes described in the Cemetery Law. Prior law required the Division to deposit \$1 of its share of the permit fee to the Cemetery Grant Fund to advance grants to cemeteries. The grants defray the costs of exceptional cemetery maintenance or training cemetery personnel in the maintenance and operation of cemeteries.

The act eliminates the Cemetery Grant Fund, requiring the full \$2.50 of the Division’s share to be deposited to the Cemetery Registration Fund, which the act creates. The \$1 of the fee still must be used for the cemetery grants. In addition, the act eliminates the restriction that grants cannot total more than 80% of the appropriation for that fiscal year.

The act also eliminates the Real Estate Education and Research Fund, Manufactured Homes Regulatory Fund, Home Inspectors Fund, and Real Estate Appraiser Operating Fund. It redirects deposits going to these funds to the Division of Real Estate Operating Fund and makes conforming changes.

The act authorizes, instead of requires, the Ohio Real Estate Commission to use operating funds for education and research in the same manner it is authorized to use the funds in the Real Estate Education and Research Fund under former law.

Lastly, the act authorizes, rather than requires, the Superintendent of Real Estate and Professional Licensing to collect a service fee from the Real Estate Recovery Fund to defray the cost of administering the fund. The amount collected must not exceed the annual interest earnings of the fund multiplied by the federal short-term interest rate (which is 5% for 2023). The Real Estate Recovery Fund is maintained to satisfy judgments against real estate brokers and salespeople who engage in professional misconduct. To support the fund, continuing law requires the Real Estate Commission to impose special assessments on brokers and salespersons renewing their licenses.<sup>42</sup>

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<sup>42</sup> “[In the matter of the Determination of the Interest Rates Pursuant to Section 5703.47 of the Ohio Revised Code \(PDF\)](#),” Ohio Department of Taxation, October 14, 2022, available on the Department of Taxation’s website: [tax.ohio.gov](http://tax.ohio.gov).

## **Confidentiality of investigatory information**

(R.C. 4735.05)

Under continuing law, when the Division of Real Estate and Professional Licensing is investigating a licensee or an applicant pursuant to a complaint, or otherwise pursuant to the Division's enforcement duties, all information obtained as part of the investigation is confidential. However, the Division may release information to the Superintendent of Financial Institutions, as it relates to nonbank consumer lending laws, to the Superintendent of Insurance, as it relates to Title Insurance Law, to the Attorney General, or to local law enforcement agencies and prosecutors. The act further authorizes release of information to the Division of Securities, the Division of Industrial Compliance, and in general to any law enforcement agency or prosecutor, not just a local law enforcement agency or prosecutor. It also clarifies that any release of such information under this authority is permissive – the Division is not required to do so.

The act also makes a technical correction by removing a legacy reference to a repealed statute.

## **Ohio Home Inspector Board**

(R.C. 4764.04; R.C. 4764.05, not in the act)

The act requires the Ohio Home Inspector Board to elect a chair and vice chair from among its members by majority vote annually at the first regularly scheduled meeting after September 1. The Board also must meet at least once per quarter each year. Finally, the act specifies that (1) a majority of Board members constitutes a quorum and (2) a quorum is necessary for the Board to conduct its regular business.

Under continuing law, the COM Director is the ex officio executive officer of the Board. The Director may designate the Superintendent of Real Estate and Professional Licensing to act as the executive officer.

The Board's purpose is to establish standards to govern the issuance, renewal, suspension, and revocation of licenses, other sanctions that may be imposed for violations of state law, the conduct of hearings related to these actions, the process of reactivating a license, and the establishment of various fees.

## **Division of Securities**

### **Securities registration (VETOED)**

(R.C. 1707.01, 1707.09, 1707.091, and 1707.092)

#### **General background**

The Ohio Securities Act regulates the sale of securities (e.g., stocks, bonds, options, promissory notes, and investment contracts) in Ohio. It delegates the administration of the law to the Division of Securities in COM. If a device or transaction constitutes a security under the law, it cannot be sold in Ohio without first registering it with the Division or properly exempting

it from registration. Additionally, persons who carry out the sale of securities in Ohio must be licensed by the Division or properly exempted from licensure.

Continuing law provides three ways to register securities with the Division, each of which requires a filing that includes fees, exhibits, and other specified documents:

- An issuer that is registering securities with the U.S. Securities and Exchange Commission (SEC) under the Securities Act of 1933 can file a **registration by coordination**.
- An issuer that is making an offering that involves a limited number of purchasers or limited selling efforts can file a **registration by description**.
- Issuers that are not eligible for registration by coordination or registration by description can pursue **registration by qualification**.

### **Registration by coordination – oversight by the Division (VETOED)**

The Division of Securities can subject securities registered by coordination to the same application rules and evaluation standards that apply to those registered by qualification. These registration by qualification rules and standards are more robust than the baseline requirements for registration by coordination, and allow the Division greater discretion to decline registration if, for example, it determines registration is not in the public interest. The Governor vetoed provisions that would have changed this, so that registration by coordination was mutually exclusive from a registration by qualification, limiting the Division's review discretion. Furthermore, the vetoed provisions would have required that all federally registered securities be registered by coordination. Under continuing law, a federally registered security may be registered in Ohio by either coordination or qualification.

The Division may suspend a security offering under any type of registration or a security subject to an exemption if it finds the proposed offer or disposition is on grossly unfair terms, or the plan of issuance and sale of securities would (or would tend to) defraud or deceive purchasers. It seems that the vetoed provisions would have excluded securities registered by coordination from this oversight.

### **Timing of effectiveness (VETOED)**

Under continuing law, subject to full payment of a registration fee and certain other requirements, a registration statement under the coordination procedure is effective either at the moment the federal registration statement becomes effective or at the time the offering may otherwise be commenced in accordance with the rules, regulations, or orders of the SEC. The vetoed provision retained the same application fee and other requirements, but specified that the effectiveness of the statement is not subject to delay or waiver of any condition by the Division of Securities or the issuer.

### **Notice filings (VETOED)**

Under continuing law, investment companies, as defined under the federal Investment Company Act of 1940, that are registered or have filed a registration statement with the SEC must file a notice with the Division of Securities. The notice filing consists of a fee, based on the aggregate price of securities to be sold in Ohio, and a copy of the investment company's federal

registration statement or form U-1 (Uniform Application to Register Securities) or form NF (Uniform Investment Company Notice Filing) of the North American Securities Administrators Association.

The vetoed provision would have extended the notice filing requirement to business development companies (BDCs) that elect to be subject to federal SEC requirements. A BDC is a closed-end fund that invests in private companies and small public firms that have low trading volumes or are in financial distress. BDCs raise capital through public offerings, corporate bonds, and hybrid investment instruments. The vetoed provision would have authorized a BDC to sell an indefinite amount of securities in Ohio after filing notice with the Division. Under current law, securities sold to a BDC are exempt from the general registration requirements.

## **Division of Unclaimed Funds**

### **Legal claims against holder**

(R.C. 169.07)

The Unclaimed Funds Law specifies the types of funds that must be declared unclaimed and requires holders of the funds to report information relating to the unclaimed funds to the COM Director, give notice to owners or beneficiaries, and pay all or a portion of the funds to the Director. Under former law, when the holder made a payment of unclaimed funds to the Director, the holder was relieved of further responsibility for their safe-keeping and was held harmless by the state from liability for any claim arising out of their transfer to the Director. The act limits the hold harmless provision to holders that act in good faith and in compliance with the Unclaimed Funds Law and caps the state's assumption of liability at the value of the unclaimed funds paid, as of the time of the payment to the Director.

Under continuing law, if a lawsuit is brought against a holder that has transferred unclaimed funds to the Director or that has an agreement with the Director to hold a portion of the funds, the holder must notify the Director in writing about the legal proceedings. The act requires the holder to notify the Director not later than 14 days after the holder is served notice of the lawsuit. Continuing law specifies that failure by a holder to give the notice to the Director absolves the state from any liability the state may otherwise have with regard to the unclaimed funds. The act adds that it absolves the state from liability only beyond the value of the unclaimed funds paid by the holder to the Director.

Under former law, if there was a lawsuit against the holder, the Director was required to intervene and assume the defense of the holder in the lawsuit. Under the act, the Director may take any action the Director considers necessary or expedient to protect the interests of the state, which may or may not include intervening in the lawsuit in defense of the holder. The Director is not required to intervene. The act specifies that if the Director elects not to intervene in the lawsuit and a judgment is entered against the holder for any amount of the unclaimed funds paid to the Director, the Director must reimburse the holder for the amount paid, or enter into an agreement modified to reflect the satisfaction of the judgment, if there was an agreement in place previously in which the holder held the funds. The act also specifies that the Director is not required to hold harmless or intervene in the lawsuit against a holder that does not act in good faith or that does not act in compliance with the Unclaimed Funds Law, and that the act's

changes do not insure or indemnify a holder against a holder's own acts or omission, negligence, bad faith, or breach of any duties owed to the owner of the unclaimed funds or the Director.

Under continuing law, property transferred to the Director that is not cash must be converted to cash and the proceeds are deposited into the Unclaimed Trust Fund. The act specifies that if there is a change in the market value of the unclaimed funds after the holder pays the Director, or after the Director sells the unclaimed funds, a person cannot file a lawsuit against the state, a holder, a transfer agent, registrar, or other person acting for or on behalf of the holder for any change in the market value of the unclaimed funds.

## **Uniform Commercial Code**

### **Lease-purchase agreements**

(R.C. 1351.01 and 1351.07)

The act amends the law related to lease-purchase agreements. A lease-purchase agreement is an agreement for the use of personal property for an initial period of four months or less, that is automatically renewable with each lease payment, and that permits the person leasing the property to purchase it. All of the following are expressly excluded from the law governing lease-purchase agreements:

- A lease for agricultural, business, or commercial purposes;
- A lease made to an organization;
- A lease of money or intangible personal property;
- A lease of a motor vehicle.

Under continuing law, a person offering property for lease-purchase must disclose all of the following:

- The cash price of the property;
- The amount of the lease payment;
- The total number of lease payments necessary to acquire ownership of the property.

Former law required the disclosures to be stamped upon, or otherwise affixed to the property in a manner that is clear and understandable. Under the act, when personal property is being offered or displayed for lease-purchase online by the property owner, the property owner may make the disclosures electronically. If the property is not owned by the person offering it for lease-purchase, the person offering the property must make the disclosures electronically, whether or not the property is offered or displayed online.

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## STATE BOARD OF COSMETOLOGY

- Reduces the required hours of initial instruction that an applicant must satisfy to obtain a hair designer license if the applicant does not hold another license.

### **Reduction in training hours for a hair designer license**

(R.C. 4713.28)

The act reduces the number of hours of required training, from 1,200 hours to 1,000 hours, that an applicant must satisfy to obtain an initial practicing hair designer license if the applicant does not hold another license. Under continuing law unchanged by the act, an applicant who holds a barber license and applies for a practicing hair designer license must complete 1,000 hours of training to be issued the additional license.

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## **COUNSELOR, SOCIAL WORKER, AND MARRIAGE AND FAMILY THERAPIST BOARD**

### **Art therapist and music therapist licensure**

- Creates licensing schemes for the practice of art therapy and music therapy, and requires the Counselor, Social Worker, and Marriage and Family Therapist (CSW) Board to license and regulate art therapists and music therapists.
- Beginning October 3, 2024, prohibits unlicensed persons from knowingly providing art therapy or music therapy services or using “art therapist” or “music therapist” or a similar title, and subjects an unlicensed person to existing criminal penalties for violating that prohibition.
- Lists the requirements an applicant must satisfy to be licensed as an art therapist or music therapist.
- Subjects licensed art therapists and music therapists to the same renewal and continuing education requirements, reasons for discipline, and types of disciplinary actions to which other professionals licensed by the CSW Board are subject.
- Allows a licensed art therapist or music therapist to provide telehealth services and provide services through a business entity in combination with other licensed professionals.
- Requires the CSW Board to establish fees for an initial or renewed art therapist or music therapist license and a code of ethics for art therapists and music therapists.

### **CSW Board**

- Adds six new members to the CSW Board: two licensed art therapists, two licensed music therapists, and two public members, and requires the Governor to appoint these members by January 1, 2024.
- Creates the Art Therapist Professional Standards Committee and Music Therapist Professional Standards Committee to act on the CSW Board’s behalf on all matters concerning art therapists and music therapists, respectively.
- Requires that four CSW Board members be licensed as either independent social workers or social workers, provided that at least one member is a licensed social worker at the time of appointment.

## Art therapist and music therapist licensure

(R.C. 4757.01, 4757.02, 4757.03, 4757.04, 4757.05, 4757.11, 4757.15, 4757.16, 4757.24, 4757.31, 4757.34, 4757.36, 4757.37, 4757.38, 4757.41, 4757.43, and 4757.50; with conforming changes in multiple R.C. sections; Section 747.20)

The act creates licensing schemes for the practice of art therapy and music therapy. To practice as an art therapist or music therapist, the act requires a person to be licensed by the appropriate professional standards committee, created by the act (see “**Professional standards committees**,” below), of the Counselor, Social Worker, and Marriage and Family Therapist (CSW) Board.

### Unlicensed practice prohibited

Beginning October 3, 2024, the act prohibits any person from knowingly engaging in the practice of art therapy or providing music therapy services or using the title “art therapist” or “music therapist” or a similar title unless the person holds a valid license that is in good standing. A person who violates this prohibition is guilty of a fourth degree misdemeanor for the first offense and a third degree misdemeanor for each subsequent offense. This is the same penalty for unlicensed practice of other occupations regulated by the CSW Board.<sup>43</sup>

### Practice of art therapy

The act defines “practice of art therapy” as the rendering or offering to render art therapy in the prevention or treatment of cognitive, developmental, emotional, or behavioral disabilities or conditions. “Art therapy” is the integrated use of psychotherapeutic principles and methods with art media and the creative process to assist individuals, families, or groups in doing any of the following:

- Improving cognitive and sensory-motor functions;
- Increasing self-awareness and self-esteem;
- Coping with grief and traumatic experiences;
- Enhancing cognitive abilities;
- Resolving conflicts and distress;
- Enhancing social functioning;
- Identifying and assessing clients’ needs to implement therapeutic intervention to meet developmental, behavioral, mental, and emotional needs.

“Art therapy” includes therapeutic intervention to facilitate alternative modes of receptive and expressive communication and evaluation and assessment to define and implement art-based treatment plans to address cognitive, behavioral, developmental, and emotional needs.

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<sup>43</sup> R.C. 4757.99, not in the act.

## **Music therapy services**

The act defines “music therapy” as the clinical use of music interventions to accomplish individualized goals within a therapeutic relationship through an individualized music therapy treatment plan developed for a client. “Music therapy services” are services a licensed music therapist is authorized under the act to provide to achieve the goals of music therapy.

### **Exemption**

The act does not apply to a person completing supervised experience to qualify for a license as an art therapist or music therapist, provided that experience is completed under a licensed art therapist’s or music therapist’s supervision, as applicable.

## **Telehealth services**

The act permits licensed art therapists and music therapists to provide telehealth services in accordance with continuing law standards applicable to the delivery of telehealth services by licensed health care professionals.

## **Hospital admissions**

Nothing in the act authorizes a licensed art therapist or music therapist to admit a patient to a hospital or requires a hospital to allow an art or music therapist to admit a patient.

## **Licensure**

### **Application and issuance**

A person seeking to be a licensed art therapist or music therapist must file a written application on a form prescribed by the CSW Board. The appropriate committee must issue a license as an art therapist or music therapist to an applicant who submits a properly completed application, pays the fee established by the Board, and meets the eligibility requirements listed below. The license must be issued within 60 days after receiving the information listed below and proof that the applicant has submitted to a criminal records check.<sup>44</sup>

The license is valid for two years and may be renewed in accordance with the same renewal procedures that apply to all licenses issued by the Board.<sup>45</sup>

### **Art therapist eligibility requirements**

To be eligible for a license to practice art therapy, an applicant must meet the following requirements:

- **Age** – the applicant is at least 18.
- **Education** – the applicant has attained a master’s or higher degree from a graduate program in art therapy that one of the following applies to at the time the degree was conferred:

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<sup>44</sup> By reference to R.C. 4757.101, not in the act.

<sup>45</sup> R.C. 4757.32, not in the act.

- The program is approved by the American Art Therapy Association or its successor.
- The program is accredited by the Commission on Accreditation of Allied Health Education Programs or its successor.
- The CSW Board considers the program to be substantially equivalent to a program approved or accredited as described above.
- **Experience** – the applicant has completed at least two years of postgraduate supervised clinical experience in the experience requirements that the Art Therapy Credentials Board, its successor, or an equivalent organization recognized by the CSW Board required for an individual to become a registered art therapist at the time the experience was completed.
- **Board certification** – the applicant has a board certification in good standing with the Art Therapy Credentials Board, its successor, or an equivalent organization recognized by the CSW Board.
- **Additional requirements** – the applicant satisfies any other requirements the CSW Board establishes.

### **Music therapist eligibility requirements**

To be eligible for a license to practice music therapy, an applicant must meet all of the following requirements:

- **Age** – the applicant is at least 18.
- **Education** – the applicant has earned a bachelor’s degree or higher in music therapy approved by the American Music Therapy Association or its successor.
- **Board certification** – the applicant has either passed the board certification examination by the Certification Board for Music Therapists or its successor, or obtained certification as a music therapist by the Certification Board on January 1, 1985, and is currently certified as a music therapist by the Certification Board.
- **Clinical training** – the applicant has completed at least 1,200 hours of clinical training, including at least 180 hours in preinternship experience and at least 900 hours in internship experience approved by an academic institution, the American Music Therapy Association or its successor, or both.

The licensure requirements outlined above do not apply to members of other professions licensed, certified, or registered in Ohio while performing services within the recognized scope, standards, and ethics of their professions.

### **Temporary waiver of eligibility requirements**

For one year beginning October 3, 2023, the CSW Board may waive the requirements that an applicant must satisfy to obtain an art therapist license if the applicant files an application that includes evidence satisfactory to the Board that the applicant meets all of the following requirements:

- The applicant holds a credential in good standing with the Art Therapy Credentials Board, its successor, or an equivalent organization recognized by the CSW Board.
- The applicant has practiced art therapy for at least five years.
- The applicant satisfies any additional requirements the CSW Board establishes.

For one year beginning October 3, 2023, the CSW Board must waive the examination requirement that an applicant must satisfy to obtain a music therapist license if the applicant demonstrates to the Board that the applicant is either:

- A board-certified music therapist who has completed the education and clinical training requirements established by the American Music Therapy Association, has passed the Certification Board for Music Therapists certification examination or obtained certification by that Board on January 1, 1985, and remains actively certified by the Certification Board for Music Therapists; or
- A registered music therapist, certified music therapist, or advanced certified music therapist in good standing with the National Music Therapy Registry.

### **Out-of-state applicants**

If an out-of-state applicant applies before December 29, 2023, the appropriate professional standards committee may issue a license by endorsement to a resident of a state with which the CSW Board does not have a reciprocal agreement, if the applicant submits proof satisfactory to the committee of currently being licensed, certified, registered, or otherwise authorized to practice by that state. If the Board has a reciprocity agreement with another state that has licensure standards that are substantially equivalent to Ohio's, it may issue a license per that agreement.

Beginning December 29, 2023, the appropriate professional standards committee must issue an art therapist license or music therapist license in accordance with the Occupational Licenses for Out-of-State Applicants Law<sup>46</sup> to an applicant if the applicant:

- Holds a license in another state; or
- Has satisfactory work experience, a government certification, or a private certification as an art therapist or music therapist in a state that does not issue an art therapist license or music therapist license.<sup>47</sup>

### **Fees**

Under continuing law largely unchanged by the act, the CSW Board must establish and, from time to time may adjust, initial issuance, renewal, late renewal, continuing education, verification, and various other fees in connection with the licensure of art and music therapists. Continuing law prohibits the Board from charging a licensure or renewal fee of more than \$125.

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<sup>46</sup> R.C. Chapter 4796 (effective December 29, 2023).

<sup>47</sup> R.C. 4757.18, not in the act (amendments effective December 29, 2023).

The Board may do so, however, if it determines a higher amount is needed to cover its necessary expenses and the Controlling Board approves the increase.

### **Continuing education**

Licensed art and music therapists are subject to the same continuing education requirements as professionals holding other licenses issued by the CSW Board. To renew a license, continuing law requires each licensee to complete at least 30 continuing education hours during the licensing period.<sup>48</sup>

Under continuing law, the Board must approve continuing education courses to assist licensees, including art therapists and music therapists licensed under the act, in recognizing the signs of domestic violence and its relationship to child abuse. Licensees, however, are not required to take these courses.

### **Combined businesses**

The act permits a person licensed to practice art therapy or music therapy to provide services through a corporation, limited liability company, partnership, or professional association that is formed for the purpose of providing services in combination with any of the following licensed professionals:

- Licensed professional clinical counselors, licensed professional counselors, independent social workers, social workers, independent marriage and family therapists, marriage and family therapists, art therapists, or music therapists;
- Optometrists;
- Chiropractors;
- Psychologists;
- Registered or licensed practical nurses;
- Pharmacists;
- Physical therapists;
- Occupational therapists;
- Mechanotherapists;
- Doctors of medicine and surgery, osteopathic medicine and surgery, or podiatric medicine and surgery.

This authorization applies regardless of any code of ethics provision that prohibits a licensed art therapist or music therapist (or any of the other licensees listed above) from engaging in the licensee's practice in combination with another licensed professional.

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<sup>48</sup> R.C. 4757.33, not in the act.

## **Discipline and investigations**

Art therapists and music therapists are subject to the same types of disciplinary actions and reasons for discipline as professionals holding other licenses issued by the CSW Board.

Continuing law modified by the act requires the Board to investigate alleged irregularities in the delivery of art therapy or music therapy services by a licensee. Information the Board receives pursuant to a complaint or investigation is confidential and not subject to discovery in a lawsuit. The Board, however, may disclose that information to law enforcement or government entities for purposes of investigating either a licensed art therapist or music therapist or a person or entity that may have engaged in the unauthorized practice of art therapy or music therapy.

## **CSW Board**

### **Art therapist and music therapist membership**

The act adds six new members to the CSW Board, increasing the number of members from 15 to 21. Specifically, it adds two members who are licensed art therapists and two members who are licensed music therapists. It also increases, from three to five, the number of Board members representing the general public who have not practiced an occupation licensed by the Board or been involved in the delivery of professional services regulated by the Board.

### **Independent social worker and social worker membership**

The act modifies the membership requirements for independent social worker and social worker members on the CSW Board. It requires that four members be licensed as either independent social workers or social workers. At least one of them must be a licensed social worker at the time of appointment. Former law required that two be licensed independent social workers and two be licensed social workers.

The act also requires that, at all times, at least one of these four members be an educator who teaches in a bachelor's or master's degree social work program. Former law required that, at all times, the social worker membership include such an educator.

### **Initial appointments and terms of office**

The Governor must make initial appointments of the new CSW Board members by January 1, 2024. These initial members need not be licensed as art therapists or music therapists. Of the six newly appointed members:

- Two are appointed to a term ending October 10, 2024;
- Two are appointed to a term ending October 10, 2025; and
- Two are appointed to a term ending October 10, 2026.

Terms of office for subsequent appointments made by the Governor are three years.

### **Quorum**

The act accordingly increases, from eight to 11, the number of CSW Board members required for a quorum for the Board to conduct business.

## **Membership limitations**

The act increases, from three to five, the minimum number of CSW Board members who must have practiced during the five years preceding appointment at a public agency or an organization that is certified or licensed by a specified state agency.

It also increases, from eight to 11, the maximum number of Board members who may be of the same political party. It eliminates a limitation on the maximum number of Board members who may be of the same sex.

## **Duties**

The act requires the CSW Board to establish codes of ethical practice for licensed art therapists and music therapists. The codes may be based on any codes developed by national organizations representing the interests of those involved in art therapy or music therapy.

In carrying out the Board's duty to provide for the examination of persons seeking to practice an occupation, the act allows it to use an examination prepared by a state or national organization that represents the interests of those involved in art therapy or music therapy.

## **Professional standards committees**

The act creates within the CSW Board the Art Therapist Professional Standards Committee and the Music Therapist Professional Standards Committee. They are subject to the same provisions of law governing the professional standards committees that regulate other professionals licensed by the Board. For example, the committees must meet as necessary to fulfill their duties. However, two committee members constitute a quorum for either the Art Therapist Professional Standards Committee or the Music Therapist Professional Standards Committee to conduct business (the other professional standards committees, each of which has five members, requires three members for a quorum).

The Art Therapist Professional Standards Committee consists of the Board's two licensed art therapist members and one member representing the public who is not on another professional standards committee. It has full authority to act on the Board's behalf on all matters concerning art therapy and art therapists.

Similarly, the Music Therapist Professional Standards Committee consists of the Board's two licensed music therapist members and one member representing the public who is not on another professional standards committee. It has full authority to act on the Board's behalf on all matters concerning music therapy and music therapists.

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## OHIO DEAF AND BLIND EDUCATION SERVICES

- Establishes Ohio Deaf and Blind Education Services and places the State School for the Deaf and the State School for the Blind under it.
- Abolishes the superintendent positions for both schools and creates one superintendent for Ohio Deaf and Blind Education Services appointed by the Department of Education and Workforce.

### Ohio Deaf and Blind Education Services

(R.C. 3325.01, 3325.011, 3325.02, 3325.03, 3325.04, 3325.06, 3325.07, 3325.071, 3325.08, 3325.09, 3325.10, 3325.11, 3325.12, 3325.13, 3325.15, 3325.16, and 3325.17; conforming changes in R.C. 123.211, 124.15, 3101.08, 3301.0711, 3365.07, 4117.14, 4117.15, 5162.01, and 5162.365; repealed R.C. 3325.14; Section 525.30)

The act establishes Ohio Deaf and Blind Education Services (ODBES) and places under it the State School for the Deaf and the State School for the Blind. ODBES must operate under the control and supervision of the Department of Education and Workforce. The Department must appoint a superintendent for ODBES.

The act transfers to ODBES the duties previously prescribed to the state schools for deaf and blind. It also abolishes the individual superintendent positions for both state schools and transfers their powers and duties to the new ODBES superintendent.

In addition, the act:

1. Changes references to “partially deaf,” “partially blind,” and “both deaf and blind” in the law regarding the state schools to “hard of hearing,” “visually impaired,” and “deafblind,” respectively;
2. Authorizes the ODBES superintendent to create additional divisions to meet the educational needs of students throughout Ohio who are deaf, hard of hearing, blind, visually impaired, or deafblind;
3. Eliminates law that permits the Superintendent of the State School for the Deaf to pay expenses for the instruction of deafblind Ohio resident children in any suitable institution;
4. Eliminates a prohibition against the State School for the Blind hiring a teacher who has not taken at least two courses in braille or otherwise demonstrated competency in it;
5. Transfers from the State Board of Education to ODBES the responsibility to establish training programs for the parents of preschool children who are deaf, hard of hearing, blind, or visually impaired;
6. Transfers from the State Board to ODBES the responsibility to establish career-technical programs for visually impaired students and expands that responsibility to include students who are blind, deaf, hard of hearing, and deafblind; and
7. Combines the separate employees food service funds into one ODBES Employees Food Service Fund.

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## DEPARTMENT OF DEVELOPMENT

### All Ohio Future Fund (PARTIALLY VETOED)

- Renames the Investing in Ohio Fund as the All Ohio Future Fund and expands the fund's economic development purposes.
- Expands the purposes for which money in the fund may be used (PARTIALLY VETOED).
- Requires rules to be adopted, in consultation with JobsOhio, that establish requirements and procedures to provide financial assistance from the fund (PARTIALLY VETOED).
- Would have required the Director of Development (DEV Director) to adopt those rules (VETOED).
- Would have required the Director, when awarding financial assistance from the fund, to give preference to sites that were publicly owned (VETOED).
- Requires Controlling Board approval to release moneys from the fund.
- Would have prohibited an entity that received financial assistance from the fund from:
  - Issuing riders or any other additional charges to their customers for the purposes of the project funded by that assistance;
  - Regarding a water company, using the financial assistance for a new or expanded water treatment facility or waste water treatment facility (VETOED).

### Welcome Home Ohio (WHO) Program

- Creates the Welcome Home Ohio (WHO) Program, which:
  - Creates a grant program by which land banks may apply for funds to purchase residential property, for sale to income-eligible owner occupants, and appropriates \$25 million in both FYs 2024 and 2025 to fund the grants.
  - Creates a grant program by which land banks may apply for funds to rehabilitate or construct residential property, up to \$30,000, for income-restricted owner occupancy, and appropriates \$25 million in both FYs 2024 and 2025 to fund the grants.
  - Authorizes up to \$25 million in tax credits in each of FYs 2024 and 2025 for the rehabilitation or construction of income-restricted and owner-occupied residential property.

### Brownfield and building revitalization programs

- Revises the Brownfield Remediation Program and the Building and Site Revitalization Program to require a lead entity to submit grant applications for each county to the DEV Director under the programs.
- Requires the lead entity to be either:

- Selected by the DEV Director from recommendations made by the board of county commissioners of the county, if either of the following apply:
  - ❖ The county has a population of less than 100,000; or
  - ❖ The county has a population of 100,000 or more and does not have a county land reutilization corporation (land bank);
- The land bank for the county if the county has a population of 100,000 or more and the county has a land bank.
- Requires a lead entity to include with a grant application any agreement executed between the board and other recipients that will receive grant money through the lead entity.
- Specifies that recipients may include local governments, nonprofit organizations, community development corporations, regional planning commissions, county land banks, and community action agencies.
- Authorizes a lead entity, after making an initial application for grant funding under the Brownfield Remediation Program, to later amend that application, and allows the DEV Director to approve the amended amount of requested grant funding up to the amount reserved for that county.

## **TourismOhio**

- Expands the mission of TourismOhio to include promoting not just tourism, but also “living, learning, and working” in Ohio.

## **Microcredential assistance program**

- Increases the maximum reimbursement amount for microcredential training providers participating in Department of Development’s (DEV’s) Individual Microcredential Assistance Program from \$250,000 to \$500,000 per fiscal year.

## **Rural Industrial Park Loan Program**

- Allows a developer who previously received financial assistance under the Rural Industrial Park Loan Program and that, consequently, was previously ineligible to receive additional financial assistance, to apply for and receive additional assistance, provided the developer did not receive any previous assistance in the same fiscal biennium.
- Regarding the program eligibility criterion that prohibits a proposed industrial park from competing with an existing industrial park in the same county, states that the consent of the existing industrial park’s owner demonstrates noncompetition.

## **Distress criteria**

- Modifies and standardizes the criteria used to evaluate whether a county or municipality is a distressed area for the purpose of DEV’s Urban and Rural Initiative Grant Program and Rural Industrial Park Loan Program.

- Requires DEV to update the counties and municipalities that qualify as distressed areas under each program every ten years, rather than annually.
- Makes the same changes to the distressed area characteristics for several obsolete DEV-administered grant and tax credit programs.

## **Ohio Residential Broadband Expansion Grant Program**

### **Definition changes**

- Adds the definition of “extremely high cost per location threshold area” as an area in which the cost to build high speed internet infrastructure exceeds the extremely high cost per location threshold established by the Broadband Expansion Program Authority.
- Removes wireless broadband from the definitions of “tier one broadband service” and “tier two broadband service” and increases the broadband speed requirements to be:
  - At least 25, but less than 100 megabits per second (Mbps) downstream and at least three, but less than 20 Mbps upstream for tier one service;
  - 100 Mbps or greater downstream and 20 Mbps or greater upstream for tier two service.
- Permits the inclusion of fixed wireless broadband service as tier two service, if located in an extremely high cost per location threshold area.
- Changes the definition of “unserved area” to no longer exclude an area where construction of tier one service is in progress and scheduled to be completed within two years.
- Creates the definition of “eligible addresses” to include residential addresses that are in an unserved area or tier one area and modifies the definitions of “eligible project” and “last mile” to replace references to “residences” with “eligible addresses.”

### **Other terminology changes**

- Changes the requirement for posting program grant application information on the DEV website to list “eligible addresses” instead of “residential addresses.”
- Changes “residences” to “residential addresses” (1) in the notarized letter of intent information required for applications, (2) in the broadband speed verification complaint provision, and (3) in the information required for broadband provider annual progress reports and Authority annual reports.

### **Authority duties**

- Includes among the Authority’s duties the requirement to establish the extremely high cost per location threshold for the costs of building high speed internet infrastructure in any specific area, above which wireline broadband service has an extremely high cost in comparison to fixed wireless broadband service.

## **Program funding**

- Requires gifts, grants, and contributions provided to the DEV Director for the Ohio Residential Broadband Expansion Grant (ORBEG) Program to be deposited in the Ohio Residential Broadband Expansion Grant Program Fund.
- Specifies that if the use of these deposits or the appropriation of nonstate funds is contingent upon meeting application, scoring, or other requirements that are different from program requirements, DEV must adopt the different requirements.
- Requires a description of any differences in program requirements adopted by DEV as described above to be made available with the program application on the DEV website at least 30 days before the beginning of the application submission period.

## **Program grant application challenges**

- Modifies various requirements regarding challenges to program grant applications such as requirements for what evidence a challenge must include and how and to whom copies of a challenge, or copies of a broadband provider's revised application in response to a challenge, must be sent.
- Requires DEV to reject any challenge regarding a residential address where tier two service is planned if the challenging provider also submitted an application for the same residential address.
- Specifies that if an application is not challenged during an application submission period, the lack of a challenge does not do either of the following:
  - Create a presumption that residential addresses included in an application submitted in a subsequent submission period are eligible addresses under the program; or
  - Prohibit a challenging provider from filing a challenge to an application that is being refiled during a subsequent submission period.

## **Application scoring system changes**

- Replaces the weighted scoring system used under previous law to prioritize and select grant applications with a specific scoring rubric for awarding a maximum of 1,000 points per application based on specific criteria for eight factors, including factors as, for example, broadband service speed, local support, and broadband providers' years of experience.
- Provides that applications for a grant under the ORBEG Program must be prioritized from the highest to the lowest point score according to the rubric.
- Provides for provisional scoring of applications to facilitate challenges, and requires DEV to publish the scoring on its website, but prohibits the Authority from voting on applications, or making awards based on, the provisional scoring.

## **Program reports**

- Removes from the list of information that a broadband provider must include in its annual progress report, the number of commercial and nonresidential addresses that are not funded directly by the ORBEG Program but have access to tier two service as a result of the eligible project.

## **Broadband Pole Replacement and Undergrounding Program**

- Creates the Ohio Broadband Pole Replacement and Undergrounding Program within DEV to reimburse providers of qualifying broadband service for utility pole replacements, mid-span pole installations, and undergrounding that accommodate facilities used to provide qualifying broadband service access.
- Defines “qualifying broadband service” as retail wireline broadband service capable of delivering symmetrical internet access at download and upload speeds of at least 100 megabits per second (Mbps) with a latency level sufficient to permit real-time interactive applications.
- Defines “unserved area” as an area in Ohio without current access to fixed terrestrial broadband service capable of delivering internet access at download speeds of at least 25 Mbps and upload speeds of at least 3 Mbps.
- Considers as an “unserved area” an area for which a governmental entity has awarded a broadband grant after determining the area to be an eligible unserved area under that program and an area that has not been awarded any broadband grant funding, and the most recent federal mapping information indicates that the area is an unserved area.
- Requires DEV to administer the program and to establish the process to provide reimbursements, including adopting rules and establishing an application for reimbursement, and the Broadband Expansion Program Authority to review applications and award program reimbursements.

## **When reimbursements may not be awarded**

- Prohibits the Authority from awarding reimbursements that are federally funded, if the reimbursements are inconsistent with federal requirements and if the applicant fails to commit to compliance with any federally required conditions in connection with the funds.
- Also prohibits the Authority from awarding reimbursements if (1) the broadband infrastructure deployed is used only for providing wholesale broadband service and is not used by the applicant to provide qualifying broadband service directly to residences and businesses and (2) a provider (not the applicant) is meeting the terms of a legal commitment to a governmental entity to deploy such service in the unserved area.

## **Who may apply for reimbursements**

- Allows providers (entities, including pole owners or affiliates, that provide qualifying broadband service) to apply for a reimbursement under the program for eligible costs

associated with deployed pole replacements, mid-span pole installations, and undergrounding.

- Designates as ineligible for a reimbursement an applicant's costs of deploying qualifying broadband service for which the applicant is entitled to obtain full reimbursement from another governmental entity but allows the applicant to apply for and obtain reimbursement for the portion of costs that were not already reimbursed.
- Allows the Authority to require applicants to maintain accounting records demonstrating that other grant funds do not fully reimburse the same costs as those reimbursed under the program.
- Requires the Authority to review applications and approve reimbursements based on various requirements and limitations.

### **Information and documentation from pole owner**

- Allows a pole owner to require a provider to reimburse the owner for the owner's actual and reasonable administrative expenses related to providing certain information and documentation for a program application, not to exceed 5% of the pole replacement or mid-span pole installation costs, and specifies that these costs are not reimbursable.

### **Application requirements**

- Requires DEV, not later than 60 days after the Pole Replacement Fund (described below) receives funds for reimbursements, to develop and publish an application form and post it on the DEV website.
- Requires the application form to identify and describe any additional federal conditions required in connection with the use of the federal funds, if any federal funds are used for awards under the program.
- Requires applications to include certain information including, for example, the number, cost, and locations of pole replacements, mid-span pole installations, and undergrounding for which reimbursement is requested; the reimbursement amount requested; and information necessary to demonstrate the applicant's compliance with reimbursement conditions.
- Establishes additional requirements for an application regarding a pole attachment or a mid-span pole installation, if the applicant is the pole owner or affiliate of the pole owner.

### **Applicant duties prior to receiving a reimbursement**

- Requires a provider applying for reimbursement to agree to do certain things such as (1) activating qualifying broadband service to end users utilizing the program-reimbursed broadband infrastructure not later than 90 days after receiving a reimbursement, (2) complying with any federal requirements associated with funds used for awards under the program, and (3) refunding all or any portion of reimbursements received, if the applicant materially violated any program requirements.

## **Reimbursement award timeline and formula**

- Requires the Authority to award reimbursements to an applicant not later than 60 days after it receives an application forwarded by DEV.
- Allows the Authority to award reimbursements equal to the lesser of \$7,500 or 75% of the total amount paid by the applicant for pole replacement or mid-span pole installation costs.
- Allows reimbursement awards for undergrounding costs to be calculated as described above, except that the amount may not exceed the reimbursement amount that would be available if the applicant had attached broadband infrastructure to utility poles instead of undergrounding that infrastructure.

## **Reimbursement refunds**

- Requires applicants that are awarded reimbursements to refund, with interest, reimbursement amounts if the applicant materially violates any program requirement, and specifies that, at the direction of DEV, refunds are to be deposited into the Broadband Replacement Pole Fund.

## **Broadband Pole Replacement Fund**

- Creates the Broadband Pole Replacement Fund and makes an appropriation in FY 2024 to provide funding for reimbursements awarded under the program and for DEV to administer the program.

## **Program information on DEV website**

- Requires DEV to publish and regularly update certain information regarding the program on its website.

## **DEV report on deployments under program**

- Whenever the fund is exhausted, requires the Authority, not later than one year after, to identify, examine, and report on broadband infrastructure deployment under the program and the technology facilitated by the reimbursements and requires the report to be published on DEV's website.

## **Program audit**

- Requires the Auditor of State to audit the Broadband Pole Replacement Fund annually, beginning not later than one year after the first deposits are made to the credit of the fund.

## **Sunset**

- Except as provided below, effectively sunsets the program by requiring payments under the Broadband Pole Replacement Fund to cease and the fund to no longer be in force or have further application on October 3, 2029 (six years after the act's 90-day effective date).

- For the period ending six months after October 3, 2029, requires DEV and the Authority to review any applications and award reimbursements (1) if the applications were submitted prior to that date and (2) if the applications were submitted not later than four months after that date for reimbursements of costs incurred prior to that date.
- Requires any Broadband Pole Replacement Fund balance remaining after final applications are processed (after the October 3, 2029, sunset date and as described above) to be returned to the original funding sources as determined by DEV.

## **Nuclear development in Ohio**

### **Ohio Nuclear Development Authority (PARTIALLY VETOED)**

- Establishes the Ohio Nuclear Development Authority within DEV consisting of nine members from certain stakeholder groups.
- Establishes the Authority for the following purposes:
  - To be an information resource for Ohio and certain federal agencies regarding advanced nuclear research reactors, isotopes, and isotope technologies.
  - To make Ohio a leader regarding new-type advanced nuclear research reactors, isotopes, and high-level nuclear waste reduction and storage.
- Grants the Authority, but for the partial veto, extensive power to fulfill its nuclear technology purposes specifically with respect to advanced nuclear reactor commercialization, isotope production, and nuclear waste reduction (PARTIALLY VETOED).
- Requires the Authority to submit an annual report of its activities and post the report on the Authority's website.
- Would have required the Authority to adopt rules for the Ohio State Nuclear Technology Research Program (VETOED).

### **Nominating council (VETOED)**

- Would have established a seven-member Ohio Nuclear Development Authority Nominating Council to review, evaluate, and make recommendations to the Governor for potential Authority member appointees, from which the Governor must select (VETOED).

### **Nuclear agreements (PARTIALLY VETOED)**

- Permits the Governor, to the same extent as may be done under continuing law with the U.S. Nuclear Regulatory Commission, to enter into agreements with the U.S. Department of Energy or branches of the U.S. military to permit the state to license and exercise regulatory authority regarding certain radioactive materials.
- Would have permitted the Authority to enter into the same agreements on behalf of the Governor (VETOED).

- Would have prohibited rules adopted by the Department of Health for radiation control from conflicting with or superseding rules adopted by the Authority (VETOED).

### Legislative intent

- States the General Assembly's intent to encourage the use of these provisions promoting nuclear development in Ohio as a model for future legislation to further the pursuit of innovative research and development for any industry in Ohio.

## All Ohio Future Fund (PARTIALLY VETOED)

(R.C. 126.62)

The act renames the Investing in Ohio Fund as the All Ohio Future Fund. It also requires the Controlling Board to release money appropriated from the fund before the money may be spent, and it specifies that investment earnings of the fund must be credited to the fund.

The act clarifies that the fund's purpose of promoting economic development throughout Ohio includes infrastructure projects. It retains the purpose of using the fund to promote economic development, including infrastructure improvements. However, the Governor vetoed provisions that would have expanded the fund's purposes for the following:

1. Providing financial assistance through loans, grants, or other incentives that promote economic development; and
2. Providing funding for gas infrastructure projects, electric infrastructure development projects approved by the Public Utilities Commission (see "**Electric infrastructure development**" under the "**PUBLIC UTILITIES COMMISSION**" chapter of this analysis), and electric infrastructure improvements made by electric cooperative and municipal electric utilities.

The act requires rules to be adopted, in accordance with the Administrative Procedure Act, that establish requirements and procedures to provide financial assistance from the fund. The Governor vetoed a provision that would have required the financial assistance to be specifically provided to eligible economic development projects. Additionally, the Governor vetoed a provision that explicitly required the Director of Development (DEV Director) to adopt the rules. Instead, the resulting law is unclear because it only requires an unspecified director to adopt the rules. According to the Governor's Office, the intent of the veto was for the Director of OBM to adopt the rules. Regardless of which director adopts the rules, in doing so, the director must consult with JobsOhio.

The Governor also vetoed requirements that the rules include the following:

1. All forms and materials required to apply for financial assistance from the fund;
2. Requirements, procedures, and criteria that the Director would have had to use in selecting sites to receive financial assistance from the fund. The rules would have had to require the Director to consider sites that JobsOhio and local and regional economic development organizations identified for economic development. The criteria adopted in rules for site

selection would have had to include a means to identify and designate economic development projects into the following development tiers:

a. A tier one project, which would have been a megaproject (a large scale development meeting certain wage and investment or payroll thresholds).

b. A tier two project, which would have been a megaproject supplier (a supplier of tangible personal property to a megaproject with a substantial manufacturing, assembly, or processing facility in Ohio or meeting certain wage and investment or payroll thresholds).

c. A tier three project, which would have been a project in an industrial park or a site zoned for industrial usage.

3. Any other requirements or procedures necessary to administer the act's provisions governing the fund.

The Governor vetoed a requirement that the Director, when awarding financial assistance, do both of the following:

1. Unless the Controlling Board approved a higher amount, limit financial assistance amounts as follows:

a. For tier one projects, up to \$200 million per project;

b. For tier two projects, up to \$75 million per project;

c. For tier three projects, up to \$25 million per project.

2. Give preference to publicly owned sites.

The Director would have been authorized to specifically provide grants and loans from the fund to port authorities, counties, community improvement corporations, joint economic development districts, and public-private partnerships to aid in the acquisition of land necessary for site development. Further, the Director would have been authorized to provide loans to a board of county commissioners to facilitate the transfer or relocation of assets under the control of the county for the purpose of site development. However, the Governor vetoed these provisions.

Finally, the Governor vetoed provisions that would have prohibited an entity receiving financial assistance from the fund from:

1. Issuing riders or any other additional charges to its customers for the purposes of a project that was funded by that assistance; and

2. Regarding a water company, using the financial assistance for a new or expanded water treatment facility or waste water treatment facility.

## **Welcome Home Ohio (WHO) Program**

(R.C. 122.631 to 122.633, 5726.98, and 5747.98; Sections 259.10, 259.30, and 513.10)

The act creates the Welcome Home Ohio (WHO) Program in the Department of Development (DEV). The program has three components:

- Grants for land banks to purchase qualifying residential property;
- Grants for land banks to rehabilitate or construct qualifying residential property;
- Tax credits for land banks and nonprofit developers that rehabilitate or construct qualifying residential property.

“Qualifying residential property” is single-family residential property, including a single unit in a multi-unit property as long as it has ten units or less, with at least 1,000 square feet of habitable space.

Qualifying residential property that benefits from any of the incentives offered by the program must be sold, for \$180,000 or less, to an individual, or individuals, with annual income that is no more than 80% of the median income for the county where the property is located. Buyers must also agree, in the purchase agreement, to maintain ownership of the property as a primary residence, not to sell or rent the property at all for five years, and not to sell the property to anyone who does not meet the income requirements for twenty years. Land banks and developers are required to include deed restrictions with these requirements when selling property that benefits from the WHO Program, and the act grants DEV the authority and standing to sue to enforce those requirements. The buyer must annually certify to DEV, during the five-year period following their purchase of the property, that the buyer still owns and occupies the property and has not rented it to another individual for use as a residence.

Key features of the grant and tax credit programs are discussed below.

### **Grants for foreclosure sale purchases**

The WHO Program authorizes grants for land banks to pay or offset the cost to purchase qualifying residential property. The act appropriates \$25 million for the grants in both FY 2024 and FY 2025, and DEV may award grants to land banks as long as funds are available. Grant amounts are not capped.

### **Grants for construction or rehabilitation**

The WHO Program allows land banks to apply to DEV for a grant to pay or offset the cost to rehabilitate or construct qualifying residential property held by the land bank. The act appropriates \$25 million for the grants in both FY 2024 and FY 2025, and DEV may award grants to land banks as long as funds are available. WHO construction and rehabilitation grants are capped at \$30,000 per qualified residential property.

### **WHO Program tax credits**

The WHO Program allows DEV to award nonrefundable tax credits against the income tax and financial institutions tax (FIT) to land banks and eligible developers for the rehabilitation or construction of qualifying residential property. An “eligible developer” is one of several enumerated nonprofit entities, provided a primary activity of the entity is the development and preservation of affordable housing or a community improvement corporation or community urban redevelopment corporation.

Credits equal \$90,000 per qualified residential property or one-third of the cost of construction or rehabilitation, whichever is less. Up to \$25 million in total credits may be awarded

by DEV in both FY 2024 and FY 2025, but no credits may be issued after FY 2025. Land banks and developers can apply for tax credits after the construction or rehabilitation is completed and the property is sold.

Eligible applicants will be awarded a tax credit certificate. Because land banks and nonprofit developers likely do not have income tax or FIT liability, they will be unlikely to claim the credits themselves. The act authorizes the certificates to be transferred, with written notice to TAX. This allows a land bank or developer to sell the right to claim the credits, and purchasers may claim the credits for the taxable year or tax year that the certificate is issued and claim any unused amount in the five ensuing taxable or tax years.

### **Grant and credit combinations**

The act authorizes a land bank that receives a grant to purchase qualified residential property to also apply for and receive either a WHO construction or rehabilitation grant or a WHO tax credit for the same qualified residential property. However, it prohibits a land bank that receives a grant to construct or rehabilitate qualified residential property from applying for a WHO tax credit for the same property.

### **Penalties**

Land banks and developers that receive WHO grant funds and do not use them for their program purposes, do not sell the qualified residential property on which those funds are spent to an eligible buyer, sell to an eligible buyer who does not agree to the program's sale restrictions, or sell without the required deed restriction must repay the grant funds.

A purchaser of qualified residential property that benefits from a WHO grant or tax credit is also subject to penalty for not abiding by the program's five-year sale or rental restriction. If the qualified residential property benefits from one of the grant programs and the purchaser sells or rents the property as a residence before owning the property for five years, the purchaser is subject to a \$90,000 penalty, less \$18,000 for every full year of ownership. If the property benefited from the WHO tax credit and the purchaser sells or rents before five years, the purchase is subject to a penalty equal to the amount of the tax credit, reduced by 20% for every full year the purchaser owned the property.

For qualified residential property that benefits from either both grant programs or a grant program and the tax credit, purchasers are only subject to one penalty for violation of the five-year sale restriction. If the property benefited from both grant programs, the penalties are the same, but will only be charged once. If the property benefited from both the grant program and the tax credit, whichever penalty is greater applies.

### **Financial literacy counseling**

Land banks and nonprofit developers that benefit from WHO Program grants or tax credits must agree to provide at least one year of financial literacy counseling to each purchaser of qualified residential property that benefits from program grants or credits. Each purchaser must also agree to participate in that counseling.

## Reporting

Each land bank and nonprofit developer that participates in the WHO Program must report to DEV the sale of each home that was awarded a grant or credit. DEV must maintain a list of homes that are still subject to the 20-year affordability deed restriction required as a grant or credit condition. That list is not a public record.

## Rules

The act authorizes DEV to adopt rules as necessary to administer each aspect of the WHO Program. The rules may include any of the following:

- Application forms, deadlines, and procedures;
- Criteria for evaluating and prioritizing applications,
- Guidelines for promoting an even geographic distribution of awards throughout the state.

## Brownfield and building revitalization programs

(R.C. 122.6511 and 122.6512)

Continuing law establishes the Brownfield Remediation Fund (brownfield fund), and the Building Demolition and Site Revitalization Fund (building fund). The brownfield fund is used to fund a grant program for the remediation of brownfield sites. The building fund is used to fund a grant program for the demolition of commercial and residential properties and revitalization of surrounding properties that are not brownfields.

From appropriations made to each fund, the DEV Director must reserve money for each of the 88 Ohio counties. For the brownfield fund, the amount reserved is \$1 million per county, or a proportionate amount if the appropriations are less than \$88 million. For the building fund, the amount reserved is \$500,000 per county, or a proportionate amount if the appropriations are less than \$44 million. The Director must make appropriated money that exceeds the amount to be reserved for each county available for grants for projects located anywhere in Ohio on a first-come, first-served basis.

The act revises the brownfield fund to clarify that only a “lead entity” may submit grant applications to the Director. The lead entity must be either of the following:

- Selected by the DEV Director from recommendations made by the board of county commissioners of the county if either of the following apply:
  - The county has a population of less than 100,000; or
  - The county has a population of 100,000 or more and the county does not have a county land reutilization corporation (land bank);
- The land bank for the county if the county has a population of 100,000 or more and the county has a land bank.

When applying for a grant, the act requires the lead entity to include with a grant application any agreement executed between the lead entity and other recipients that will receive grant money through the lead entity. Recipients may include local governments,

nonprofit organizations, community development corporations, regional planning commissions, county land banks, and community action agencies. Prior law did not specify the entities that may receive project funding.

The act makes these same changes regarding the building fund. However, these requirements were already generally being implemented with respect to the building fund under rules adopted by the Director prior to the act.

Finally, regarding the brownfield fund, the act authorizes a lead entity, after making an initial application for grant funding from the amount reserved for each county, to later amend that application. Accordingly, the act allows the Director to approve the amended amount of requested grant funding up to the amount reserved for that county.

## **TourismOhio**

(R.C. 122.07 and 122.072)

The act expands the mission of TourismOhio, which is the office within DEV responsible for promoting Ohio tourism. Under the act, the office will be charged with promoting not just tourism, but also “living, learning, and working” in Ohio.

## **Microcredential assistance program**

(R.C. 122.1710)

The act increases the maximum reimbursement amount for a training provider from the Individual Microcredential Assistance Program (IMAP) from \$250,000 to \$500,000 per fiscal year.

Under the program, approved training providers may seek reimbursement for the cost to provide training that allows an individual to receive a microcredential, i.e., an industry-recognized credential or certificate, approved by the Chancellor of Higher Education, that a person can complete in one year or less.<sup>49</sup> Continuing law limits a training provider’s IMAP reimbursement to \$3,000 per training credential that an individual receives.

## **Rural Industrial Park Loan Program**

(R.C. 122.23 and 122.27)

The act alters two eligibility criteria for assistance from the Rural Industrial Park Loan Program. First, it allows a developer that previously received financial assistance under the program to receive additional financial assistance. However, the developer is still not eligible if the previous financial assistance was received in the same fiscal biennium. Formerly, a program applicant that previously received any financial assistance via the program was ineligible for further assistance.

Second, the act allows a proposed industrial park that would compete with an existing industrial park in the same county to receive assistance, provided the existing industrial park’s

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<sup>49</sup> R.C. 122.178, not in the act.

owner consents. Under prior law, if there was competition with an existing industrial park, a proposed industrial park was ineligible for assistance.

The Rural Industrial Park Loan Program makes loans and loan guarantees for the development and improvement of industrial parks. To be eligible, the proposed location of the park must be in an economically distressed area, an area with a labor surplus, or a rural area as designated by the DEV Director. The Director must use the Rural Industrial Park Loan Fund to support the program.

## **Distress criteria for DEV incentives**

(R.C. 122.16, 122.173, 122.19, 122.21, 122.23, and 122.25; Section 701.140)

Under continuing law, DEV administers two grant programs to develop urban and rural sites and parks – the Urban and Rural Initiative Grant Program (URI grants) and the Rural Industrial Park Loan Program (RIP loans). These programs award funding to counties and, in the case of the URI grants, municipalities, that meet criteria indicative of economic distress, i.e., an above-average unemployment rate, low per capita income, or certain other poverty markers. These areas are referred to in statute as “distressed areas.” The act modifies and standardizes these criteria, as follows:

- Requires that the five-year average unemployment rate of the county or municipal corporation be based on local area unemployment statistics published by the U.S. Bureau of Labor Statistics (BLS);
- Requires that, to qualify based on per capita personal income, the per capita personal income of the county or municipal corporation must be equal to or less than 80% of the per capita personal income of the United States, as opposed to 80% of the median county per capita income under prior law;
- Requires that county per capita income statistics be determined based on data published by the federal Bureau of Economic Analysis (BEA) and that municipal per capita income statistics be determined based on the five-year estimates published by the U.S. Census Bureau in the American Community Survey (ACS);
- Requires that the ratio of transfer receipts to total personal income of a county be determined based on data published by the BEA;
- Requires that the percentage of municipal residents with incomes below the poverty line be determined based on the ACS.

The act also allows DEV to designate alternative sources of the distressed area statistics if the federal government ceases to publish those statistics.

Under prior law, DEV was required to update which counties and municipalities qualify as distressed areas every year. The act only requires this update every ten years, within three months after publication of the decennial census. Accordingly, the statistical source described above that DEV will use to make these updates is the most recent version as of the date that census is published.

The act makes similar changes to the distressed area characteristics for several obsolete grant and tax credit programs administered by DEV, including an income tax credit for the economic redevelopment of a distressed brownfield, which expired in 1999, an income tax credit for purchases before 1999 of new manufacturing machinery or equipment, and a grant program that funded the improvement of industrial sites.<sup>50</sup>

## **Ohio Residential Broadband Expansion Grant Program**

(R.C. 122.40, 122.407, 122.4017, 122.4019, 122.4020, 122.4030, 122.4031, 122.4032, 122.4034, 122.4037, 122.4040, 122.4041, 122.4045, 122.4071 and 122.4076)

The Ohio Residential Broadband Expansion Grant (ORBEG) Program awards grants to broadband providers for projects to provide “tier two broadband service” to areas of the state that are “tier one areas” or “unserved areas.” DEV administers the program and works in conjunction with the Broadband Expansion Program Authority, the entity that awards the grants according to a scoring system developed by DEV in consultation with the Authority.<sup>51</sup>

### **Program definition changes**

The act makes changes to certain definitions that apply to the ORBEG Program. First, it removes retail wireless broadband service from the definitions of “tier one broadband service” and “tier two broadband service”; however, it permits fixed wireless broadband service to be included as tier two service in an extremely high cost per location threshold area (see description of such an area below).

The act also increases the broadband speed requirements for each tier. Under the act, tier one service is at least 25, but less than 100 megabits per second (Mbps) downstream, and at least 3, but less than 20 Mbps upstream, and tier two service is 100 Mbps or greater downstream and 20 Mbps or greater upstream. Under former law, tier one service was retail wireline or wireless broadband service of at least 10, but less than 25 Mbps downstream and at least 1, but less than 3 Mbps upstream, and tier two service was retail wireline or wireless broadband service of at least 25 Mbps downstream and at least 3 Mbps upstream.

Second, the act defines “extremely high cost per location threshold area” as an area in which the cost to build high speed internet infrastructure exceeds the extremely high cost per location threshold established by the Authority.

Third, under the act, an “unserved area” no longer excludes an area where construction of a network to provide tier one service is in progress or scheduled to be completed within a two-year period. But, it retains the exclusion of the construction of a network to provide tier two service that is in progress or scheduled to be completed within a two-year period. An “unserved area” is an area without access to either tier one service or tier two service.

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<sup>50</sup> R.C. 122.95, not in the act.

<sup>51</sup> R.C. 122.40 to 122.4077, all but the sections listed above, not in the act.

Fourth, the act adds the definition of “eligible addresses,” which are residential addresses in an unserved area or tier one area.

### **Other terminology changes**

To reflect the new definition of “eligible addresses” and also to replace the term “residences,” the act:

- Modifies the definitions of “eligible project” and “last mile” by specifying that (1) an “eligible project” is a project to provide tier two service access to eligible addresses (instead of to “residences”) in an unserved or tier one area of a municipal corporation or township that is eligible for funding under the ORBEG Program and (2) the definition of “last mile” includes, in part, other network infrastructure in the last portion of the network that is needed to provide tier two service to “eligible addresses” (instead of to “residences”) as part of an eligible project;
- Requires DEV to publish on its website, for each completed grant application, the list of “eligible addresses” (instead of “residential addresses”) included with the application;
- Requires the notarized letter of intent required for an application to state that none of the funds provided by the program grant will be used to extend or deploy to any “residential addresses” (instead of “residences”) other than to those in the unserved or tier one areas of the application’s project;
- Changes the reference to “residence” to be “residential address” in the provision regarding broadband speed verification tests following a complaint concerning a “residence” that is part of the eligible project;
- For the report each broadband provider receiving a program grant must submit, changes the requirement that the report include the number of “residences” that have access to tier two service as a result of the eligible project to include the number of “residential addresses” instead;
- For the Authority’s required annual report, changes the requirement to list the number of “residences” receiving, for the reporting year, tier two service for the first time under the ORBEG Program to the number of “residential addresses” instead.

### **Authority duties**

To the list of the Authority’s duties, the act adds that the Authority must establish the extremely high cost per location threshold for the costs of building high speed internet infrastructure in any specific area, above which wireline broadband service has an extremely high cost in comparison to fixed wireless broadband service.

### **Program funding**

Ongoing law requires the Authority to award grants under the ORBEG Program using funds from the Ohio Residential Broadband Expansion Grant Program Fund. The act specifies that any gift, grant, and contribution received by the DEV Director for the Program must be deposited in the fund. (Ongoing law also expressly requires payments from certain broadband providers to

be deposited in the fund if the providers fail to provide tier two service as described in a challenge upheld by the Authority.<sup>52)</sup>

Under the act, if an appropriation for the ORBEG Program includes funds that are not state funds, or if the Director receives funds that are in the form of a gift, grant, or contribution to the fund, the Authority must award grants from those funds. However, if those funds are contingent on meeting application, scoring, or other requirements that are different from ORBEG Program requirements, the following must occur:

- DEV must adopt the different requirements and publish a description of them with the program application on the DEV website.
- A description of any differences in application, scoring, or other program requirements must be available with the application on the DEV website at least 30 days before the beginning of the application submission period.

### **Program grant application challenges**

The act makes changes to the process that allows a “challenging provider” to challenge all or part of a completed application for a program grant after the application is published on the DEV website. Under ongoing law, a “challenging provider” is a broadband provider that provides tier two service within or directly adjacent to an eligible project or a municipal electric utility that provides tier two service to an area within the eligible project that is within the geographic area served by the utility.

#### **Deadline for challenging an application**

Under the act, a challenge must be made in writing not later than 65 days after the provisional application scoring has been published on the DEV website (see “**Provisional scoring**” below). Prior law required the challenge to be made in writing not later than 65 days after the close of the application submission period or an application extension period, if an extension is granted by DEV.

#### **Method for providing copies of a challenge**

The act requires a challenging provider to provide its complete challenge to DEV, and within ten business days of receipt of the challenge, DEV must provide a complete copy of the challenge to the applicant whose application is subject to the challenge. Both the challenge provided by the challenging provider and the copies sent to the applicant by DEV must be sent by electronic means or such other means as DEV may establish. This differs from the prior law process which required the challenging provider to provide, by certified mail, a written copy of the challenge to DEV and to the broadband provider that submitted the application being challenged.

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<sup>52</sup> R.C. 122.4036, not in the act.

### **Information in a challenge that is proprietary or a trade secret**

The act removes the provision that expressly allowed the copy of a challenge provided to DEV to include any information that the challenging provider considers to be proprietary or a trade secret. However, the act does not prohibit including such information.

Also removed by the act is the provision that permitted redaction of the proprietary information or trade secrets from the copy provided to the broadband provider whose application is being challenged. This provision is no longer necessary because the act removes the requirement that the challenging provider provide the copy to the broadband provider that submitted the application.

### **Information provided by challenging providers**

Ongoing law lists the minimum information that must be included for a challenge, which to be successful must provide sufficient evidence to DEV that all or part of a project is ineligible for a program grant. The act modifies the provision that requires evidence disputing the application's notarized letter of intent to specify that the eligible project contains "eligible addresses." Prior law required evidence to be provided that the project contained "unserved or tier one areas."

The act also adds the requirement that the signed, notarized statement submitted by a challenging provider must identify the aggregate number of eligible addresses to which the challenging provider offers tier two service and the part of the eligible project to which it will offer tier two service. Under ongoing law, the statement must identify the part of the eligible project to which the challenging provider offers or will offer "broadband service." Prior to the act's changes, the law did not specify whether that service was tier two service or a different level of broadband service.

The act also requires, rather than permits, a challenging provider to present shapefile data and residential addresses to demonstrate that all or part of an application's project is ineligible for a program grant. It adds the requirement that this information must identify each challenging residential address and the basis for such challenge. But, it removes the provision allowing a challenging provider to present maps or similar geographic details.

### **When DEV must reject a challenge**

The act adds a provision that requires DEV to reject any challenge regarding a residential address where the provision of tier two service is planned to be provided if the challenging provider has also submitted an application for funding for the same residential address.

### **Effect when there is no challenge**

In the event that an application filed during an application submission period is not challenged under the ORBEG Program's challenge process, the act specifies that the lack of a challenge does not create a presumption that residential addresses included in an application submitted in a subsequent submission period are eligible addresses under the program. The act also specifies that the lack of a challenge does not prohibit a challenging provider from filing a challenge to an application that is being refiled during a subsequent submission period.

Under ongoing law, the Authority may establish no more than two submission periods each fiscal year during which time DEV accepts applications. Submission periods must be at least 60 but not more than 90 days.

### **Suspension of an application**

The Authority, under law unchanged by the act, may suspend an application, approve the application, or reject an application after receiving a challenge. If it suspends an application, the broadband provider that submitted the application may revise and resubmit the application not later than 14 days after receiving a suspension notification from the Authority.<sup>53</sup> The act removes the requirement that the broadband provider must provide a copy of its revised application to the challenging provider. Instead, it adds the requirement that DEV must provide the revised application to the challenging provider by electronic mail or by such other means as DEV establishes. In addition, it retains the requirement that the broadband provider must send a copy of the revised application to the Authority, but removes certified mail as one of the specified options for sending it.

### **Application scoring system changes**

Under the act, the Authority must establish a scoring system that includes a detailed scoring rubric for eight specific factors. Under ongoing law, the scoring system must be published on the DEV website at least 30 days before the beginning of the application submission period. The scoring system replaces the prior weighted scoring system for the ORBEG Program that used at least 12 factors to prioritize applications. The scoring system the act replaces did not assign a specific score for the factors used to prioritize applications, but did list the factors by highest to lowest weight.

### **Scoring rubric**

The act requires applications to be prioritized from the highest to the lowest point score according to the rubric for those factors. Under the scoring rubric, the maximum score for an application is 1,000 points. The table below lists the factors and scoring rubric for them.

Scoring factor	Scoring criteria	Maximum allowable score
Eligible projects for unserved and underserved areas	<p>The sum of (1) the point value determined by multiplying 300 times the percentage of “passes” in unserved areas of the application and (2) ½ of the point value determined by multiplying 300 times the percentage of “passes” in underserved areas of the application.</p> <p>“Passes” are defined as the residential addresses in close proximity to a broadband provider’s broadband infrastructure network to which residents at those addresses may opt to connect.</p>	300

<sup>53</sup> R.C. 122.4033, not in the act.

Scoring factor	Scoring criteria	Maximum allowable score
Broadband service speed based on a graduated scale	<p><b>25 points:</b> ≥ 100 Mbps downstream and ≥ 20 Mbps upstream but &lt; 250 Mbps downstream and 50 Mbps upstream</p> <p><b>50 points:</b> ≥ 250 Mbps downstream and ≥ 50 Mbps upstream but &lt; 500 Mbps downstream and 100 Mbps upstream</p> <p><b>100 points:</b> ≥ 500 Mbps downstream and ≥ 100 Mbps upstream but &lt; 750 Mbps downstream and 250 Mbps upstream</p> <p><b>125 points:</b> ≥ 750 Mbps downstream and ≥ 250 Mbps upstream but &lt; 1 gigabit per second (Gbps) downstream and 500 Mbps upstream</p> <p><b>150 points:</b> ≥ 1 Gbps downstream and ≥ 500 Mbps upstream but &lt; 1 Gbps upstream</p> <p><b>200 points:</b> ≥ 1 Gbps downstream and ≥ 1 Gbps upstream</p>	200
Rating broadband service cost	<p>The sum of the following:</p> <p>(1) Of a possible maximum of 75 points, the number of points equal to the application's grant cost percentile multiplied by 75;</p> <p>(2) Of a possible maximum of 75 points, the number of points equal to ½ of the application's percentage of eligible project funding from all sources other than the ORBEG Program.</p> <p>Additional requirements for this factor are described below under "<b><i>Broadband service cost factor.</i></b>"</p>	150
Tier two service coverage or greater to eligible addresses in an eligible project	<p><b>10 points:</b> for coverage to ≥ 500, but &lt; 1,000 eligible addresses</p> <p><b>20 points:</b> for coverage to ≥ 1000, but &lt; 1,500 eligible addresses</p> <p><b>30 points:</b> for coverage to ≥ 1,500, but &lt; 2,000 eligible addresses</p> <p><b>40 points:</b> for coverage to ≥ 2,000, but &lt; 2,500 eligible addresses</p> <p><b>50 points:</b> for coverage to ≥ 2,500, but &lt; 3,000 eligible addresses</p> <p><b>60 points:</b> for coverage to ≥ 3,000, but &lt; 3,500 eligible addresses</p> <p><b>70 points:</b> for coverage to ≥ 3,500, but &lt; 4,000 eligible addresses</p> <p><b>80 points:</b> for coverage to ≥ 4,000, but &lt; 4,500 eligible addresses</p> <p><b>90 points:</b> for coverage to ≥ 4,500, but &lt; 5,000 eligible addresses</p> <p><b>100 points:</b> for coverage to ≥ 5,000 eligible addresses</p>	100

Scoring factor	Scoring criteria	Maximum allowable score
Local support	<p><b>25 points:</b> if the application includes a resolution of support from the board of county commissioners in the county where the eligible project is located;</p> <p><b>15 points:</b> if the application includes a letter of support from a board of township trustees, village, or municipal corporation;</p> <p><b>10 points:</b> for letters of support from a local economic development agency or a chamber of commerce that advocates for an area of the eligible project with the majority of eligible addresses in the application.</p> <p>Additional requirements for this factor are described below under <b><i>“Local support factor.”</i></b></p>	50
Broadband provider general experience and technical and financial ability	Point score to be based on the Authority’s judgment. The Authority may award partial points for scores awarded for this factor.	75
Broadband provider experience based on years provider has been providing tier two service	<p><b>10 points:</b> 4 years, but &lt; 5 years of experience</p> <p><b>20 points:</b> 5 years, but &lt; 6 years of experience</p> <p><b>30 points:</b> 6 years but &lt; 7 years of experience</p> <p><b>40 points:</b> 7 years but &lt; 8 years of experience</p> <p><b>50 points:</b> 8 years but &lt; 9 years of experience</p> <p><b>60 points:</b> 9 years but &lt; 10 years of experience</p> <p><b>75 points:</b> &gt; ten or more years of experience</p>	75
County median income based on the median county per capita income of the U.S. as determined by the most recently available data from the U.S. Census Bureau	<p><b>0 points:</b> for county median income <math>\geq</math> 160%</p> <p><b>10 points:</b> for county median income <math>\geq</math> 140% but &lt; 160%</p> <p><b>20 points:</b> for county median income <math>\geq</math> 120% but &lt; 140%</p> <p><b>30 points:</b> for county median income <math>\geq</math> 100% but &lt; 120%</p> <p><b>40 points:</b> for county median income <math>\geq</math> 80% but &lt; 100%</p> <p><b>50 points:</b> for county median income &lt; 80%</p> <p>Additional requirements for this factor are described below under <b><i>“County median income factor.”</i></b></p>	50

## **Additional scoring rubric requirements for certain factors**

### ***Broadband service cost factor***

For the broadband service cost factor, the act requires the Authority to determine the “grant cost percentile” for each application submitted during that period. The Authority must determine this percentile by doing the following:

- Determining, for each individual application in Ohio, the total grant cost per eligible address in the application by calculating the quotient of the amount of program grant funds requested for the application divided by the number of eligible addresses in the application;
- Ranking, from lowest to highest cost, all individual applications by total grant cost per eligible address;
- Assigning each individual application a percentile based on the application’s total grant cost per eligible address relative to all other applications’ total grant cost per eligible address.

Under the act, the Authority must assign the percentiles so that the highest percentile is assigned to the application with the lowest total grant cost per eligible address. Percentiles for all other applications must be assigned based on each application’s relative grant cost per eligible address.

### ***Local support factor***

For the local support factor, the act scores an application differently if the application’s eligible project spans multiple counties. In this case, of a possible maximum score of 25 points for county support resolutions adopted by boards of county commissioners, the number of points will be awarded on a pro rata basis based on the percentage of eligible addresses for the eligible project in each affected county for which the board of county commissioners adopted a resolution of support. Similarly, the act scores an application differently if the application’s eligible project spans multiple townships, villages, and municipal corporations. In this case, of a possible maximum score of 15 points for letters of support from boards of township trustees, villages, and municipal corporations, the number of points will be awarded on a pro rata basis according to the percentage of eligible addresses for the project in each affected village, municipal corporation or unincorporated area of a township for which a board of township trustees, village, or municipal corporation submitted a letter of support.

### ***County median income factor***

For determining the appropriate scoring range for the county median income factor, the act scores an application differently if the application’s eligible project spans multiple counties. For this type of application, the scoring range will be based on the percentage of eligible addresses for the eligible project in each affected county.

### **Provisional scoring**

Under the act, to facilitate the challenge process and after DEV publishes all grant applications, DEV must publish on its website a provisional scoring for applications based on the

scoring criteria for the ORBEG Program described above. The provisional scoring must be published on the DEV website not later than 15 business days after all applications have been accepted as complete.

The act prohibits the Authority from voting on, or making awards based on the provisional scoring.

### **Program reports**

The act removes, from the list of information that a broadband provider must include in its annual progress report, the number of commercial and nonresidential entities that are not funded directly by the ORBEG Program but have access to tier two service as a result of the eligible project.

Under continuing law, each broadband provider that receives a program grant must submit to DEV an annual progress report on the status of the deployment of the broadband network described in the eligible project for which the program grant was awarded.<sup>54</sup>

## **Broadband Pole Replacement and Undergrounding Program**

(R.C. 191.01 to 191.45)

The act creates the Ohio Broadband Pole Replacement and Undergrounding Program within DEV to advance the provision of qualifying broadband service access to residences and businesses in an unserved area. To accomplish this, the program reimburses certain costs of pole replacements, mid-span pole installations, and undergrounding incurred by providers.

Under the act, DEV must administer and provide staff assistance for the program. It also is responsible for (1) receiving and reviewing program applications, (2) sending completed applications to the Broadband Expansion Program Authority for final review and the award of program reimbursements (reimbursements), and (3) establishing an administrative process for reimbursements. The Authority must award the reimbursements after reviewing applications and determining whether they meet the requirements for reimbursement.

DEV must adopt rules necessary for the successful and efficient administration of the program by January 1, 2024.

### **Definitions**

Program terms defined in the act include the following:

Term	Definition
Affiliate	A person or entity under common ownership or control with, or a participant in a joint venture, partnership, consortium, or similar business arrangement with, another person or entity pertaining to the provision of broadband service.

<sup>54</sup> R.C. 122.4070, not in the act.

Term	Definition
Broadband infrastructure	Facilities that are used, in whole or in part, to provide qualifying broadband service access to residences and businesses.
Mid-span pole installation	The installation of, and attachment of broadband infrastructure to, a new utility pole that is installed between or adjacent to one or more existing utility poles or replaced utility poles to which poles broadband infrastructure is attached.
Pole owner	Any person or entity that owns or controls a utility pole.
Pole replacement	The removal of an existing utility pole and replacement of that pole with a new utility pole to which a provider attaches broadband infrastructure.
Provider	An entity, including a pole owner or affiliate, that provides qualifying broadband service.
Qualifying broadband service	A retail wireline broadband service that is capable of delivering symmetrical internet access at download and upload speeds of at least 100 megabits per second (Mbps) with a latency level sufficient to permit real-time, interactive applications.
Undergrounding	The placement of broadband infrastructure underground, including by directly burying the infrastructure or through the underground placement of new ducts or conduits and installation of the infrastructure in them.
Unserved area	An area of Ohio that is without access to fixed, terrestrial broadband service capable of delivering internet access at download speeds of at least 25 Mbps and upload speeds of at least 3 Mbps.
Utility pole	Any pole used, in whole or in part, for any wired communications or electric distribution, irrespective of who owns or operates the pole.

### **Areas considered “unserved areas”**

The act further specifies that areas of Ohio are to be considered to be an “unserved area” under the program if one of the following applies:

- Under a program to deploy broadband service to unserved areas (which may include programs other than the Ohio Broadband Pole Replacement and Undergrounding Program), a governmental entity has awarded a broadband grant for the area after determining it to be an eligible unserved area under that program.
- The area has not been awarded any broadband grant funding, and the most recent mapping information published by the Federal Communications Commission (FCC) indicates that the area is an unserved area. (The searchable FCC National Broadband Map is available on the Broadband Data Collection page of the FCC website: [fcc.gov/BroadbandData](http://fcc.gov/BroadbandData).)

## When reimbursements may not be awarded

The Authority is not permitted to award reimbursements that are federally funded if the reimbursements are inconsistent with federal requirements and is not permitted to award reimbursements under certain other circumstances specified in the act. Those other circumstances are:

- The broadband infrastructure deployed is used only for the provision of wholesale broadband service and is not used by the program applicant to provide qualifying broadband service directly to residences and businesses.
- A provider, other than the applicant, is meeting the terms of a legally binding commitment to a governmental entity to deploy qualifying broadband service in the unserved area.
- For reimbursements that are funded by federal funds deposited in the Pole Replacement Fund (see “**Broadband pole replacement fund,**” below), the applicant fails to commit to compliance with any conditions in connection with the funds that the federal government requires.

## Who may apply for reimbursements

A provider may submit an application on a form prescribed by DEV for a reimbursement under the program if the provider has deployed “qualifying broadband infrastructure” in an unserved area and has paid any costs specified in the act that are in connection with its deployment.

The act does not define “qualifying broadband infrastructure,” which must be deployed before submitting a program application. But, it does define “broadband infrastructure” as “facilities that are used, in whole or in part, to provide qualifying broadband service access to residences and businesses” and defines “qualifying broadband service” as “retail wireline broadband service that is capable of delivering symmetrical internet access at download and upload speeds of at least 100 [Mbps] with a latency level sufficient to permit real-time, interactive applications.” This use of a similar, but undefined, term in the act may create some confusion about how “qualifying broadband infrastructure” differs from “broadband infrastructure.” See also “**DEV report on deployments under program.**”

## Costs eligible for reimbursement

As described in the act, costs eligible for reimbursement under the program include (1) pole replacement costs, (2) mid-span pole installations, and (3) undergrounding costs. Specifically, reimbursements may be made for actual and reasonable costs to perform a pole replacement or mid-span pole installation, including the amount of any expenditures to remove and dispose of an existing utility pole, purchase and install a replacement utility pole, and transfer any existing facilities to the new pole. Also reimbursable are actual and reasonable undergrounding costs, including the costs to dig a trench, perform directional boring, install conduit, and seal the trench, but only if undergrounding is required by law, regulation, or local ordinance or if it is more economical than the cost of performing a pole replacement.

## **Costs not eligible for reimbursement**

If an applicant's costs of deploying broadband infrastructure are eligible for full reimbursement from another governmental entity, those costs generally are ineligible for reimbursements under the act. However, if the costs are reimbursed in part by a governmental entity, the applicant may apply for and obtain a reimbursement for the portion of the eligible costs not reimbursed by the other governmental entity.

## **Reimbursement accounting records**

The act allows the Authority to require applicants that obtain broadband grant funding from sources other than reimbursements under the program to maintain accounting records sufficient to demonstrate that the other grant funds do not fully reimburse the same costs as those reimbursed under the program. Since the act's reference to broadband grant funding in the provision does not specify funding from another governmental entity, the accounting record that the Authority may require might also apply to broadband grants from the private sector.

## **Information and documentation from pole owner**

If a pole owner provides information and documentation to a provider that enables the provider to submit an application, the act allows a pole owner to require the provider to reimburse the owner for the owner's actual and reasonable administrative expenses. The amount a pole owner may charge for those expenses may not exceed 5% of the pole replacement or mid-span pole installation costs. The act specifies that these costs are not reimbursable under the program.

## **Application requirements**

Not later than 60 days after the Broadband Pole Replacement Fund (described below) receives funds for reimbursements, DEV must develop and publish an application form and post it on the DEV website. The application form must identify and describe any additional federal conditions required in connection with the use of the federal funds, if any federal funds are used for awards under the program. Applications must include the following information:

- The number, cost, and locations of pole replacements, mid-span pole installations, and undergrounding for which reimbursement is requested;
- Documentation sufficient to establish that the pole replacements, mid-span pole installations, and undergrounding described in the application have been completed;
- Documentation sufficient to establish how the costs for which reimbursement is requested comport with the reimbursement requirements under the program;
- The reimbursement amount requested under the program;
- Documentation of any broadband grant funding awarded or received for the area described in the application and accounting information sufficient to demonstrate the reimbursement costs requested are eligible because they have not been fully reimbursed by another governmental entity or by a broadband grant (see "**Costs not eligible for reimbursement,**" above);

- A notarized statement, from an officer or agent of the applicant, that the contents of the application are true and accurate and that the applicant accepts the requirements of the program as a condition of receiving a reimbursement;
- Any information necessary to demonstrate the applicant's compliance, and agreement to comply, with any conditions associated with the reimbursement awarded to the applicant;
- Any other information DEV considers necessary for final review and for the award and payment of reimbursements.

### **Applicant duties prior to receiving reimbursement**

Applicants for the program must agree to do certain things before receiving a reimbursement. Specifically, all applicants must agree to:

- Not later than 90 days after receipt of a reimbursement, activate qualifying broadband service to end users utilizing the broadband infrastructure for which the applicant has received the reimbursement for deployment costs for pole replacement, mid-span pole installation, or undergrounding;
- Certify the applicant's compliance with program requirements;
- Comply with any federal requirements associated with the funding used by the Authority in connection with the award;
- Refund all or any portion of reimbursements received under the program if the applicant is found to have materially violated any of the program requirements.

The act requires that applications regarding a pole replacement or a mid-span pole installation, must meet the requirements described above, if the applicant is the pole owner or affiliate of the pole owner. In addition, these applicants must do the following:

- Commit that the pole owner will comply with all applicable state and federal pole attachment regulations and requirements;
- Commit that the pole owner will exclude from its costs (specifically the costs used to calculate its rates or charges for access to its utility poles) the reimbursements received:
  - From the program or any other broadband grant program; or
  - By a provider, for make-ready charges.
- Commit that the pole owner will maintain and make available, upon reasonable request, to DEV, or to a party subject to the rates and charges, accounting documentation sufficient to demonstrate compliance with the requirement that rates and charges were excluded as required.

Under the act, the rates and charges documentation requirement does not apply to an electric distribution utility, unless the electric distribution utility is the applicant.

## **Reimbursement award timeline and formula**

The act requires the Authority to award reimbursements to an applicant not later than 60 days after it receives an application forwarded by DEV.

Reimbursements must equal the lesser of \$7,500 or 75% of the total amount the applicant paid for each pole replacement or mid-span pole installation. For undergrounding costs, the Authority must approve reimbursements according to the same calculation, except that reimbursements may not exceed the reimbursement amount that would be available if the applicant had attached broadband infrastructure to utility poles instead of undergrounding that infrastructure.

At the Authority's direction, DEV must issue reimbursements for approved applications using the money available for them in the Broadband Pole Replacement Fund (described below). The Authority must award, and DEV must fund, reimbursements under the program until funds are no longer available. If there are any pending applications at the point when funds have been exhausted, those applications must be denied. However, applications that have been denied may be resubmitted to DEV and reimbursements awarded according to the application and award process, if sufficient money is later deposited into the fund.

## **Reimbursement refunds**

If DEV finds that an applicant that received a reimbursement materially violated any program requirements, DEV must direct the applicant to refund, with interest, all or any portion of the reimbursements the applicant received. As required by the act, DEV must direct the refund to be made if it finds substantial evidence of the violation and after providing the applicant notice and the opportunity to respond. At DEV's direction, refunds must be deposited to the credit of the Broadband Pole Replacement Fund (described below). Interest on refunds must be at the applicable federal funds rate as determined in ongoing commercial transactions law.<sup>55</sup>

## **Broadband Pole Replacement Fund**

The act creates the Broadband Pole Replacement Fund in the state treasury. The fund is to be used by DEV to provide reimbursements awarded under the program and by the DEV Director to administer the program. The fund consists of money credited or transferred to it, money appropriated by the General Assembly, including from available federal funds, or money that the Controlling Board authorizes for expenditure from available federal funds, and grants, gifts, and contributions made directly to the fund. The act makes an appropriation in FY 2024 to the Broadband Pole Replacement Fund.

## **Program information on DEV website**

The act requires DEV to publish and regularly update its website with program information not later than 60 days after money is first deposited into the Broadband Pole Replacement Fund. The information that must be published includes the following:

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<sup>55</sup> R.C. 1304.84, not in the act.

- The number of program applications received, processed, and rejected by the Authority;
- The number, reimbursement amount, and status of reimbursements awarded;
- The number of providers receiving reimbursements;
- The balance remaining in the fund at the time of the latest program update on the website.

### **DEV report on deployments under program**

Whenever the money in the Broadband Pole Replacement Fund is exhausted, the Authority, not later than one year after, must identify, examine, and report on the deployment of qualifying broadband infrastructure under the program and the technology facilitated by the reimbursements. The report must be published on the DEV website.

As described in more detail above, the act does not define “qualifying broadband infrastructure.” But, the act does define “broadband infrastructure” and “qualifying broadband service.” The use of a similar but undefined term in the act may create some confusion about what DEV must report and how “qualifying broadband infrastructure” differs from “broadband infrastructure.”

### **Program audit**

The act also requires the Auditor of State to audit the Broadband Pole Replacement Fund and its administration by the Authority and DEV for compliance with the program’s requirements. The first audit must begin not later than one year after money is first deposited into the fund with subsequent audits to take place annually.

### **Sunset**

The act effectively sunsets the program by requiring payments from the Broadband Pole Replacement Fund to cease, and the fund to no longer be in force or have further application, on October 3, 2029, which is six years after the act’s 90-day effective date.

However, the act makes two exceptions to the sunset provision. For the period ending April 3, 2030 (six months after the sunset date), DEV, in coordination with the Authority, must (1) complete the review of any applications that were submitted prior to the sunset date and pay reimbursements of the approved applications, and (2) complete the review of any applications submitted not later than February 3, 2030 (four months after the sunset date) and pay reimbursements for the approved applications, if the reimbursements are for costs incurred prior to October 3, 2029.

After the reimbursements are paid as described in the exceptions above, if there is an outstanding balance in the fund, the remaining balance must be returned to the original funding sources as determined by DEV.

## Nuclear development in Ohio

### Ohio Nuclear Development Authority

(R.C. 4164.01, 4164.04 to 4164.08, and 4164.10 to 4164.20)

The act creates the Ohio Nuclear Development Authority within DEV.

#### Membership and appointment

##### *Composition*

The Authority consists of nine members appointed by the Governor and representing three stakeholder groups (Safety, Industry, and Engineering Research and Development) within the nuclear-engineering-and-manufacturing industry.

##### *Qualifications*

**A member appointed from the Safety group** must hold at least a bachelor's degree in nuclear, mechanical, chemical, or electrical engineering and at least one of the following must apply to the member:

- Be a recognized professional in nuclear-reactor safety or developing ISO 9000 standards;
- Been employed by, or has worked closely with, the U.S. Department of Energy (USDOE) or the U.S. Nuclear Regulatory Commission (USNRC), and the member has a professional background in nuclear-energy-technology development or advanced-nuclear-reactor concepts;
- Been employed by a contractor that has built concept reactors and also worked with hazardous substances, either nuclear or chemical, during that employment.

**A member appointed from the Industry group** must have at least five years of experience in one or more of the following:

- Nuclear-power-plant operation;
- Processing and extracting isotopes;
- Managing a facility that deals with hazardous substances, either nuclear or chemical;
- Handling and storing nuclear waste.

**A member appointed from the Engineering Research and Development group** must hold at least a bachelor's degree in nuclear, mechanical, chemical, or electrical engineering and that member must also be a recognized professional in at least one of the following areas of study:

- Advanced-nuclear reactors;
- Materials science involving the study of alloys and metallurgy, ceramics, or composites;
- Molten-salt chemistry;
- Solid-state chemistry;
- Chemical physics;

- Actinide chemistry;
- Instrumentation and sensors;
- Control systems.

Additionally, each member of the Authority must be citizen of the U.S. and a resident of Ohio.

### ***Appointment requirements (PARTIALLY VETOED)***

The act provides that all members of the Authority are to be appointed by the Governor, subject to the advice and consent of the Senate. Members begin performing their duties immediately after appointment, and serve five-year terms.

The Governor vetoed provisions that would have required the Governor to appoint members and fill vacancies of the Authority from lists of nominees recommended by the Ohio Nuclear Development Authority Nominating Council (see “**Nominating council (VETOED)**” below). The Governor would have possessed discretion to reject the Council’s nominations and reconvene the Council to recommend additional nominees, with the Governor then required to choose from the Council’s first or second nominee list.

The Governor also vetoed a deadline to appoint members by January 31, 2024.

### ***Other employment not forfeited***

The act provides that, notwithstanding any law to the contrary, no officer or employee of the state of Ohio can be deemed to have forfeited, or actually have forfeited, the officer’s or employee’s office or employment due to acceptance of membership on the Authority or by providing service to the Authority.

### ***Vacancies (PARTIALLY VETOED)***

The Governor is required to fill vacancies in the membership of the Authority. Any appointment to fill a vacancy on the Authority must be made for the unexpired term of the member whose death, resignation, or removal created the vacancy.

The Governor vetoed a provision that would have mandated the Governor to fill a vacancy in the Authority not later than 30 days after receiving the Nominating Council’s recommendations.

### ***Open meetings***

The act requires Authority meetings to be held in accordance with Ohio’s Open Meetings Law.<sup>56</sup>

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<sup>56</sup> R.C. 121.22, not in the act.

### ***Use of DEV staff and experts***

The act allows the Authority to use DEV staff and experts for the purpose of carrying out the Authority's duties. This use is to occur in the manner provided by mutual arrangement between the Authority and DEV.

### **Authority purposes**

The act establishes the Authority for the following purposes:

- To be an information resource on advanced-nuclear-research reactors, isotopes, and isotope technologies for Ohio, USNRC, all branches of the U.S. military, and the USDOE;
- To make Ohio a leader in the development and construction of new-type advanced-nuclear-research reactors, a national and global leader in the commercial production of isotopes and research, and a leader in the research and development of high-level-nuclear-waste reduction and storage technology.

### **Authority powers**

#### ***Necessary and convenient powers (PARTIALLY VETOED)***

The act grants the Authority all necessary and convenient powers to carry out its purposes, including the following:

- To adopt bylaws for the management and regulation of its affairs;
- To develop and adopt a strategic plan for carrying the Authority's purposes;
- To foster innovative partnerships and relationships in Ohio and among Ohio's public institutions of higher education, private companies, federal laboratories, and nonprofit organizations to accomplish the Authority's purposes;
- To identify and support, in cooperation with the public and private sectors, the development of education programs related to Ohio's isotope industry.

The Governor vetoed provisions that would have also given the Authority the following powers:

- To assume, with the advice and consent of the Senate, any regulatory powers delegated from USNRC, USDOE, any U.S. military branch, or similar federal agencies, departments, or programs, governing the construction and operation of noncommercial power-producing nuclear reactors and the handling of radioactive materials;
- To act in place of the Governor in approving agreements with USNRC and joint-development agreements with USDOE or an equivalent regulatory agency in the event that the Authority requests any of the following:
  - USNRC to delegate rules for a state-based nuclear research-and-development program;
  - To jointly develop advanced-nuclear-research-reactor technology with USDOE under USDOE's authority;

- To jointly develop advanced-nuclear-research-reactor technology with the U.S. Department of Defense (USDOD) or another U.S. military agency under the authority of the department or agency.

### ***Advanced-nuclear-reactor-component commercialization (PARTIALLY VETOED)***

The act requires the Authority to work with industrial and academic institutions and USDOE or U.S. military branches for the commercialization of advanced-nuclear-reactor components. These components may include: neutronics analysis and experimentation; reactor safety and plant safety; fuels and materials; steam-supply systems and associated components and equipment; engineered-safety features and associated components; building; instrumentation, control, and application of computer science; quality practices and nondestructive-inspection practices; plant design and construction, debug, test-run, operation, maintenance, and decommissioning technology; economic methodology and evaluation technology; treatment, storage, recycling, and disposal technology for advanced-nuclear-reactor and system-spent fuel; and treatment, storage, and disposal technology for advanced-nuclear-reactor and system radioactive waste.

The Governor vetoed provisions that would have: (1) specified that the Authority must work with the entities described above specifically to approve designs for the commercialization of advanced-nuclear-reactors components, and (2) included other areas that the parties or their executive agents agree upon in writing as advanced-nuclear-reactor components.

### ***Nuclear waste and isotope production***

The act requires the Authority to give priority to projects that reduce nuclear waste and produce isotopes.

### ***Essential governmental function***

The act labels the Authority's exercise of its powers as a performance of an essential governmental function that addresses matters of public necessity for which public moneys may be spent.

### **Annual report**

The act requires that on or before July 4 each year, the Authority must submit a report of its activities to the Governor, the Speaker of the House, the Senate President, and the chairpersons of the House and Senate committees that oversee energy-related issues. This report must also be posted to the Authority's website.

### **Agreements not superseded (PARTIALLY VETOED)**

The act states that the Nuclear Development Authority provisions are not to be construed as superseding any agreement between the Ohio Department of Health and the USNRC (see "**Nuclear agreements**," below). The Governor, however, vetoed language that limited the provision discussed above to regulating activities not within the scope of the Authority's activities.

## **Rules (VETOED)**

The Governor vetoed a provision that would have required the Authority to adopt rules, under the Ohio Administrative Procedure Act (R.C. Chapter 119), provided for by USNRC, USDOE, USDOD, or another U.S. military agency, or a comparable federal agency for an Ohio State Nuclear Technology Research Program for the purposes of developing and studying advanced-nuclear-research reactors to produce isotopes and to reduce Ohio's high-level nuclear waste. The rules were to reasonably ensure Ohioans of their safety with respect to nuclear-technology research and development and radioactive materials, and were exempted from the regulatory restriction limitation in current law.

## **Nominating Council (VETOED)**

(R.C. 4164.09 to 4164.0918; Section 741.10)

The act would have created the Ohio Nuclear Development Authority Nominating Council. The Council would have consisted of seven members with the primary duty to make recommendations to the Governor for appointment to the Authority. A detailed description of the vetoed provisions is available on pages 121 to 123 of [LSC's analysis of H.B. 33, As Passed by the House \(PDF\)](#), which is available on the General Assembly's website, [legislature.ohio.gov](http://legislature.ohio.gov).

The act requires the Nominating Council to provide the Governor with a list of possible initial appointees to the Authority not later than 90 days after October 3, 2023 (the effective date of the provision). However, since the Governor vetoed the provisions that create the Nominating Council, this requirement likely has no effect.

## **Nuclear agreements**

(R.C. 3748.03 and 3748.23)

The act makes changes to Ohio law governing agreements with the Federal government regarding nuclear licensing and regulatory issues.

## **Governor**

The act provides that the Governor may enter into agreements with USDOE or branches of the U.S. military, in addition to with USNRC under continuing law, to permit the state to license and exercise related regulatory authority with respect to byproduct material, source material, the commercial disposal of low-level radioactive waste, and special nuclear material in quantities not sufficient to form a critical mass.

## **Authority (VETOED)**

The Governor vetoed a provision that would have allowed the Authority to pursue the same agreements with the USNRC, USDOE, or branches of the U.S. military, and to do so on behalf of the Governor. Under continuing law, ODH remains the only agency authorized to pursue such an agreement.

**Rules not in conflict or superseded (VETOED)**

The Governor vetoed a provision that would have prohibited rules adopted under continuing law by the Director of Health for radiation control from conflicting with, or superseding, the rules adopted by the Authority under the act.<sup>57</sup>

**Legislative intent**

(R.C. 4164.02)

The General Assembly declares its intent is to encourage the use of these provisions promoting nuclear development in Ohio as a model for future legislation to further the pursuit of innovative research and development for any industry in Ohio.

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<sup>57</sup> R.C. 3748.04, not in the act.

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## **DEPARTMENT OF DEVELOPMENTAL DISABILITIES**

### **County board membership**

- Beginning July 1, 2025, requires emphasis to be placed on appointing individuals with developmental disabilities and their family members to county boards of developmental disabilities.
- Beginning July 1, 2025, requires each county board to include at least one individual with developmental disabilities.

### **County board remote participation**

- Permits county boards to establish a policy allowing members to attend board meetings remotely through electronic communication.
- Permits a board member attending a meeting remotely to be considered present, to be counted for purposes of establishing a quorum, and to vote.

### **Developmental Disabilities Council meetings**

- Eliminates requirements that the Developmental Disabilities Council establish geographic limits and record a roll-call vote for each vote, to allow a council member's remote participation.

### **Interagency workgroup on autism**

- Designates the entity contracted to administer programs and services for individuals with autism and low incidence disabilities as the workgroup's coordinating body.
- Requires the workgroup to meet publicly at least twice per year and submit an annual report to the Department of Developmental Disabilities.

### **State protection and advocacy system**

- Requests that the Governor redesignate the entity serving as the state protection and advocacy system and client assistance program (P&A system).
- Specifies that the authority of the entity designated as the P&A system cannot exceed the authority granted to a state P&A system under federal law.
- Requires the entity designated as the P&A system to adopt a policy that acknowledges and supports the right of individuals served by the P&A system to reside in and receive services from an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

### **Joint committee to examine the state P&A system**

- Permanently establishes a joint committee to examine the state P&A system.

## **Innovative pilot projects**

- Permits the Director of Developmental Disabilities to authorize, in FY 2024 and FY 2025, innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county boards.

## **County share of nonfederal Medicaid expenditures**

- Requires the Director to establish a methodology to estimate in FY 2024 and FY 2025 the quarterly amount each county board is to pay of the nonfederal share of its Medicaid expenditures.

## **County subsidies used in nonfederal share**

- Requires, under certain circumstances, that the Director pay the nonfederal share of a claim for ICF/IID services using subsidies otherwise allocated to county boards.

## **County board annual fee for HCBS waiver services**

- Makes discretionary (rather than mandatory) for the Department to charge county boards an annual fee related to the total value of all Medicaid claims paid for home and community-based services (HCBS) provided to individuals eligible to receive services from the county board.
- Permits the Department to use the fees collected to provide technical and financial support to county boards with respect to the responsibility of county boards to pay the nonfederal share of certain Medicaid services.

## **Medicaid rates for homemaker/personal care services**

- For 12 months, requires the Medicaid rate for each 15 minutes of routine homemaker/personal care services provided to a qualifying enrollee in the Individual Options Medicaid waiver program be 52¢ higher than the rate for services to an enrollee who is not a qualifying enrollee.

## **Competitive wages for direct care workforce**

- Requires that certain funds contained in the act for provider rate increases be used to increase wages and needed workforce supports to ensure workforce stability and greater access to care for Medicaid recipients.

## **Direct care provider payment rates (PARTIALLY VETOED)**

- Appropriates funds for increases in payment rates in FY 2024 beginning January 1, 2024, and during FY 2025.
- Would have used the funds to increase direct care wages to \$17 an hour in FY 2024 beginning January 1, 2024, and to \$18 an hour for all of FY 2025 for certain direct care services provided under the Medicaid home and community-based services waivers administered by the Department (VETOED).

## **Direct Support Professional Quarterly Retention Payments (PARTIALLY VETOED)**

- Continues the Direct Support Professional Quarterly Retention Payments Program administered by the Department until December 31, 2023.
- Upon the conclusion of the program, would have required the Department to use funds to increase the direct care base payment rate for (1) personal care services and (2) adult day services by \$1 per hour over the base payment rates for the services (VETOED).

## **ICFs/IID**

- Increases the intermediate care facility for individuals with intellectual disabilities (ICF/IID) per Medicaid day payment rate by adding to the formula a professional workforce development payment amount.
- For purposes of ICF/IID Medicaid payments, creates a new peer group for youth in need of intensive behavior support services.
- Exempts ICFs/IID that have specified bed capacities in counties with specified populations from the limitation that no more than two residents reside in the same sleeping room.
- Repeals law requiring recoupment of payments made to ICFs/IID under a program that no longer exists.

## **Obsolete report repeal**

- Repeals law requiring the Department to submit a report to the General Assembly in 2003, 2004, and 2005.

## **County board membership**

(R.C. 5126.021; R.C. 5126.022 (repealed effective July 1, 2025))

Beginning July 1, 2025, the act requires appointing authorities to place emphasis on appointing individuals with developmental disabilities and their family members to county boards of developmental disabilities. To achieve this, the act modifies the composition of each board to generally require each board to include at least one individual with developmental disabilities. Under continuing law that will remain in effect until July 1, 2025, a board is required to include at least two individuals who are eligible for services from the board or are immediate family members of such individuals. After that date, the act instead requires each county board to include at least one individual with developmental disabilities and at least one individual who is a family member of an individual with developmental disabilities.

The act requires a board of county commissioners to appoint as a member of a board of developmental disabilities at least one individual with developmental disabilities and at least one family member of an individual with developmental disabilities. The act also requires a senior probate judge to appoint at least one individual with developmental disabilities or a family member of such an individual. If a senior probate judge appoints an individual with

developmental disabilities, the act specifies that the appointment satisfies the requirement for a board of county commissioners to make the appointment.

The act also specifies that an appointing authority's unfilled vacancy does not prohibit the appointing authority from filling other vacancies on the county board of developmental disabilities.

## **County board remote participation**

(R.C. 5126.0223)

As a permanent exception to the Open Meetings Act, the act permits each county board of developmental disabilities to establish a policy that allows board members to use a means of electronic communication to attend and vote at a board meeting. For this purpose, "electronic communication" is live, audio-enabled communication that permits members attending the meeting remotely and those present in person where the meeting is being conducted to communicate with each other simultaneously.

A board's policy must specify the number of regular meetings at which each board member must be present in person – no less than half of the regular board meetings held annually. Additionally, the policy must specify the following minimum standards regarding a meeting conducted using electronic communication:

1. At least one-third of the board members attending a meeting must be present in person;
2. All votes taken at the meeting must be taken by roll call vote; and
3. A board member who intends to attend a meeting using electronic communication must notify the chairperson of that intent at least 48 hours before the meeting, except in the case of a declared emergency.

A board member who attends a meeting remotely is considered to be present at the meeting and counted for the purposes of establishing a quorum.

## **Developmental Disabilities Council meetings**

(R.C. 5123.35)

The act removes two requirements related to remote meetings of the Ohio Developmental Disabilities Council. First, it removes the prerequisite that, for a Council member to participate in a meeting remotely by teleconference, roll call votes must be made for each vote taken. Second, it removes a requirement that the Council establish a geographic restriction for video conference or teleconference participation under the Council's rulemaking authority.

## **Interagency workgroup on autism**

(R.C. 5123.0419)

The act designates the entity contracted to administer programs and coordinate services for infants, preschool and school age children, and adults with autism and low incidence disabilities as the coordinating body of the interagency workgroup on autism that exists under

continuing law.<sup>58</sup> The workgroup is tasked with addressing the needs of individuals with autism and their families.

The act requires the workgroup to submit an annual report to the Department of Developmental Disabilities detailing the group's recommendations as well as priorities and goals for the coming year. The coordinating body must ensure the report is compiled and submitted and must contract with the Department to implement the recommendations made by the workgroup as well as any additional initiatives.

Finally, the act requires the workgroup to meet publicly at least twice each year to report its work to the public and hear feedback.

## **State protection and advocacy system**

### **Redesignation of the state protection and advocacy system**

(Section 751.10)

The act requests that the Governor redesignate the entity serving as the state's protection and advocacy system (P&A system). Under federal law, each state is required to have a P&A system, designated by the Governor, in place in order to receive allotments of federal funds to support and protect the legal and human rights of individuals with developmental disabilities.

Before an entity serving as a state P&A system may be redesignated, federal law requires that all of the following be satisfied:<sup>59</sup>

- There is good cause for the redesignation;
- The state gives the existing designee both notice of intent to redesignate and an opportunity to respond to the assertion that good cause has been shown for the redesignation;
- The state gives timely notice and an opportunity for public comment in an accessible format to individuals with developmental disabilities or their representatives; and
- The existing entity has an opportunity to appeal the redesignation to the U.S. Secretary of Health and Human Services, on the basis that the redesignation was not for good cause.

### **Authority of the state P&A system**

(R.C. 5123.60 and 5123.601)

Federal law vests in a state P&A system authority to undertake specified actions to protect and advocate for the rights of individuals with developmental disabilities, and provides that a state P&A system may exercise authority under state law if that authority exceeds the federal authority. The act specifies that the authority granted to the P&A system under Ohio law cannot exceed the authority granted to a state P&A system under federal law.

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<sup>58</sup> R.C. 3323.32 (not in Section 101.01 of the act).

<sup>59</sup> 42 U.S.C. 15043(a)(4).

Additionally, the act requires the entity designated as the state P&A system to adopt a policy that acknowledges and supports the right of individuals who receive services from the P&A system to reside in and receive services from an intermediate care facility for individuals with developmental disabilities (ICF/IID).

## **Joint committee to examine the state P&A system**

(R.C. 5123.603)

H.B. 110 of the 134<sup>th</sup> General Assembly required the Senate President and House Speaker to establish a joint committee to examine the activities of the state P&A system. The act eliminates a requirement that this joint committee be established every two years and instead establishes it permanently.

In making the joint committee permanent, the act eliminates certain provisions relating to its former temporary nature.

The act also removes the authority of the current entity serving as the state P&A system to, in its sole discretion, appear before and offer testimony to the joint committee.

## **Innovative pilot projects**

(Section 261.120)

For FY 2024 and FY 2025, the act permits the Director of Developmental Disabilities to authorize the continuation or implementation of innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county boards. Under the act, a pilot project may be implemented in a manner inconsistent with the laws or rules governing the Department and county boards; however, the Director cannot authorize a pilot project to be implemented in a manner that would cause Ohio to be out of compliance with any requirements for a program funded in whole or in part with federal funds. Before authorizing a pilot project, the Director must consult with entities interested in the issue of developmental disabilities, including the Ohio Provider Resource Association, Ohio Association of County Boards of Developmental Disabilities, Ohio Health Care Association/Ohio Centers for Intellectual Disabilities, the Values and Faith Alliance, and ARC of Ohio.

## **County share of nonfederal Medicaid expenditures**

(Section 261.100)

The act requires the Director to establish a methodology to estimate in FY 2024 and FY 2025 the quarterly amount each county board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible. With certain exceptions, continuing law requires the board to pay this share for waiver services provided to an eligible individual. Each quarter, the Director must submit to the board written notice of the amount for which the board is responsible. The notice must specify when the payment is due.

## County subsidies used in nonfederal share

(Section 261.130)

The act requires the Director to pay the nonfederal share of a claim for ICF/IID services using funds otherwise appropriated for subsidies to county boards if (1) Medicaid covers the services, (2) the services are provided to an eligible Medicaid recipient who does not occupy a bed that was included in the Medicaid-certified capacity of another ICF/IID certified before June 1, 2003, (3) the services are provided by an ICF/IID whose Medicaid certification was initiated or supported by a county board, and (4) the provider has a valid Medicaid provider agreement when services are provided.

## County board annual fee for HCBS waiver services

(R.C. 5123.0412)

Under former law, the Department was required to charge each county board of developmental disabilities an annual fee equal to 1.25% of the total value of all Medicaid claims for home and community-based services (HCBS) provided during the year to an individual eligible to receive services from the county board. The act instead *permits* the Department to charge an annual fee up to 1.25% of the total value of all Medicaid claims for home and community-based services provided during the year to an individual eligible to receive services from the county board, instead of required as under former law.

In addition to the purposes specified in continuing law for which the Department must use the fees described above, the act permits these fees to be used to provide technical and financial support to county boards with respect to county boards' responsibility to pay the nonfederal share of (1) Medicaid expenditures for Medicaid case management services a county board provides to an individual with a developmental disability and (2) Medicaid expenditures for certain home and community-based services provided to an individual with a developmental disability.

## Medicaid rates for homemaker/personal care services

(Section 261.140)

The act requires that the total Medicaid payment rate for each 15 minutes of routine homemaker/personal care services provided to a qualifying enrollee of the Individual Options Medicaid waiver program be 52¢ higher than the rate for services provided to an enrollee who is not a qualifying enrollee. The higher rate is to be paid only for the first 12 months, consecutive or otherwise, that the services are provided beginning July 1, 2023, and ending July 1, 2025. An Individual Options enrollee is a qualified enrollee if all of the following apply:

- The enrollee resided in a developmental center, converted ICF/IID,<sup>60</sup> or public hospital immediately before enrolling in the Individual Options waiver.

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<sup>60</sup> A converted ICF/IID is an ICF/IID, or former ICF/IID, that converted some or all of its beds to providing services under the Individual Options waiver.

- The enrollee did not receive before July 1, 2011, routine homemaker/personal care services from the Medicaid provider that is to receive the higher Medicaid rate.
- The Director has determined that the enrollee’s special circumstances (including diagnosis, services needed, or length of stay) warrant paying the higher Medicaid rate.

## **Competitive wages for direct care workforce**

(Section 261.150)

The act includes funding from the Department, in collaboration with the Departments of Medicaid and Aging, to be used for provider rate increases, in response to the adverse impact experienced by direct care providers as a result of the COVID-19 pandemic and inflationary pressures. The act requires the provider rate increases be used to increase wages and workforce supports to ensure workforce stability and greater access to care for Medicaid recipients.

## **Direct care provider payment rates (PARTIALLY VETOED)**

(Section 261.75)

The act earmarks Medicaid funds to be used to increase provider wages for FY 2024 and FY 2025, beginning January 1, 2024. The Governor vetoed a provision that would have required the funds to be used to increase base payment rates to \$17 per hour beginning January 1, 2024, and \$18 per hour during FY 2025 for the following services provided under Medicaid components of the home and community-based services waivers administered by the Department:

1. Personal care services;
2. Adult day services; and
3. ICF/IID services.

## **Direct Support Professional Quarterly Retention Payments (PARTIALLY VETOED)**

(Section 261.160)

The act continues the Direct Support Professional Quarterly Retention Payments Program administered by the Department until December 31, 2023.

Upon the program’s conclusion, the act specifies that a portion of appropriated funds instead be used to increase direct care base payment rates by an additional \$1 per hour over the base payment rates specified in the act (see “**Direct care provider payment rates**” above).<sup>61</sup> The Governor vetoed a specification that the appropriated funds were to be used specifically to increase the base payment rate for personal care services and adult day services provided under Medicaid waiver components administered by the Department.

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<sup>61</sup> Section 261.75.

## ICFs/IID

### Payment rate

(R.C. 5124.15)

Under Ohio law, each intermediate care facility for individuals with intellectual disabilities (ICF/IID) receives a per day payment amount for each Medicaid resident. The act increases the ICF/IID Medicaid payment rate by adding to the formula a professional workforce development payment amount, equal to 13.55% in FY 2024 and 20.81% in FY 2025 of the ICF/IID's desk-reviewed, actual, allowable, per Medicaid day direct care costs from the applicable cost report year.

### New ICF/IID Medicaid peer group for certain youth

(R.C. 5124.01)

The act creates "peer group 6" as a new classification for ICF/IID Medicaid day payment rate determinations. The new group consists of ICFs/IID that have:

- A Medicaid-certified capacity not exceeding six;
- Submitted and received approval for a best practices protocol for providing services to youth up to 21 years old in need of intensive behavior support services;
- A contract with the Department that includes a provision for Department approval of all admissions to the ICF/IID; and
- Agreed to a reimbursement methodology established under existing rules.

### Number of ICF/IID residents in same sleeping room

(R.C. 5124.70)

The act exempts certain ICF/IIDs from the continuing law requirement that generally prohibits an ICF/IID provider from permitting more than two residents to reside in the same sleeping room. An ICF/IID is exempt from these requirements if, on October 3, 2023, the ICF/IID meets one of the following requirements, as measured by the 2020 federal decennial census:

- The ICF/IID has a Medicaid-certified bed capacity between 60 and 70 beds and is located in a county with a population between 40,500 and 41,000;
- The ICF/IID has a Medicaid-certified bed capacity between 90 and 100 beds and is located in a county with a population between 242,000 and 243,000;
- The ICF/IID has a Medicaid-certified bed capacity between 55 and 60 beds and is located in a county with a population between 400,000 and 500,000;
- The ICF/IID has a Medicaid-certified bed capacity between 90 and 100 beds and is located in a county with a population between 1,300,000 and 1,400,000; or
- The ICF/IID has a Medicaid-certified bed capacity between 120 and 130 beds and is located in a county with a population between 160,000 and 162,000.

**Recoupment for ICF/IID downsizing delay**

(Repealed R.C. 5124.39; R.C. 5124.45)

The act repeals law that required the Department to recoup money paid to certain ICFs/IID in a downsizing incentive program that no longer exists.

**Obsolete report repeal**

(Repealed R.C. 5123.195)

The act repeals law that required the Department to submit a report regarding implementation of changes to the law governing residential facility licensure at the end of 2003, 2004, and 2005.

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# DEPARTMENT OF EDUCATION AND WORKFORCE

## I. Transfer of State K-12 Governance

### Department of Education and Workforce

- Renames the Department of Education as the Department of Education and Workforce.
- Creates the position of the Director of Education and Workforce, who is appointed by the Governor, with the advice and consent of the Senate, and is the head of the Department.
- Establishes within the Department the Division of Primary and Secondary Education and the Division of Career-Technical Education, each of which is headed by a Deputy Director appointed by the Director with the advice and consent of the Senate.

### State Board of Education

- Transfers most of the powers and duties of the State Board of Education and the Superintendent of Public Instruction to the Director or the Department, as applicable.
- Retains the State Board's and state Superintendent's powers and duties regarding educator licensure, licensee disciplinary actions, school district territory transfers, and certain other areas.
- Expands the uses for the State Board Licensure Fund.

### Implementation deadline

- Requires the Director, Department, State Board, and state Superintendent to complete any action necessary to implement the transfer of powers by January 1, 2024.

## II. School finance

### Funding for FYs 2024 and 2025

- Extends the operation of the school financing system established in H.B. 110 of the 134<sup>th</sup> General Assembly, with changes, to FY 2024 and FY 2025.
- Extends to FY 2024 and FY 2025 the payment of temporary transitional aid to school districts and the payment of a formula transition supplement to districts, community schools, and STEM schools.

### Student wellness and success fund

- Requires the Department to notify, in each fiscal year, each school district, community school, and STEM school of the portion of the district or school's state share of the base cost that is attributable to the staffing cost for the student wellness and success component.
- Requires districts and schools to spend student wellness and success funds (SWSF) on the same initiatives required for disadvantaged pupil impact aid (DPIA) funds.

- Requires districts and schools to spend at least 50% of SWSF for either physical or mental health based initiatives, or a combination of both.
- Requires districts and schools to develop a plan to use SWSF in coordination with certain community based mental health treatment providers and other community partners.
- Requires that any SWSF allocated in any of FYs 2020 through 2023 be expended by June 30, 2025, and any unexpended funds be repaid to the Department.
- Beginning in FY 2024, requires all SWSF to be expended by the end of the following fiscal year, and any unexpended funds be repaid to the Department.
- At the end of each fiscal year, requires each district and school to submit a report to the Department describing the initiative or initiatives on which the district or school's SWSF were spent during that fiscal year.

### **Disadvantaged pupil impact aid**

- Makes changes in initiatives for which schools may spend DPIA.

### **Gifted funding requirements**

- Makes permanent, and in some cases revises, requirements regarding gifted student funding and services, including spending requirements, funding reductions for noncompliant spending, and reporting and auditing requirements.

### **Jon Peterson Special Needs Scholarship amounts**

- Increases the base and category amounts for a Jon Peterson Special Needs Scholarship for FY 2024 and increases the category amounts for FY 2025.
- Increases the maximum scholarship amount for a Jon Peterson Special Needs Scholarship from \$27,000 to \$30,000 for FY 2024 and to \$32,445 for FY 2025.

### **Payment for districts with decreases in utility TPP value**

- Requires the Department to make a payment, for FY 2024 and FY 2025, to each school district that has at least one power plant within its territory and that experiences a 10% or greater decrease in the taxable value of utility tangible personal property (TPP) and an overall negative change in TPP subject to taxation.

### **Newly chartered nonpublic school auxiliary services funds**

- Permits a newly chartered nonpublic school, within ten days of receiving its charter, to elect to receive auxiliary services funds directly.

### **Community school equity supplement**

- Requires the Department to pay a \$650 per student equity supplement in FY 2024 and FY 2025 to each site-based community school.

## **Quality Community and Independent STEM School Support Program**

- Extends and revises the Quality Community School Support Program, including by expanding it to cover independent STEM schools.

### **DOPR community school credential-only programs**

- Requires the Department to include students enrolled in a credential-only program at a dropout prevention and recovery (DOPR) community school in the school's category one career-technical ADM and to count those students as full-time students.
- Permits a DOPR community school that offers a credential-only program to provide support services to its graduates to assist them in securing post-secondary placement opportunities.
- Authorizes a DOPR community school to use a portion of its career-technical education funds to provide its recent graduates with short-term, emergency financial assistance related to specified issues.

### **DOPR e-school funding pilot program**

- Makes permanent and revises the operation of the pilot program that provides additional funding to DOPR internet- or computer-based community schools (e-schools).

### **School funding based on updated TY 2021 data**

- Requires the Department to compute the state foundation aid for a school district whose property tax information was incorrectly reported in tax year 2021 using updated information for that year.

## **III. Student transportation**

### **Transportation dispute resolution timeline**

- Requires the Department to resolve any disputes over determinations regarding transportation noncompliance received after December 1, 2023, within 30 days of receiving notice of the dispute, or within 45 days if the Department notifies all affected parties in advance of the delay.

### **Late drop-off**

- Prohibits transportation operators from delivering students late to school.

### **Out of compliance definition and penalties**

- Defines "out of compliance" with regard to student transportation requirements as a period of five consecutive school days or more than ten school days within a school year in which certain conditions apply.
- Requires the Department to notify a district if it is found to be out of compliance and requires the district to create a corrective action plan to be submitted to the Department within one week of its first notification of noncompliance.

- Requires the Department to withhold 25% of a district's daily transportation payments for each day a district is determined to be out of compliance for the next three subsequent determinations of noncompliance in the same school year.
- Requires the Department, for the fifth determination of noncompliance in the same school year, to withhold 100% of a district's daily state transportation payment amount.
- Requires the noncompliance count be reset to zero at the beginning of the school year.

### **Bus Driver Flex Career Path Model**

- Requires the Department to develop the Bus Driver Flex Career Path Model to create a pathway for bus drivers to work as educational aides or student monitors at districts and schools.

### **Nine-passenger vehicles**

- Authorizes a school district to use a vehicle designed to carry nine passengers or less (not including the driver) in lieu of a school bus to transport chartered nonpublic and community school students under certain conditions.
- Authorizes a community school to transport its students using a nine-passenger or less vehicle under certain circumstances.
- Adds a new circumstance under which a chartered nonpublic and a community school may transport its students to and from regularly scheduled school sessions using a nine-passenger or less vehicle to include when the school has offered to provide its own student transportation.

### **Private and community school transportation – children with disabilities**

- Requires school districts to provide transportation as a related service to students with disabilities who live in the district but attend a nonpublic school if the school district is provided with supporting documentation in the student's individualized education program (IEP) or individual service plan.

### **Pilot program**

- Establishes a pilot program under which two selected educational service centers provide transportation to students enrolled in participating community schools and chartered nonpublic schools in the 2023-2024 school year.

## **IV. Literacy and dyslexia screening and intervention**

### **Third Grade Reading Guarantee**

- Exempts a student from retention under the Third Grade Reading Guarantee if the student's parent or guardian, in consultation with the student's reading teacher and building principal, requests that the student be promoted to fourth grade regardless of whether the student is reading at grade level.

- Requires districts and schools to continue to provide reading intervention services to promoted students who do not read at grade level until the student reads at grade level.
- Requires reading intervention and remediation services to include high-dosage tutoring opportunities, be aligned to the science of reading, and include a written notification statement that details the connection between reading proficiency and long-term outcomes of success.
- Permits students retained under the Guarantee in the 2022-2023 school year to be promoted to the fourth grade, unless the student's parent or guardian requests otherwise.

## **Dyslexia screening and intervention**

### **Transfer students**

- Requires public schools to administer grade-level aligned dyslexia screenings to students enrolled in grades K-6 who transfer into the district or school midyear.
- Exempts a district or school from administering a tier one dyslexia screening measure to a transfer student who received a screening in that school year from the student's original school.
- Generally requires a district or school to administer a dyslexia screening within 30 days of transfer student enrollment or request, though a kindergarten transfer student screening may be performed at the regularly scheduled screening for all kindergartners if the student transfers before that assessment has been performed.

### **Professional development**

- Requires teachers hired after April 12, 2021, to complete dyslexia professional development training by the later of two years after the date of hire or prescribed dates, unless the teacher has completed the training while employed by a different district.

## **Literacy improvement grants**

### **Professional development stipends**

- Requires the Department to reimburse public schools for stipends for teachers to complete professional development in the science of reading and evidence-based strategies for effective literacy instruction provided by the Department.
- Requires all teachers and administrators to complete the professional development not later than June 30, 2025, unless they have previously completed a similar course.
- Requires each district and school to pay teachers who complete the professional development stipends of \$1,200 or \$400 dependent upon subject and grade band.

### **Subsidies for core curriculum and instructional materials**

- Requires the Department to subsidize the cost for public schools to purchase high-quality core curriculum and instructional materials in English language arts and evidence-based reading intervention programs from the lists established by the Department.

- Requires the Department to conduct a survey to collect information on the core curriculum and instructional materials in English language arts in grades pre-K through 5 and the reading intervention programs in grades pre-K through 12 used by public schools.

### **Literacy supports coaches**

- Requires the Department to use funds for coaches to provide literacy supports to public schools with the lowest rates of proficiency in literacy based on their performance on the English language arts assessments.

### **Early literacy activities**

- Requires the Department to use funds to support early literacy activities to align state, local, and federal efforts to bolster all students' reading success.

### **Literacy instructional materials**

- Requires the Department to compile a list of high-quality core curriculum and instructional materials in English language arts and a list of evidence-based reading intervention programs that are aligned with the science of reading and strategies for effective literacy instruction.
- Not later than the 2024-2025 school year, requires each school district, community, and STEM school to use the core curriculum, instructional materials, and intervention programs from the lists compiled by the Department.
- Prohibits a district or school from using the "three-cueing approach" to teach students to read unless the district or school receives a waiver from the Department, but permits waivers for individual students.
- Requires the Department to identify vendors that provide professional development to educators, including pre-service teachers and faculty employed by educator preparation programs, on the use of high-quality core curriculum, instructional materials, and reading intervention programs.

### **EMIS reporting of literacy instructional materials**

- Requires districts and schools to report to the Education Management Information System (EMIS) the English language arts curriculum and instructional materials used in each of grades pre-K-5 and the reading intervention programs used in each of grades pre-K-12.

## **V. State scholarship programs**

### **Ed Choice Expansion eligibility and scholarship amounts**

- Expands eligibility for an Ed Choice Expansion scholarship to any student entering any of grades K-12 in the school year for which a scholarship is sought.
- Establishes in codified law a logarithmic function formula to calculate Ed Choice Expansion scholarship amounts for students who receive a first-time scholarship in and after the 2024-2025 school year, but also prescribes specific, partial scholarship amounts

for the 2023-2024 school year only for students with a family income at or above 450% federal poverty level (FPL).

- Bases the income eligibility threshold for an Ed Choice Expansion scholarship on a “family’s adjusted gross income” rather than “family income.”
- Eliminates the priority order for awarding Ed Choice Expansion scholarships if the number of eligible students who apply for a scholarship exceeds the scholarship available based on the appropriation.

### **Ed Choice scholarship selection**

- Permits a student who qualifies for both a traditional Ed Choice scholarship and an Expansion Ed Choice scholarship to select which scholarship the student would like to receive.

### **Use of private scholarships for Ed Choice**

- Permits a chartered nonpublic school to accept private scholarships issued by a scholarship granting organization as payment for the difference between the amount of an Ed Choice scholarship and the school’s regular tuition, as well as for any fees regularly charged by the school.

### **Ed Choice student growth measure**

- Requires the Department to develop a student growth measure by July 1, 2025, for Ed Choice scholarship students enrolled in grades 4-8.

### **Family income disclosure**

- Prohibits a chartered nonpublic school participating in Ed Choice from requiring a student’s parent to disclose, as part of the school’s admission procedure, whether the student’s family income is at or below 200% FPL.

### **Autism scholarship**

#### **Eligibility**

- Expands qualification for the Autism Scholarship Program to a child who receives an autism diagnosis from a physician or psychologist.
- Qualifies a child for a scholarship who meets only one, instead of all, qualifications.
- Requires school districts to develop an education plan for a child who is eligible for the Autism Scholarship Program based on an autism diagnosis, but does not have an individualized education program.

#### **Intervention services providers**

- Qualifies certified Ohio behavior analysts as providers that may offer intervention services under the Autism Scholarship Program.
- Qualifies registered behavior technicians as providers that may offer intervention services under the Autism Scholarship Program if the registered behavior technician works under

the supervision and following the intervention plan of a certified Ohio behavior analyst or a nationally certified behavior analyst.

- Prohibits the State Board from requiring registered behavior technicians and certified Ohio behavior analysts to have an instructional assistant permit to provide services to a child under the Autism Scholarship Program.

### **Cleveland scholarship program location restrictions**

- Permits a Cleveland Scholarship recipient to attend any private school, without a restriction on location of that school, using that scholarship.

### **State scholarships – general**

#### **Income verification**

- Specifies what documents a student’s parent or guardian may use to certify income eligibility for an Ed Choice Expansion scholarship to the Department.
- Prohibits the Department from generally requiring the parent of a student who is applying for, or receiving, a state scholarship, other than an Ed Choice Expansion scholarship, from completing any kind of income verification regarding the student’s family income.
- Creates an exception to the general prohibition described above to qualify low-income Ed Choice or Cleveland scholarship recipients for a waiver of any tuition, textbooks, or fees related to attending a private college through the College Credit Plus Program.

#### **Tax return information**

- Exempts an individual who is not required to file a state tax return under continuing law from the requirement to certify income eligibility for an Ed Choice Expansion scholarship.
- Prohibits the Department from requiring the parent of a student to submit a complete copy of the parent’s federal or state income tax return to determine the student’s family income for the purposes of the traditional Ed Choice or Cleveland Scholarship Program.
- Permits the Department to require a partial federal or state tax return that only contains the minimum amount of information necessary to determine the student’s family income.

#### **Reporting of tuition rates**

- Requires certain educational entities that enroll state scholarship students, by September 30, 2023, for the 2023-2024 school year and by June 30 for each subsequent year, to submit to the Department their tuition rates for that year.

#### **Application after the start of the school year**

- Delays the application deadline for receiving the full amount of an Ed Choice or Cleveland scholarship from July 1 to October 15 of the school year for which a scholarship is sought.
- Requires the Department to prorate the amount of a student’s scholarship for an application submitted on and after October 15 based on how much of the school year remains after the date of the student’s enrollment in school.

## **VI. Community schools**

### **Community school sponsors**

- Requires the Department, in deciding whether to approve a request to change sponsors from a community school that primarily serves students with disabilities, to consider the school's performance against the average performance of all other community schools that primarily serve students with disabilities.
- Permits a community school that primarily serves students with disabilities to enter into a contract with a new qualified sponsor without submitting a request if it satisfies certain state report card rating criteria.

### **Community school FTE reporting**

- Extends through the 2023-2024 and 2024-2025 school years the option of certain community schools to report their student enrollment on a full-time equivalent basis based partially on credits earned.

### **Dropout prevention and recovery schools**

#### **End-of-course exams for DOPR community schools**

- Requires a DOPR community school to administer end-of-course exams in an online or paper format based on the needs of the student.
- Requires the Director to establish extended testing windows of ten weeks in duration in the fall and spring for dropout recovery community schools so that assessments may be administered in closer proximity to when students complete related coursework.
- Requires the Director to establish a summer testing window for students participating in summer instruction.

#### **DOPR report card**

- Requires the Department to consult with stakeholder groups and use data from prior school years and simulations in establishing benchmarks and performance levels for performance indicators on the DOPR community school report card.

#### **DOPR Advisory Council**

- Establishes the Dropout Prevention and Recovery Advisory Council to provide a forum for communication and collaboration between the Department and parties involved with dropout recovery community schools.
- Requires the Council to review, in collaboration with the Director, all existing rules and guidance previously developed or adopted by the Department.

#### **Rules and guidelines for DOPR community schools**

- Requires the Department to adopt any requirement imposed on a DOPR community school as a rule under the Administrative Procedure Act, and prohibits the Department

from developing guidelines, rather than rules, that impose requirements on a DOPR community school.

- Requires that any new rule related to DOPR community school requirements be reviewed by the Dropout Prevention and Recovery Advisory Council prior to adoption.

### **E-school standards**

- Changes the source for the standards with which e-schools must comply.

### **Community school closing audit bonds and guarantees**

- Removes provisions related to community school closing audit bonds. (For more information, see “**Community school closing audit bonds and guarantees**” in the Treasurer of State portion on this analysis.)

### **JCARR review of changes regarding community schools (VETOED)**

- Would have subjected to Joint Committee on Agency Rule Review (JCARR) approval any proposed changes to EMIS or the Department’s business rules and policies that may have affected community schools (VETOED).

## **VII. Schools**

### **Intradistrict open enrollment**

- Requires a school district to report to the Department the number of students who attend a school building other than the one to which they are assigned.
- Requires a district that elects to conduct a lottery to determine intradistrict placement of students to do so by the second Monday of June prior to the school year for which enrollment is sought.

### **Virtual education during school closure**

- Requires a school district, community school, STEM school, or chartered nonpublic school to adopt a plan to provide instruction through a virtual education model during a period of school closure for a calamity.
- Repeals the process under which a district, community school, or chartered nonpublic school may adopt a plan to require students to complete lessons posted on the district or school’s website, or paper copies of those lessons (“blizzard bags”), during a period of school closure for a calamity.

### **Seizure action plans**

- Requires public and chartered nonpublic schools to create an individualized seizure action plan for each enrolled student who has an active seizure disorder diagnosis.
- Requires at least one employee at each school to be trained on implementing seizure action plans.

- Provides qualified immunity in a civil action for money damages for school districts and schools and their officers and employees for injury, death, or other loss allegedly arising from providing care or performing duties under the act.

### **Cash payments for school-affiliated events**

- Requires qualifying schools to accept cash payments for tickets and concessions at school-affiliated events, unless the event is conducted at a public facility that is leased by a professional sports team or privately owned facility.

### **School meals**

- Provides free breakfast and lunch to students eligible for a reduced-price meal by requiring the Department to provide reimbursements to schools and other programs that participate in the National School Breakfast or Lunch Program and requiring schools and programs to provide meals at no cost to qualifying students.

### **Free feminine hygiene products**

- Requires all public and private schools that enroll girls in grades 6-12 to provide free feminine hygiene products for those students and permits schools to provide products to students below grade six.

### **Auxiliary services personnel**

- Prohibits a school district from denying a nonpublic school's request for properly licensed personnel to provide auxiliary services.

### **Auxiliary services reimbursement for Educational Service Centers**

- Specifies that if an ESC contracts with a district to provide auxiliary services, only the ESC may be reimbursed for administrative costs.

### **Transmission of transferred student's records**

- Requires public and chartered nonpublic schools to transmit a transferring student's school records within five school days upon receiving a request from the school or district that the student is attending, unless there is \$2,500 or more of debt attributed to the student.

### **Pecuniary interest of school board members**

- Exempts a school board member employed by a private institution of higher education from the prohibition against members having a financial interest in a contract with the district when the contract is with a private institution of higher education.

### **Nonchartered nonpublic schools**

- Codifies an administrative rule that sets minimum requirements for nonchartered nonpublic schools, including hours of instruction, educational requirements for teachers and administrators, curriculum, promotion, and safety requirements.

- Requires the Director to update existing rules to conform to the changes and prohibits the adoption of any additional rules for nonchartered nonpublic schools.

### **Home education and school attendance**

- Exempts a child from the compulsory school attendance law if the child's parent submits a notice to the superintendent of the child's school district of residence that the child is receiving a home education in specified subject areas.
- Specifies that a child exempt for the purposes of home education may be subject to state truancy law if there is evidence the child is not receiving the required education.

## **VIII. Educator and other licensing and permits**

### **Ohio Teacher Residency Program**

- Revises the operation of the Ohio Teacher Residency Program, with respect to mentoring, counseling, and the Resident Educator Summative Assessment.

### **Alternative resident educator license**

- Reduces the alternative resident educator license from four to two years and makes that license renewable.
- Permits the holder of an alternative resident educator license to teach preschool students.
- Permits the holder of an alternative resident educator license to convert that license to a renewable alternative educator license instead of completing the Ohio Teacher Residency Program and other certain prescribed requirements necessary for obtaining a professional educator license.

### **Temporary substitute teacher license**

- Permits public schools to hire substitute teachers without a post-secondary degree and establishes a one-year temporary substitute teacher license.

### **Out-of-state teacher license**

- Permits an applicant for a one-year nonrenewable out-of-state teaching license who passes Ohio's Foundations of Reading Exam on the first try to forgo the required completion of coursework in the teaching of reading.

### **Licensure grade bands**

- Expands the grades bands for which an individual may receive a resident educator license, professional educator license, senior professional educator license, or a lead professional educator license to grades pre-K-8 or 6-12.
- Permits a school district or community school to employ an educator to teach not more than two years outside of the educator's designated grade band for two school years at a time.

### **Pre-service teaching for compensation**

- Establishes a three-year pre-service teaching permit for student teachers that authorizes them to substitute teach and receive compensation for it.

### **Alternative military educator license**

- Requires the State Board, in consultation with the Chancellor of Higher Education, to establish an alternative military educator license that permits eligible military individuals to receive an educator license on an expedited timeline.

### **Computer science educator licensure**

- Permits industry professionals to teach 40 hours a week in computer science without taking a content examination.
- Requires all computer science licenses to carry a grade band designation of K-12, pre-k-5, 4-9, or 7-12.
- Extends through the 2024-2025 school year an exemption that permits a public school to permit a licensed teacher to teach computer science in any of grades K-12, provided the teacher completes a specific professional development course.
- For purposes of that exemption, extends the grade bands for which a license holder must be licensed to teach from any of grades 7-12 to any of grades K-12.

### **Financial literacy license validation**

- Exempts all chartered nonpublic schools from the general requirement that teachers who provide high school financial literacy instruction have a financial literacy license validation.
- Disqualifies chartered nonpublic schools from receiving reimbursement for costs associated with financial literacy license validation for teachers.

### **School counselor licensure**

- Requires the State Board to enter into an agreement with a construction trades organization to develop a mandatory training program for school counselors about job opportunities in the construction trades.
- Requires a school counselor serving students in grades 7-12 to complete four hours of training every five years.
- Requires local professional development committees to incorporate the training into professional development programs for counselors serving students in grades 7-12.
- Requires participating building and construction trades to bear all costs associated with the required training.

## **Community school employee misconduct**

- Prohibits a community school from employing a person if the person's educator license was permanently revoked or denied or if the person entered into a consent agreement in which the person agreed not to apply for an educator license in the future.

## **Private school educator certification**

- Makes explicit that the State Board must issue teaching certificates to private school administrators, supervisors, and teachers who hold a master's degree from an accredited college or university.

## **Mental health training for school athletic coaches**

- Prohibits an individual from coaching an athletic activity at a public or nonpublic school unless the individual has completed a student mental health training course approved by the Department of Mental Health and Addiction Services.
- For renewal of pupil activity permits, changes the frequency of sudden cardiac arrest training from annually to sometime within the duration of the permit.

## **RAPBACK and criminal records checks**

### **Nonlicensed school employees**

- Requires the State Board to enroll all nonlicensed school employees and contractors, including bus drivers, in the Retained Applicant Fingerprint Database (RAPBACK).
- Requires any nonlicensed employee or contractor whose most recent criminal records check is older than one year or does not include certain information to complete a new records check by a State Board prescribed date, and every six years thereafter.

### **School volunteers**

- Specifically excludes school volunteers from the requirements related to criminal background checks and RAPBACK.

## **IX. Student performance data**

### **Online high school graduation rates**

- Requires the Department to include a modified graduation rate measure on the state report card to account for online high schools.
- Generally requires the Department to report the modified graduation rate as data without an assigned performance rating beginning with the state report card for the 2023-2024 school year.

### **Individual student performance reports on value-added data**

- Requires the Department to make individual student performance data reports available to districts and schools that have an overall value-added progress dimension score calculated on the state report card.

## **Report of state assessment scores**

- Requires each public and chartered nonpublic school to provide a student's parent with the student's state assessment scores by June 30 of each year by mail, email, or secure online portal on the school's website.

## **X. Career-technical education and workforce development**

### **Career-technical cooperative education districts**

- Permits two or more city, local, or exempted village school districts that are members of a compact career-technical education provider that exists on October 3, 2023, to enter into an agreement to create a career-technical cooperative education district.
- Requires a cooperative district to fund and provide students enrolled in grades 7-12 in member districts with a career-technical education adequate to prepare them for an occupation.
- Specifies that a cooperative district is not a joint vocational school district and, instead, requires the cooperative district to:
  - Be considered a career-technical education compact for the purposes of state education law; and
  - Serve as the lead district of a career-technical planning district composed of the cooperative district's member districts.
- Establishes a board of directors, composed of the superintendents of the cooperative district's member districts, to govern the cooperative district.
- Permits a board of directors to levy a voter-approved property tax of up to three mills and accept gifts, donations, bequests, and other grants of money.
- Requires the Department to compute and make payments to a cooperative district in the same manner as a lead district of a career-technical planning district.

### **Courses at Ohio technical centers**

- Permits school districts, upon approval from the Department, to contract with Ohio technical centers (OTCs) to serve students in grades 7-12 who are enrolled in a career-technical education program at the district but cannot enroll in a course for specified reasons.

### **DOPR and career-technical programs**

- Adds DOPR programs of school districts, community schools, and STEM schools to the approval process for state funding for career-technical education programs.
- Requires the Department to authorize a payment for a DOPR school offering a career-technical program that is in its first year of operation and that submits an application for approval after the May 15 deadline established under continuing law.

## **Workforce development**

- Requires the Department to develop informational materials for seventh and eighth graders about available career opportunities.
- Requires the Department to participate in the process to identify in-demand jobs.
- Requires the Governor to appoint the Deputy Directors to the Governor's Executive Workforce Board.

## **XI. Other**

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

- Increases the minimum base salary for beginning teachers with a bachelor's degree from \$30,000 to \$35,000 and proportionally increases the minimum salaries for teachers with different levels of education and experience.

### **English learners**

- Eliminates an exemption excusing English learners who have been enrolled in U.S. schools for less than a year from any reading, writing, or English language arts state assessments.
- Eliminates an exemption that excluded, except when required by federal law, English learners who have been enrolled in U.S. schools for less than a year from state report card performance measures.
- Requires English learners to be included in performance measures on the state report card in accordance with the state's federally approved plan to comply with federal law.
- Requires the Director to adopt rules related to educating English learners that conform to the state's federally approved plan.

### **School emergency management plans**

- Specifies that all records related to a school's emergency management plan and emergency management tests are security records and are not subject to Ohio's public records laws.
- Extends the annual deadline for a school administrator to submit the school district's or school's emergency management plan to the Director of Public Safety from July 1 to September 1.

### **School counselor liaison**

- Requires the Director to designate at least one employee of the Department to serve as a liaison to school counselors across the state.

### **Innovative Pilot Program waivers**

- Prohibits waivers of the requirements associated with blended learning or operating an online learning school for school districts of innovation or an online learning school as part of an innovative education pilot program.

## **Academic distress commissions**

- Prohibits the Director from establishing any new academic distress commissions (ADCs) for the 2023-2024 and 2024-2025 school years.
- Dissolves the Lorain City Schools ADC and academic improvement plan, and, upon dissolution of the ADC, requires the chief executive officer to relinquish management and control of the school district to the district board of education and the district superintendent.

## **State share of local property taxes in five-year forecasts**

- Requires the Department and Auditor of State to label the property tax allocation projections in a school district's five-year forecast as the "state share of local property taxes."

## **Private before and after school care programs – licensure**

- Authorizes a private before and after school care program that meets certain conditions to seek licensure as a school child program.

## **State Report Card Review Committee**

- Eliminates the State Report Card Review Committee.

## **Study on services for economically disadvantaged students**

- Requires the Department to conduct a study evaluating the needs of economically disadvantaged students.

## **Competency-based diploma pilot program**

- Requires the Department to operate a competency-based diploma pilot program in FYs 2024 and 2025 for students who are at least 18 years old, but under 22 years old and issue a report on the pilot program by July 30, 2025.

## **Adult Diploma Pilot Program minimum age**

- Expands eligibility to participate in the Adult Diploma Pilot Program by lowering the minimum age from 20 to 18 years old.

# **I. Transfer of state K-12 governance**

## **Department of Education and Workforce**

(R.C. 3301.07, 3301.111, 3301.13, 3301.137, and 3301.0138; Sections 130.100 and 130.101; conforming changes in numerous R.C. sections)

The act renames the Department of Education as the Department of Education and Workforce. It also creates the position of Director of Education and Workforce, who is appointed by the Governor with the advice and consent of the Senate, to oversee the Department and primary and secondary education in Ohio. To that end, the act transfers to the Department, or

where applicable the Director, most of the powers and duties assigned to the State Board of Education and the Superintendent of Public Instruction.

Examples of the powers and duties transferred include:

1. Adopting minimum education standards for elementary and secondary schools, and minimum operating standards for school districts;
2. Issuing and revoking state charters to school districts, school buildings operated by districts, and nonpublic schools that elect to seek a charter;
3. Developing state academic standards and model curricula;
4. Establishing the statewide program for assessing student achievement through standardized assessments;
5. Establishing the state report card system for school districts, community schools, STEM schools, and college-preparatory boarding schools;
6. Administering state scholarship programs;
7. Performing prescribed functions regarding the creation and operation of joint vocational school districts;
8. Providing oversight to, and performing functions regarding, community schools, community school sponsors, and STEM schools; and
9. Calculating and distributing all foundation funding payments.

The State Board and the state Superintendent retain duties and powers regarding educator licensure, licensee disciplinary actions, school district territory transfers, and certain other areas. The act transfers from the Department to the State Board any employees and assets necessary for the State Board to perform its retained powers and duties.

For more information about the role of the State Board and the state Superintendent under the act, see “**State Board of Education**,” below.

### **Organization of the Department**

Under the act, the Department consists of the Division of Primary and Secondary Education and the Division of Career-Technical Education. Each division is headed by a Deputy Director appointed by the Director with the advice and consent of the Senate. However, the act does not prescribe specific functions for either division.

Rather, except for those duties and powers retained by the State Board and state Superintendent, the act vests responsibility for primary, secondary, special, and career-technical education in the Director. The Director may delegate duties and powers to either division as the Director determines appropriate. The Director also is responsible for employing personnel to carry out the Department’s powers and duties. The Director must exercise general supervision of the Department’s employees and may appoint them, fix their salaries, and terminate their employment.

The act expressly states that the Department is subject to all provisions of law pertaining to departments, offices, or institutions established for the exercise of any function of state government. It also subjects the Department to the Administrative Procedure Act.

## **Appointment of Director and Deputy Directors**

### ***Limits on interim officeholders***

The act expressly prohibits any individual from holding the office of, or serving on an interim basis for more than 45 days as, Director or Deputy Director without being appointed with the advice and consent of the Senate.

### ***Deputy Director qualifications***

The act requires the Director to appoint an individual with appropriate educational, professional, or managerial experience, as determined by the Director, to be a Deputy Director.

### ***Confirmation hearing***

The act requires the Senate Education Committee to hold at least one in-person hearing on the nomination of an individual to serve as Director or as a Deputy Director before the full Senate holds a confirmation vote on that nomination.

## **Director's rulemaking authority**

Under the act, the Director is responsible for adopting the Department's administrative rules. However, it expressly limits the Director's rulemaking authority to the Director's or the Department's statutorily prescribed powers and duties. It also permits the General Assembly, in accordance with continuing law, to adopt a concurrent resolution to rescind or invalidate any administrative rule adopted by the Director. The Director is not authorized to adopt rules regarding the State Board's or state Superintendent's retained powers.

(The act also addresses providing information about rulemaking in "**Public presentation requirement**" below.)

### ***Rules regarding minimum education standards***

Prior law authorized the State Board, when it adopted rules to prescribe minimum education standards, to include in those standards any factor it determines necessary. The act eliminates that authority and, instead, specifies that the Director, when adopting minimum education standards, is limited to the powers and duties that are expressly prescribed and authorized in statute.

### ***Stakeholder outreach and rulemaking***

The act requires the Department to establish a stakeholder outreach process for use when it engages in rulemaking. The Department must establish a method under which stakeholders may elect to participate in the process. The process must include both a notice and an opportunity for stakeholder feedback prior to the Department initiating rulemaking and submitting a proposed rule to the Joint Committee on Agency Rule Review (JCARR). The process

also may include stakeholder meetings, questionnaires for stakeholders, or stakeholder advisory groups.

The act expressly states that a notice under the process is a not a public notice, but rather it is a courtesy for stakeholders. The Department also is not required to send draft rules out to, nor negotiate draft rule language with, stakeholders.

### ***Prior to initiating rulemaking***

Prior to conducting a five-year review, adopting a new rule, or amending or rescinding an existing rule, the Department must notify stakeholders of its intent to initiate rulemaking and provide an explanation of the rationale for doing so. The notice must include:

1. For a five-year review in which the Department decides not to make any changes to an existing rule, a statement that the rule is not being changed;
2. For a new rule or an amendment or rescission of an existing rule, information explaining the rationale for the new rule or rule change, including any state or federal law changes that make it necessary; and
3. A link to a webpage on the Department's website that provides an opportunity to:
  - a. Review the existing rule, if one exists;
  - b. Submit public comments for a period of time established by the Department; and
  - c. Provide, as part of the public comment system, a chance to submit information that might aid the Department in preparing a business impact analysis, if one is required.

The Department must consider each submitted comment provided during the public comment period. However, it is not required to respond to them.

### ***Prior to submitting a proposed rule to JCARR***

Prior to submitting a proposed rule to JCARR, the Department must post the draft rule and a completed business impact analysis, if one is required, on the Department's website and notify stakeholders that they have been posted. The notice must include a link to a webpage on the Department's website that provides the opportunity to review the draft rule, and the business impact analysis if required, and submit public comments for a period established by the Department. The Department must consider each comment it receives and may revise the draft based on them. If the Department determines further outreach is necessary, it must hold stakeholder meetings, send questions to stakeholders, or create stakeholder advisory groups.

### **Public presentation requirement**

The act requires the Director, or the Director's designee, to convene a public meeting at least every other month. The Department's employees must conduct a presentation at each meeting that addresses any new information the Department has about:

1. Any of its significant new or existing initiatives, policies, or guidelines;
2. Any change to state or federal law that affects the Department or education stakeholders; and

3. Any rule the Director intends to adopt, amend, or rescind.

At the conclusion of a presentation, the Director, or designee, must provide an opportunity for public discussion on the information in the presentation or other appropriate topics, as determined by the Director or designee. The Department must make available via the internet an audio recording of each meeting within five days after its conclusion.

Under the act, any nonemergency rule adopted after October 3, 2023, is void unless the rule was included in a presentation conducted during a public meeting.

In addition, the act requires the Director to schedule meetings for FY 2024 in a timely manner.

### **Limits on policies and guidance**

The act establishes that any policy adopted or guidance issued by the Director or Department that is not expressly authorized or required by state or federal statute is advisory in nature. Furthermore, it also establishes that those policies or guidance are nonbinding on schools and educators and do not have the force and effect of law.

### **Exchange of information with the State Board**

The act authorizes the Department and the State Board to exchange necessary information and documentation upon request to enable both agencies to effectively perform their functions under state or federal law, including sharing proprietary and confidential information. Each agency cannot disclose any proprietary or confidential information it receives and must adopt safeguards to prevent disclosure.

The act expressly states that the purpose of the authorization to exchange information is to best serve the interests of primary and secondary education and workforce development in Ohio and to maximize efficiencies and operations.

### **State Board of Education**

(R.C. 3301.111 and 3319.51)

#### **Duties and powers**

The State Board and the state Superintendent retain their duties and powers under continuing law regarding:

1. Educator licensure and licensee disciplinary actions;
2. School district territory transfer determinations;
3. The teacher and school counselor evaluation systems;
4. The annual teacher recognition program; and
5. The Educator Standards Board (ESB).

However, the act designates the Director of Education and Workforce, or the Director's designee, as a nonvoting, ex officio member of the ESB and its subcommittees.

The act expressly reserves responsibility for the adoption of requirements for educator licensure and licensee disciplinary actions to the State Board, and largely excludes the Director and the Department from that process. The act requires the State Board to adopt those requirements as rules in accordance with the Administrative Procedure Act.

Finally, the act requires the State Board to make recommendations to the Director regarding priorities for primary and secondary education. It also permits the state Superintendent to serve as an adviser to the Director.

### **Administration**

Under prior law, the Department of Education was the organizational unit through which the state Superintendent administered the policies and statutorily prescribed powers and duties of the State Board and the state Superintendent. With the transfer of control over the Department from the State Board to the Director, the act establishes a separate administrative structure for the State Board and state Superintendent. That structure is similar to prior law.

Specifically, the act expressly states that, in accordance with the Ohio Constitution, the state Superintendent remains an appointee of the State Board. It further states that, in accordance with continuing law, the state Superintendent remains the State Board's secretary and executive officer.

The State Board remains subject to all provisions of law regarding state departments, offices, or institutions. The State Board must employ personnel to carry out its duties and powers. Subject to the State Board's policies, rules, and regulations, the state Superintendent exercises general supervision of those employees and may appoint them, fix their salary, and terminate their employment.

Finally, the State Board may request the Department's assistance in exercising the State Board's powers and duties. To the extent the Director determines that assistance necessary and practicable, the Department must provide the requested assistance.

### **State Board of Education Licensure Fund**

The act expands the uses of the State Board of Education Licensure Fund to pay the State Board's operating expenses, including any cost incurred to perform a duty prescribed by law, in addition to the cost of administering requirements related to the issuance and renewal of educator credentials as under continuing law. Prior law limited the use of that fund solely for the cost of administering requirements related to the issuance and renewal of licenses, certificates, and permits.

### **Implementation deadline**

(Section 130.106)

The act requires the Director, Department, State Board, and state Superintendent to complete any action necessary to implement the transfer of powers by January 1, 2023.

### **Background – State Board of Education**

The Ohio Constitution provides that there must be a State Board of Education and a Superintendent of Public Instruction appointed by the State Board. The selection and terms of

members of the State Board, as well as the powers and duties of the State Board and the state Superintendent, must be prescribed by law.<sup>62</sup>

## II. School finance

### Funding for FYs 2024 and 2025

(R.C. 3314.08, 3317.011, 3317.012, 3317.014, 3317.016, 3317.017, 3317.018, 3317.019, 3317.0110, 3317.02, 3317.021, 3317.022, 3317.024, 3317.026, 3317.0212, 3317.0213, 3317.0215, 3317.0217, 3317.0218, 3317.051, 3317.11, 3317.16, 3317.162, 3317.20, 3317.201, 3317.25, and 3326.44; Sections 265.280 and 265.290)

The act extends the operation of the current school financing system to FY 2024 and FY 2025, but with the following changes:

1. Updates the data used to calculate the base cost from FY 2018 data to FY 2022 data;
2. Requires the use of FY 2024 statewide average base cost per pupil in FY 2024 and FY 2025;
3. Requires the use of FY 2024 statewide average career-technical base cost per pupil in FY 2024 and FY 2025;
4. Increases the general phase-in and disadvantaged pupil impact aid phase-in percentages from 33.33% in FY 2023 to 50% in FY 2024 and 66.67% in FY 2025;
5. Increases the minimum state share percentage from 5% to 10% for FY 2024 and FY 2025;
6. Increases the minimum transportation state share percentage from 33.33% in FY 2023 to 37.5% in FY 2024 and 41.67% in FY 2025;
7. Increases the career awareness and exploration per pupil amount from \$5 in FY 2023 to \$7.50 in FY 2024 and \$10 in FY 2025;
8. Increases the gifted professional development per pupil amount from \$14 in FY 2023 to \$21 in FY 2024 and \$28 in FY 2025;
9. Clarifies that a school district's building operations cost in the aggregate base cost calculation does not use a six-year average of the average building square feet per pupil and average cost per square foot for all districts in the state but instead uses only FY 2022 data;
10. Requires the payment of English learner funds to internet- or computer-based community schools (e-schools); and
11. Renames the "threshold catastrophic cost" for special education students as the "threshold cost" for special education students.

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<sup>62</sup> Ohio Const., art. VI, sec. 4.

In addition, the act extends to FY 2024 and FY 2025 the payment of temporary transitional aid to school districts based on a FY 2020 funding base and a formula transition supplement based on an FY 2021 funding base to districts, community schools, and STEM schools.

For background information on the current school financing system, see the LSC [Final Analysis \(PDF\) for H.B. 110 of the 134<sup>th</sup> General Assembly](#), which enacted the system, and the LSC [Final Analysis \(PDF\) for H.B. 583 of the 134<sup>th</sup> General Assembly](#), which made a number of corrective and technical changes to it. Both final analyses are available on the General Assembly's website: [legislature.ohio.gov](http://legislature.ohio.gov).

## **Student wellness and success funds**

(R.C. 3317.26)

### **Spending requirements**

The act requires the Department, in each fiscal year, to notify each school district, community school, and STEM school, of the portion of the district or school's state share of the base cost that is attributable to the staffing cost for the student wellness and success component of the base cost. Those funds are designated as student wellness and success funds (SWSF).

It requires districts and schools to spend their SWSF on the same initiatives for which schools must spend disadvantaged pupil impact aid (DPIA) funds. (See "**Disadvantaged pupil impact aid**," below.) Of those initiatives, the act further requires districts and schools to spend at least 50% of SWSF for either physical or mental health based initiatives, or a combination of both. Formerly, there were no requirements placed on how districts and schools must spend SWSF.

Additionally, districts and schools must develop a plan to use SWSF in coordination with both: (1) a community mental health prevention or treatment provider or their local board of alcohol, drug addiction, and mental health services, and (2) a community partner identified under continuing law. Within 30 days of completing or amending this plan, each district or school must share the plan at a meeting of its board of education or governing authority and post it to the district or school's website.

At the end of each fiscal year, each district and school must submit a report to the Department, in a manner determined by the Department, describing the initiative or initiatives on which the district or school's SWSF were spent during that fiscal year.

### **Unexpended funds**

The act requires that any SWSF allocated in any of FYs 2020 through 2023 be expended before June 30, 2025, and requires any unexpended funds to be repaid to the Department.

Beginning in FY 2024, the act requires all SWSF to be spent by the end of the following fiscal year and, again, requires any unexpended funds to be repaid to the Department.

The act permits the Department to develop a corrective action plan if it determines that a district or school is not spending the SWSF funds correctly and further permits the Department to withhold SWSF if a district or school is found to be out of compliance with the action plan.

## Disadvantaged pupil impact aid

(R.C. 3317.25)

Under continuing law, disadvantaged pupil impact aid (DPIA) is calculated based on the number and concentration of economically disadvantaged students enrolled at each school and district. A district must develop a plan for utilizing its DPIA in coordination with one of the following: a board of alcohol, drug addiction, and mental health services, an educational service center (ESC), a county board of developmental disabilities, a community-based mental health treatment provider, a board of health of a city or general health district, a county department of job and family services, a nonprofit organization with experience serving children, or a public hospital agency.

Continuing law prescribes initiatives upon which DPIA must be spent. The act makes changes to some of those initiatives. The table below illustrates the current initiatives and the changes made by the act (these changes apply to both DPIA funds and SWSF):

Initiatives	
Current initiatives	The act
Extended school day and school year	No change
Reading improvement and intervention	Requires reading improvement and intervention to be aligned with the science of reading and evidence-based strategies for effective literacy instruction
Instructional technology or blended learning	No change
Professional development in reading instruction for teachers of students in kindergarten through third grade	Requires professional development be aligned with the science of reading and evidence-based strategies for effective literacy instruction
Dropout prevention	No change
School safety and security measures	No change
Community learning centers that address barriers to learning	No change
Academic interventions for students in any of grades six through twelve	No change
Employment of an individual who has successfully completed the bright new leaders for Ohio schools program as a principal or an assistant principal	No change

Initiatives	
Current initiatives	The act
Mental health services, including telehealth services	Adds community-based behavioral health services, and recovery supports
Culturally appropriate, evidence-based or evidence-informed prevention education, including youth-led programming and social and emotional learning curricula to promote mental health and prevent substance use and suicide	Changes prevention “education” to prevention “services” and removes the requirement that prevention services include social and emotional learning, but adds trauma-informed services
Services for homeless youth	No change
Services for child welfare involved youth	No change
Community liaisons or programs that connect students to community resources, including city connects, communities in schools, and other similar programs	Adds behavioral wellness coordinators as a possible liaison
Physical health care services, including telehealth services	Requires physical health care service initiatives to include community-based health services
Family engagement and support services	No change
Student services provided prior to or after the regularly scheduled school day or any time school is not in session, including mentoring programs	No change

## Gifted funding requirements

(R.C. 3317.022, 3324.05, and 3324.09)

The act makes permanent, and in some cases revises, a series of requirements regarding gifted student funding that, under prior law, applied only to FYs 2022 and 2023. Those requirements include how school districts spend gifted funding, how the Department reduces funding for noncompliance, and what information is included in reports regarding services for gifted students.

### Spending requirements

The act makes permanent the requirement that a school district only spend its gifted funding on:

1. The identification of gifted students;
2. Gifted coordinator services;
3. Gifted intervention specialist services; and
4. Gifted professional development.

The act does not make permanent a law that applied to FYs 2022 and 2023, that a district also may spend its gifted funding on other service providers approved by the Department.

### **Reduction of funds for noncompliance**

The act also makes permanent a requirement that the Department, if it determines a district did not spend its gifted funding on authorized services and providers, reduce the district's state funding for the fiscal year by the misspent amount. In addition, the act requires the Department to reduce a district's state funding within 90 days after the end of the fiscal year.

### **Reporting and auditing requirements**

The act makes permanent the requirement that each school district include the number of students identified in each gifted category in its annual report to the Department regarding the screening, assessment, and identification of gifted students.

In addition, the act makes permanent the requirement that the Department annually publish data submitted by districts regarding services offered to gifted students and the district's number of gifted intervention specialists and coordinators. Furthermore, it requires the Department to report the services offered in grade bands of K-2, 3-6, 7-8, and 9-12, rather than K-3, 4-8, and 9-12 as under prior law for FY 2022 and 2023.

The act also makes permanent the requirement that the Department annually publish on its website a district's gifted funding for the prior fiscal year and each district's expenditure of those funds. It eliminates a requirement that the Department, for FY 2024 and annually thereafter, publish a report on its website that only includes the district's expenditure of funds for the previous fiscal year.

Finally, the act makes permanent the requirement that, when the Department audits a school district's identification numbers as required under continuing law, it also audit the district's service numbers.

### **Jon Peterson Special Needs Scholarship amounts**

(R.C. 3317.022)

The act increases the base and category amounts for the Jon Peterson Special Needs Scholarship (JPSN) Program for FY 2024 and also establishes amounts for FY 2025. The base and category amount increases are as follows:

1. Increases the base amount from \$6,414 to \$7,190 for FY 2024 and FY 2025;
2. Increases the Category 1 amount from \$1,562 to \$1,751 for FY 2024, and \$2,395 for FY 2025;

3. Increases the Category 2 amount from \$3,963 to \$4,442 for FY 2024, and \$5,280 for FY 2025;
4. Increases the Category 3 amount from \$9,522 to \$10,673 for FY 2024, and \$11,960 for FY 2025;
5. Increases the Category 4 amount from \$12,707 to \$14,243 for FY 2024, and \$15,787 for FY 2025;
6. Increases the Category 5 amount from \$17,209 to \$19,290 for FY 2024, and \$21,197 for FY 2025;
7. Increases the Category 6 amount from \$25,370 to \$28,438 for FY 2024, and \$30,469 for FY 2025.

The act also increases the maximum scholarship award for the JPSN Program from \$27,000 to \$30,000 for FY 2024, and \$32,445 for FY 2025.

The act maintains requirements with regard to how scholarships under the program are determined, limiting a scholarship to the least of (a) the fees charged by the student's alternative public provider or registered private provider, (b) the sum of the base amount and the student's category amount, and (c) the maximum amount.

### **Payment for districts with decreases in utility TPP value**

(Section 265.310)

The act requires the Department to make a payment, for FY 2024 and FY 2025, to each city, local, exempted village, or joint vocational school district that has at least one power plant within its territory and that experiences a 10% or greater decrease in the taxable value of utility tangible personal property (TPP) and an overall negative change in TPP subject to taxation. To qualify for the FY 2024 payment, a district must have experienced this decrease between tax years 2017 and 2023 or tax years 2022 and 2023. To qualify for the FY 2025 payment, a district must have experienced this decrease between tax years 2017 and 2024 or tax years 2023 and 2024.

### **Eligibility determination**

The Tax Commissioner must determine which districts are eligible for this payment no later than May 15, 2024 (for the FY 2024 payment) or May 15, 2025 (for the FY 2025 payment). For each eligible district, the Commissioner must certify the following information to the Department:

1. If the district is eligible for the FY 2024 payment, its total taxable value for tax year 2023 and the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2023; and

2. If the district is eligible for the FY 2025 payment, its total taxable value for tax year 2024 and the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2024; and

3. If the district is eligible for either payment, the taxable value of the utility TPP decrease and the change in taxes charged and payable on the change in taxable value.

### **Payment amount**

The act requires the Department, for purposes of computing the payment, to replace the three-year average valuations used in computing a district's state education aid for FY 2019 with the district's total taxable value for tax year 2023 (for the FY 2024 payment) or tax year 2024 (for the FY 2025 payment). It then must recompute the state education aid for FY 2019 without applying any funding limitations enacted by the General Assembly.

The amount of a district's payment is the *greater* of 1 or 2 as described below:

1. The lesser of either:

a. The positive difference between the district's state education aid for FY 2019 prior to the recomputation and the district's recomputed state education aid for FY 2019; or

b. The absolute value of the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2023 (for the FY 2024 payment) or for tax years 2017 and 2024 (for the FY 2025 payment).

2. 0.50 times the absolute value of the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2023 (for the FY 2024 payment) or for tax years 2017 and 2024 (for the FY 2025 payment).

### **Payment deadline**

The Department must make FY 2024 payments between June 1 and June 30, 2024, and must make FY 2025 payments between June 1 and June 30, 2025.

### **Codified law payment**

The act prohibits the Department from calculating or making a similar payment prescribed under codified law for FY 2024 and FY 2025.<sup>63</sup>

### **Newly chartered nonpublic school – auxiliary services funds**

(R.C. 3317.024)

The act permits a newly chartered nonpublic school, within ten days of receiving a notification of the approval and issuance of its charter, to elect to receive auxiliary services funds directly. A school that does not make an election will receive auxiliary services funds through the school district in which it is located. Continuing law permits chartered nonpublic schools to choose whether to receive auxiliary services funds directly from the Department. Otherwise, by default a school receives those funds through the school district in which it is located. A chartered nonpublic school may subsequently change its election.

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<sup>63</sup> R.C. 3317.028, not in the act.

Auxiliary services funds are used to purchase goods and services for students who attend chartered nonpublic schools, such as textbooks, digital texts, workbooks, instructional equipment, library materials, or tutoring and other special services.<sup>64</sup>

### **Community school equity supplement**

(Sections 265.285 and 265.290)

The act requires the Department to pay an equity supplement in FYs 2024 and 2025 to each community school that is not an internet- or computer-based community school (e-school). The Department must calculate a community school's equity supplement for a fiscal year by multiplying the number of students in the school's enrolled ADM by \$650.

Additionally, the act requires the Department to include a community school's equity supplement in the school's payments for the fiscal year when the Department calculates the school's formula transition aid.

### **Quality Community and Independent STEM School Support Program**

(Sections 265.430, 265.431, and 265.432)

The act extends and revises the Quality Community School Support Program, including by expanding it to cover independent STEM schools. Under the program, the Department must pay each community school and STEM school that is designated as a "School of Quality" up to \$3,000 per fiscal year for each student identified as economically disadvantaged and up to \$2,250 per fiscal year for each student who is not identified as economically disadvantaged.

#### **"Community School of Quality" designation**

Under the act, to be a "Community School of Quality," the community school must meet at least one of the following sets of conditions:

1. The community school meets all of the following:
  - a. The school's sponsor was rated "exemplary" or "effective" on its most recent evaluation;
  - b. The school received a higher performance index score than the school district in which it is located on the two most recent report cards issued;
  - c. The school either:
    - i. Received a performance rating of four stars or higher for the value-added progress dimension on its most recent report card; or
    - ii. Is a school where a majority of its students are either enrolled in a dropout prevention and recovery program operated by the school or are children with disabilities receiving special education and related services, and the school did

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<sup>64</sup> See R.C. 3317.06 and 3317.062, neither in act.

not receive a rating for the value-added progress dimension on the most recent report card; and

- d. At least 50% of the students enrolled in the school are economically disadvantaged.
2. The community school meets all of the following:
    - a. The school's sponsor was rated "exemplary" or "effective" on its most recent evaluation;
    - b. The school is either:
      - i. In its first year of operation; or
      - ii. Opened as a kindergarten school, has added one grade per year, and has been in operation for less than four school years;
    - c. The school is replicating an operational and instructional model used by a community school that qualifies as a Community School of Quality under the first set of conditions; and
    - d. If the school has an operator, its operator received a "C" or better on its most recent performance report.
  3. The community school meets all of the following:
    - a. The school's sponsor was rated "exemplary" or "effective" on its most recent evaluation;
    - b. The school satisfies either of the following:
      - (i) The school contracts with an operator that operates schools in other states and meets at least one of the following:
        - (I) The operator has operated a school that received a grant funded through the federal Charter School Program within the five years prior to the date of application or receiving funding from the Charter School Growth Fund;
        - (II) The operator meets all of the following:
          - One of the operator's schools in another state performed better than the school district in which the school is located;
          - At least 50% of the total number of students enrolled in all of the operator's schools are economically disadvantaged;
          - The operator is in good standing in all states where it operates schools; and
          - The operator does not have any financial viability issues that would prevent it from effectively operating a community school in Ohio.
      - (ii) The school is replicating an operational and instructional model through an agreement with a college or university used by a community school or its

equivalent in another state that performed better than the school district in which it is located.

c. The school is in its first year of operation.

A school that is designated as a Community School of Quality maintains that designation for the two fiscal years following the fiscal year in which it is designated. Schools that were designated as Community Schools of Quality based on the report cards issued for the 2017-2018 and 2018-2019 school years may renew their designation each year, which extends the designation for the two fiscal years following the renewal. Furthermore, a school that was designated as a Community School of Quality for the first time for the 2022-2023 school year maintains that designation through the 2027-2028 school year and may renew its designation each year.

### **Merged community schools**

The act specifically qualifies for the program the surviving community school of a merger that takes place on or after June 30, 2022, provided it otherwise qualifies as a Community School of Quality under one of the sets of criteria described above. Payment for these schools is calculated using the adjusted full-time equivalent number of students enrolled in the school for the fiscal year as of the date the payment is made, as reported by the surviving community school, regardless of whether those students were previously enrolled in a community school that was dissolved as part of the merger.

Finally, the act qualifies a school dissolved under the merger that otherwise qualified for the program to receive and retain funds received under the program prior to October 3, 2023.

### **Independent STEM schools**

A STEM school is an “Independent STEM School of Quality” if it:

1. Operates autonomously;
2. Does not have a STEM school equivalent designation;
3. Is not governed by a school district;
4. Is not a community school;
5. Cannot levy taxes or issue tax-secured bonds;
6. Satisfies continuing law requirements for STEM schools; and
7. Satisfies the requirements described in the Quality Model for STEM and STEAM Schools established by the Department.

### **DOPR community school credential-only programs**

(R.C. 3317.163)

The act addresses how DOPR community schools that operate credential-only programs are funded and how those funds may be used. For purposes of the provision, a “credential-only program” is an industry-approved credentialing program, or series of programs, offered by a DOPR community school that:

1. Enrolls students in grades 11-12;
2. Permits students to earn an industry-recognized credential;
3. Aligns with an approved career-technical education program; and
4. Is offered using classroom teachers employed by the DOPR community school.

The act requires the Department to adjust the career-technical education ADM of a DOPR community school that offers a credential-only program so that each student enrolled in that program is included in the school's category one career-technical education ADM. In addition, the act requires the Department to count each student enrolled in a credential-only program as a full-time student.

Finally, the act permits a DOPR community school that offers a credential-only program to provide support services to its graduates to assist them in securing post-secondary placement opportunities, including careers with state, regional, and local labor organizations. For that purpose, it authorizes a school to use a portion of its career-technical education funds to provide recent graduates, in the year following their graduation, with short-term, emergency financial assistance related to childcare, housing, food insecurity, transportation, and services including healthcare, dental care, mental health care, and addiction treatment.

### **DOPR e-school funding pilot program**

(R.C. 3317.22)

The act makes permanent, and revises the operation of, the pilot program to provide additional funding to eligible dropout prevention and recovery (DOPR) internet- or computer-based community schools (e-schools). Specifically, the act:

1. Expands eligibility to participate in the program to any DOPR e-school, rather than only DOPR e-schools that participated in FY 2021;
2. Requires a DOPR e-school to notify the Department of its intent to participate in the program by February 1 of the school year in which the e-school wishes to participate;
3. Requires the Department to calculate a DOPR e-school's funding under the program using the statewide average base cost per pupil, rather than the formula amount prescribed under prior law; and
4. Eliminates the Department's authority to require a participating DOPR e-school to create a debt reduction plan approved by the school's sponsor.

H.B. 123 of the 133<sup>rd</sup> General Assembly established the pilot program to provide additional funding to eligible DOPR e-schools on a per-pupil basis for school's students in grades 8-12. H.B. 110 of the 133<sup>rd</sup> General Assembly extended the pilot program's operation to FY 2022 and FY 2023 and limited participation only to those DOPR e-schools that participated in FY 2021.

For additional information on the program, see the [LSC Final Analysis \(PDF\) for H.B. 123 of the 133<sup>rd</sup> General Assembly](#), which is available on the General Assembly's website: [legislature.ohio.gov](http://legislature.ohio.gov).

## **School funding based on updated tax year 2021 data**

(Section 265.560)

The act addresses the Department's computation of state foundation aid for a school district whose property tax information was incorrectly reported in tax year 2021. The adjustment applies to a district located in a county that reported incorrect tax data that year for public utility property valued at more than \$14 million.

The act allows the county auditor to certify the corrected property tax data to the Department of Taxation by July 19, 2023. The Department of Taxation must recertify the school district's updated data to the Department of Education and Workforce, which will adjust the district's state foundation aid accordingly.

## **III. Student transportation**

### **Transportation dispute resolution timeline**

(R.C. 3327.021)

Beginning with disputes regarding determinations of school district noncompliance with transportation obligations arising after December 1, 2023, the act requires the Department to issue a determination within 30 days of receiving a dispute. However, the Department may delay a determination to within 45 days of receiving a dispute notice if the Department notifies all affected parties in advance that the determination will be delayed.

Under continuing law, the Department must monitor each school district's compliance with its transportation obligations and penalize school districts that are out of compliance with those obligations.

### **Prohibition on late drop-off**

(R.C. 3327.01)

The act specifically prohibits transportation operators from delivering students late to school. Continuing law already prohibits operators of every school bus or motor van owned and operated by a school district or educational service center (ESC), or privately owned and operated under contract with any school district or ESC in the state from delivering students to their respective public and nonpublic schools sooner than 30 minutes prior to the beginning of school and requires them to be available to pick them up not later than 30 minutes after the close of their respective schools each day.

### **Out of compliance definition and penalties**

(R.C. 3327.021)

The act defines what constitutes noncompliance with school transportation law and specifies how the Department must calculate amounts to be withheld for noncompliance.

Prior law required the Department to deduct a portion of a school district's state transportation funding if the Department determined that the district had consistently, or for a prolonged period, been out of compliance with certain statutory obligations regarding student

transportation. If the Department determined a consistent or prolonged period of noncompliance by a district to meet those obligations, it was required to deduct from the district's state transportation funding the total daily amount of that funding for each day the district is noncompliant.

The act makes changes to that requirement. First, it defines "out of compliance" as a period of five consecutive school days or more than ten school days within a school year in which any of the following occur for each of those days:

1. Students arrive more than 30 minutes late to school;
2. Students are picked up more than 30 minutes after the end of the school day;
3. Students do not receive any transportation at all due to the failure of the bus to arrive;

or

4. Noncompliance with any other student transportation requirements under continuing law.

The act makes an exemption for days in which inclement weather caused any of the above to occur.

Next, the act requires the Department to notify a district if it is found to be out of compliance with its student transportation responsibilities and requires the district to create a corrective action plan to be submitted to the Department within one week of its first notification of noncompliance. Upon further incidents of noncompliance, the act requires the Department to withhold 25% of a district's daily state transportation amount for each day a district is determined to be out of compliance for the next three subsequent determinations of noncompliance in the same school year. Under the act, on the fifth determination of noncompliance in the same school year the Department must withhold 100% of a district's daily state transportation payment amount for each day a district is determined to be out of compliance. The act requires that the noncompliance count be reset to zero at the beginning of the school year.

## **Bus Driver Flex Career Path Model**

(R.C. 3327.102)

The act requires the Department to develop the Bus Driver Flex Career Path Model to create a pathway for bus drivers to work as educational aides or student monitors at districts and schools.

In developing the model, the Department must do all of the following:

1. Ensure that bus drivers work an eight to ten hour shift by doing either a morning or afternoon bus route and spend the remainder of the work day working as an educational aide or student monitor at a school;
2. Make recommendations on how to seamlessly implement the model, including who would be responsible for paying wages in the most efficient way, whether proportional share or not; and
3. Ensure that the model does not adversely impact a bus driver's pension.

## Nine-passenger vehicles

(R.C. 4511.76)

The act authorizes a school district to use a vehicle designed to carry nine passengers or less (not including the driver) to transport students to and from a chartered nonpublic school and a community school for regularly scheduled school sessions if both of the following apply:

1. The number of students transported is nine or less; and
2. The district regularly transports students to that chartered nonpublic school or community school.

Generally, under the Department's rules, the vehicles described above cannot be used routinely for regularly scheduled school sessions, except for transporting preschool children, special needs children, homeless children, foster children, children who are inaccessible to school buses, students placed in alternative schools, or for work programs.<sup>65</sup>

Continuing law also includes a general exception to the Department's rules regarding nine-passenger vehicles by allowing a chartered nonpublic school to use such vehicles to transport its students when either:

1. The local school district has declared transportation of the student impractical; or
2. The student lives more than 30 minutes away from the school.

The act extends this exception to community schools. It also authorizes a chartered nonpublic school and a community school to use the vehicles to and from regularly scheduled school sessions whenever the school has offered to provide its own student transportation.

In any of the above circumstances, the act requires that the following safety standards (many of which are currently part of the Department administrative rules) apply:

1. A qualified mechanic inspects the vehicle at least two times each year and determines that it is safe for pupil transportation.
2. The driver of the vehicle does not stop on the roadway to load or unload passengers (i.e. the driver must pull into a driveway or parking lot instead).
3. The driver meets the standard Department requirements for a school bus or motor van driver (e.g., background checks and training), with the exception that the driver does not need to have a commercial driver's license. The driver must, however, have a current, valid driver's license and be accustomed to operating the vehicle that is transporting the students.
4. The driver and all passengers comply with the seat belt and child restraint system (e.g., booster seats) requirements.

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<sup>65</sup> O.A.C. 3301-83-19.

## **Private and community school transportation – children with disabilities**

(R.C. 3327.01)

The act requires school districts to provide transportation as a related service to students with disabilities who live in the district but attend a nonpublic school if the school district is provided with supporting documentation in the student's individualized education program (IEP) or individual service plan.

### **Pilot program**

(Section 265.550)

The act requires the Department to establish a pilot program under which two educational service centers (ESCs) will provide transportation to students enrolled in participating community schools and chartered nonpublic schools for the 2023-2024 school year, in lieu of the students receiving transportation from their resident school district.

By October 15, 2023, the Department must select an ESC in Franklin County and an ESC in Montgomery County to participate in the pilot program. The Department and the selected ESCs then jointly must identify a school district served by the service center and community schools and chartered nonpublic schools that enroll students from the district for whom the service center will provide transportation during the 2024-2025 school year. The act does not require community schools and chartered nonpublic schools to participate. The act requires the Department to deduct from the school district's transportation payment and pay to the ESC the amount the district would receive for each community and chartered nonpublic school student transported by the ESC.

The Department must evaluate the pilot program and issue a report of its findings not later than September 15, 2025, and participating schools and ESCs must submit data and other information to the Department for the evaluation.

Under the program, ESCs, for the 2023-2024 school year must arrange for a sufficient number of school buses and bus drivers to transport all students from participating schools who qualify for transportation. Participating ESCs must collaborate with participating schools to designate daily start and end times for the 2024-2025 school year that will enable timely and efficient transportation of the schools' students. Further, on behalf of participating schools, ESCs must notify the school district that those schools will not require transportation for the 2024-2025 school year.

School districts and ESCs that participate in the program are exempt from penalties for consistent or prolonged noncompliance with the law requiring student transportation during the 2024-2025 school year with regard to students enrolled in participating schools. However, participating ESCs still must comply with all transportation requirements for students with disabilities as specified in those students IEPs.

## **IV. Literacy and dyslexia screenings and interventions**

### **Third Grade Reading Guarantee**

(R.C. 3313.608 and 3301.163; Section 733.10)

The act exempts a student from retention under the Third Grade Reading Guarantee if the student's parent or guardian, in consultation with the student's reading teacher and building principal, requests that the student be promoted to the fourth grade regardless of whether the student is reading at grade level. The act further requires the school to continue to provide reading intervention services until the student reads at grade level.

#### **Intervention services**

The act generally maintains the requirement that public schools and chartered nonpublic schools that enroll Ed Choice and Cleveland scholarship students must offer intervention and remediation services to students reading below grade level.

However, the act requires districts and schools to provide reading intervention services to a student reading below grade level until the student reaches the required level of skill in reading for the student's current grade level. It further requires that the intervention services include high-dosage tutoring opportunities that are aligned with the student's classroom instruction through a state-approved vendor on the list of high-quality tutoring vendors or a locally approved opportunity that aligns with high-dosage tutoring best practices. The act requires that high-dosage tutoring opportunities include additional instruction time of at least three days per week, or at least 50 hours over 36 weeks. Intervention services also must be aligned to the science of reading as defined under the act.

Finally, the act requires public schools to send, in the written notification to the parents or guardians of a student reading below the required level of skill on the third grade reading assessment, a statement that details the connection between reading proficiency and long-term outcomes of success.

#### **Safe harbor**

The act requires school districts and schools that retained a student for the 2023-2024 school year based on that student's level of achievement on the third grade achievement assessment in reading in the 2022-2023 school year to promote that student to the fourth grade, unless the student's parent or guardian requests that the student continue to be retained for that school year. The act further requires that a student promoted to the fourth grade under this safe harbor receive intensive reading instruction until the student is able to read at the student's current grade level.

### **Dyslexia screenings and interventions**

#### **Transfer students**

(R.C. 3323.251)

The act requires school districts and schools to administer tier one dyslexia screenings and intervention to students enrolled in any of grades K-6 who transfer into the district or school midyear. The dyslexia screenings must be aligned to the grade level in which the student is

enrolled at the time the screening is administered. However, the act exempts a district or school from administering a tier one dyslexia screening measure to a transfer student whose student record indicates that the student received a screening in that school year from the student's original school. Continuing law requires that districts and schools administer a tier one dyslexia screening to students in grades K-6 under prescribed conditions.

The act prescribes the following administrations of a tier one dyslexia screening measure for transfer students:

1. For students enrolled in kindergarten, a district or school must administer a screening measure during the kindergarten class's regularly scheduled screening or within 30 days after the student's enrollment or after a parent, guardian, or custodian requests or grants permission for the screening;

2. For students enrolled in any of grades 1 through 6, a district or school must administer a screening measure within 30 days of a student's enrollment if required, or within 30 days after the student's parent, guardian, or custodian requests or grants permission for the screening.

### **Professional development**

(R.C. 3319.077)

Continuing law requires teachers who teach grades K-3 or special education to grades 4-12 to complete professional development regarding dyslexia. The act specifically applies the phase-in model for dyslexia training as part of a teacher's approved professional development training to teachers employed by the district on April 12, 2021, and specifies the dates by which a teacher must complete the training as follows:

1. Not later than the beginning of the 2023-2024 school year, for each district teacher who provides instruction for students in grades K and 1, unchanged from continuing law;

2. Not later than September 15, 2024, for each district teacher who provides instruction for students in grades 2 and 3;

3. Not later than September 15, 2025, for each district teacher who provides special education instruction for students in grades 4 through 12.

Teachers employed after April 12, 2021, must complete the training by the later of two years after date of hire or the dates specified above for teachers employed prior to that date. However, this does not apply to teachers who already have completed the training while employed by a different district.

### **Literacy improvement grants**

(Section 265.330)

### **Professional development stipends**

The act requires the Department to use up to \$43 million from funds appropriated for literacy improvement in each fiscal year to reimburse school districts, community schools, and STEM schools for stipends for teachers to complete professional development in the science of

reading and evidence-based strategies for effective literacy instruction. It requires the Department to provide the professional development courses.

Districts and schools must require all teachers and administrators to complete a course provided by the Department, not later than June 30, 2025, except that any teacher or administrator who has previously completed similar training, need not complete the course. Teachers must complete the course at a time that minimizes disruptions to normal instructional hours. Districts and schools must pay a stipend to each teacher who completes a course, in the following amounts:

1. \$1,200 for:
  - a. All teachers of grades K through 5;
  - b. All English language arts teachers of grades 6 through 12;
  - c. All intervention specialists, English learner teachers, reading specialists, and instructional coaches who serve any of grades pre-K through 12.
2. \$400 for all teachers who teach a subject area other than English language arts in grades 6 through 12.

Each district and school may apply to the Department for reimbursement of the cost of the stipends. The act prohibits the Department from providing reimbursement to an administrator to complete a professional development course.

The act further requires the Department to work with the Department of Higher Education, institutions of higher education that offer educator preparation programs, and local professional development committees, to help teachers and administrators who complete a professional development course to earn college credit or to apply the coursework towards licensure renewal requirements. Additionally, the Department must collaborate with the Department of Higher Education, and institutions of higher education that offer educator preparation programs to align the coursework of the programs with the science of reading and evidence-based strategies for effective literacy instruction.

### **Subsidies for core curriculum and instructional materials**

The act requires the Department to use up to \$64 million from funds appropriated for literacy improvement to subsidize the cost for school districts, community schools, and STEM schools to purchase high-quality core curriculum and instructional materials in English language arts and evidence-based reading intervention programs from the lists established by the Department.

Further, the Department must conduct a survey to collect information on the core curriculum and instructional materials in English language arts in grades pre-K through 5 and the reading intervention programs in grades pre-K through 12 that are being used by public schools. Each district and school must participate in the survey and provide the information requested by the Department.

## **Literacy supports coaches**

The act requires the Department to use up to \$6 million in FY 2024 and up to \$12 million in FY 2025 from funds appropriated for literacy improvement for coaches to provide literacy supports to school districts, community schools, and STEM schools with the lowest rates of proficiency in literacy based on their performance on the state English language arts assessments. These coaches must have training in the science of reading and evidence-based strategies for effective literacy instruction and intervention and must implement “Ohio’s Coaching Model,” as described in Ohio’s Plan to Raise Literacy Achievement. The coaches will be under the direction of, but not employed by, the Department.

## **Early literacy activities**

The act requires the Department to support early literacy activities to align state, local, and federal efforts in order to bolster all students’ reading success. The Department must distribute these funds to educational service centers (ESCs) to establish and support regional literacy professional development teams consistent with current law requirements. A portion of the funds may be used by the Department for program administration, monitoring, technical assistance, support, research, and evaluation.

## **Literacy instructional materials**

(R.C. 3313.6028)

The act requires the Department to compile a list of high-quality core curriculum and instructional materials in English language arts and a list of evidence-based reading intervention programs that are aligned with the science of reading and strategies for effective literacy instruction.

The act defines the “science of reading” as an interdisciplinary body of scientific evidence that:

1. Informs how students learn to read and write proficiently;
2. Explains why some students have difficulty with reading and writing;
3. Indicates that all students benefit from explicit and systematic instruction in phonemic awareness, phonics, vocabulary, fluency, comprehension, and writing to become effective readers;
4. Does not rely on any model of teaching students to read based on meaning, structure and syntax, and visual cues, including a three-cueing approach.

Beginning not later than the 2024-2025 school year, each school district, community school, and STEM school must use core curriculum, instructional materials, and intervention programs only from the lists compiled by the Department.

The act generally prohibits a district or school from using the “three-cueing approach” to teach students to read unless that district or school receives a waiver from the Department permitting them to do so. The act defines “three-cueing approach” as any model of teaching students to read based on meaning, structure and syntax, and visual cues.

However, the act permits a district or school to apply for a waiver on an individual student basis to use curriculum, materials or an intervention program that uses the “three-cueing approach.” But students who have an individualized education program (IEP) that explicitly indicates use of the three-cueing approach and students who have a reading improvement and monitoring plan under the Third Grade Reading Guarantee do not need a waiver to receive instruction in the “three-cueing approach.”

Prior to approval of a waiver, the Department must consider that district or school’s performance on the state report card, including its score on the early literacy component.

### **Professional development**

The act requires the Department to identify vendors that provide professional development to educators, including pre-service teachers and faculty employed by educator preparation programs, on the use of high-quality core curriculum, instructional materials, and reading intervention programs from the list compiled by the Department that are aligned with the science of reading and strategies for effective literacy instruction.

The act further requires a professional development committee to qualify any completed professional development coursework in literacy instruction provided by a vendor identified by the Department and any coursework toward professional development coursework requirements for teacher licensure renewal. Each committee must permit a teacher roll-over to the next licensure renewal period any hours earned over the minimum amount required for professional development coursework related to literacy.

### **EMIS reporting of literacy instructional materials**

(R.C. 3301.0714)

The act requires each school district, community school, and STEM school to report to the education management information system (EMIS) the English language arts curriculum and instructional materials it is using for each of grades pre-K-5 and the reading intervention programs being used in each of grades pre-K-12.

## **V. State scholarship programs**

### **Ed Choice Expansion eligibility and scholarship amounts**

(R.C. 3310.032, 3310.08, and 3317.022; Sections 265.275 and 265.277)

The act expands eligibility for an Ed Choice Expansion scholarship to *any* student entering grades K-12 in the school year for which a scholarship is sought. It also establishes, in codified law, a logarithmic function formula to calculate scholarship award amounts for students who receive a first-time Ed Choice Expansion scholarship in and after the 2024-2025 school year. The formula replaces the specific scholarship amounts set forth in prior law. Recipients of the scholarship under the expansion prior to that date may continue to receive the amounts they received prior to that date. However, the act permits the parent of any student who received an Ed Choice Expansion scholarship prior to that date to elect to receive the amount calculated under the new formula instead.

That formula will not be used for first-time scholarship recipients in the 2023-2024 school year for FY 2024. Instead of amounts based on the formula, those students will receive specific scholarship amounts based on a student's family income. The act does not affect the eligibility or amounts awarded under traditional Ed Choice scholarships.

### Logarithmic function formula

Under the formula, any student with a family adjusted gross income at or below 450% of the federal poverty level (FPL) will receive the formula's base amount. The formula's base amount is the same scholarship amount that a traditional Ed Choice scholarship recipient receives. Scholarship amounts for students with a family income above 450% FPL are progressively reduced based on family adjusted gross income, with students with higher family incomes receiving smaller amounts. However, the formula establishes a minimum scholarship amount for an Ed Choice Expansion recipient that is equal to 10% of the formula's base amount.

The table below indicates the estimated scholarship amounts for new Ed Choice Expansion recipients under the formula. The first row indicates students who will receive the formula's base amount, the second row indicates students who will receive 50% of the base amount, and the final row indicates students who will receive the formula's minimum amount.

Ed Choice Expansion scholarship amounts for first-time recipients under the formula		
Student's family income based on FPL <sup>66</sup>	K-8 scholarship amount	9-12 scholarship amount
At or below 450% FPL (\$135,000 or less)	\$6,165.00	\$8,407.00
At 550% FPL (\$165,000)	\$3,082.50	\$4,203.50
At or above 785% FPL (\$235,500 or more)	\$615.50	\$840.70

Under the act, the Department must require an applicant for an Ed Choice Expansion scholarship to submit documentation regarding the student's family adjusted gross income for purposes of calculating the student's scholarship amount. The Department must use the

<sup>66</sup> FPL dollar amounts are calculated based on the [HHS Poverty Guidelines for 2023](https://www.hhs.gov/ipo/2023/01/23/poverty-guidelines) for a family size of four issued by the federal Department of Health and Human Services, which are also available at [aspe.hhs.gov](https://aspe.hhs.gov).

documentation submitted for the first school year the student has a scholarship calculated under the formula to calculate the student's scholarship amount for that school year and subsequent school years, unless the student's parent requests for the amount to be recalculated. In that case, the Department must recalculate the scholarship amount based on updated documentation provided by the parent.

The act also requires the Department to provide an opportunity each fiscal year for the parent of a student who received an Ed Choice Expansion scholarship prior to October 3, 2023 to elect to receive a scholarship amount calculated under the formula.

### **First-time scholarship recipients in the 2023-2024 school year**

For FY 2024 only, the act requires the Department to determine a scholarship amount for a student who receives a first-time Ed Choice Expansion scholarship based on the student's family income. The student will, in subsequent years, have a scholarship amount calculated using the logarithmic function formula. A student with a family income at or below 450% FPL must receive the same scholarship amount as a traditional Ed Choice scholarship recipient. For a student with a family income above 450% FPL, the act prescribes specific scholarship amounts based on the student's family income.

The table below indicates the estimated scholarship amounts for students with a family income at or below 450% FPL and the specific prescribed amounts for students with a family income above 450% FPL.

<b>Ed Choice Expansion scholarship amounts for first-time recipients in the 2023-2024 school year</b>		
<b>Student's family income based on FPL<sup>67</sup></b>	<b>K-8 scholarship amount</b>	<b>9-12 scholarship amount</b>
At or below 450% FPL (\$135,000 or less)	\$6,165	\$8,407
Above 450% FPL, but at or below 500% FPL (\$135,001 to \$150,000)	\$5,200	\$7,050

<sup>67</sup> FPL dollar amounts are calculated based on the [HHS Poverty Guidelines for 2023](#) for a family size of four issued by the federal Department of Health and Human Services, which are also available at [aspe.hhs.gov](https://aspe.hhs.gov).

Ed Choice Expansion scholarship amounts for first-time recipients in the 2023-2024 school year		
Student's family income based on FPL <sup>67</sup>	K-8 scholarship amount	9-12 scholarship amount
Above 500% FPL, but at or below 550% FPL (\$150,001 to \$165,000)	\$3,650	\$5,000
Above 550% FPL, but at or below 600% FPL (\$165,001 to \$180,000)	\$2,600	\$3,550
Above 600% FPL, but at or below 650% FPL (\$180,001 to \$195,000)	\$1,850	\$2,500
Above 650% FPL, but at or below 700% FPL (\$195,001 to \$210,000)	\$1,300	\$1,750
Above 700% FPL, but at or below 750% FPL (\$210,001 to \$225,000)	\$900	\$1,250
Above 750% FPL (\$225,001 or more)	\$650	\$950

### Elimination of priority order

The act eliminates the priority order for awarding Ed Choice expansion scholarships if the number of eligible students who apply for a scholarship exceeds the scholarships available based on the appropriation.

## **Ed Choice scholarship selection**

(R.C. 3310.035)

The act permits a student who qualifies for both a traditional Ed Choice and an Expansion Ed Choice scholarship to select which scholarship the student will receive. A student may change which scholarship they receive in each school year.

Under former law, a student that qualified for both scholarships was required to select a traditional Ed Choice scholarship.

## **Use of private scholarships for Ed Choice**

(R.C. 3310.13)

The act permits a chartered nonpublic school to accept scholarships issued by a scholarship granting organization as payment for the difference between the amount of a student's Ed Choice scholarship and the regular tuition charge of the school, as well as for any fees regularly charged by the school. Under continuing law, these schools may charge any student whose family income is above 200% of the federal poverty guidelines up to the difference between the amount of the student's scholarship and the regular tuition charge of the school.

A "scholarship granting organization" is an entity that is certified by the Attorney General as a nonprofit organization that primarily awards academic scholarships for primary and secondary school students and prioritizes awarding scholarships to low-income primary and secondary school students.<sup>68</sup>

## **Ed Choice student growth measure**

(R.C. 3310.15)

The act requires the Department to develop a measure of student growth for Ed Choice scholarship students enrolled in chartered nonpublic schools by July 1, 2025. The measure must be used to report data annually on student growth for students in grades 4-8 during the school year for which data is reported. The act prohibits data from being reported for schools with fewer than 10 scholarship students. The Department must make the growth reports available on its publicly accessible website.

## **Family income disclosure**

(R.C. 3310.13)

The act prohibits a chartered nonpublic school participating in Ed Choice from requiring a student's parent to disclose, as part of the school's admission procedure, whether the student's family income is at or below 200% FPL.

Continuing law prohibits a chartered nonpublic school from charging an Ed Choice scholarship recipient tuition exceeding the recipient's scholarship amount if the recipient's family income is at or below 200% FPL.

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<sup>68</sup> R.C. 5747.73.

## **Autism Scholarship**

### **Eligibility**

(R.C. 3310.41)

The act adds a new qualification as well as qualifies a child under one, instead of both, existing qualifications under prior law.

As a result, the act qualifies a child for the Autism Scholarship Program if any of the following apply to the child:

1. The school district in which the child is entitled to attend school has identified the child as autistic;
2. The school district in which the child is entitled to attend school has developed an individualized education program (IEP) for the child which specifically includes services related to autism; *or*
3. The child has been diagnosed as autistic by a physician or psychologist.

Under former law, a child was eligible for the Autism Scholarship Program if the school district identified the child as autistic *and* the school district developed an IEP for the child.

The act also requires school districts to develop an education plan for a child who is eligible for the Autism Scholarship Program based on an autism diagnosis who does not have an IEP.

### **Intervention services providers**

(R.C. 3310.41 and 3310.43)

The act qualifies certified Ohio behavior analysts as providers that may offer intervention services under the Autism Scholarship Program. The act also qualifies registered behavior technicians to provide intervention services under the Autism Scholarship Program if the registered behavior technician works under the supervision and following the intervention plan of a certified Ohio behavior analyst or a behavior analyst certified by a nationally recognized organization that certifies behavior analysts.

Under continuing law, intervention services under the Autism Scholarship Program may be provided by a qualified, credentialed provider. The act adds registered behavior technicians and certified Ohio behavior analysts to the list of qualified providers.

The act also prohibits the State Board from requiring registered behavior technicians and certified Ohio behavior analysts to receive an instructional assistant permit to qualify to provide services to a child under the Autism Scholarship Program, including in-home services.

### **Cleveland scholarship program location restrictions**

(R.C. 3313.976 and 3313.978)

The act permits a Cleveland Scholarship recipient to use the scholarship to attend any private school, without a restriction on the school's location. Under prior law, eliminated by the

act, only schools located within the Cleveland Municipal School District or a qualifying neighboring municipality could participate.

## **State scholarships – generally**

### **Verification of income**

(R.C. 3310.03, 3310.032, 3310.41, 3310.52, 3313.975, and 3365.07)

The act permits a student’s parent or guardian to certify income eligibility for an Ed Choice Expansion scholarship to the Department by submitting: (1) an affidavit affirming that the student’s family income meets the income requirement, (2) proof of income eligibility under another state or federal program, or (3) other evidence determined appropriate by the Department.

Conversely, the act prohibits the Department from generally requiring the parent of a student who is applying for, or receiving, a traditional Ed Choice, Autism, Jon Peterson Special Needs, or Cleveland scholarship to complete any kind of income verification regarding the student’s family income.

However, the Department may require income verification to qualify low-income Ed Choice or Cleveland scholarship recipients for a waiver of any tuition, textbooks, or fees related to attending a private college through the College Credit Plus (CCP) Program.

### **Tax return information**

(R.C. 3310.032, 3310.13, and 3313.976)

The act exempts an individual who is not required to file a state tax return under continuing law requirements from the requirement to certify income eligibility for an Ed Choice Expansion scholarship. It also prohibits the Department from requiring the parent to submit a complete copy of the parent’s federal or state income tax return to determine the student’s family income for the purposes of the Ed Choice or Cleveland Scholarship Program. Instead, the Department may require a partial federal or state tax return that only contains the minimum amount of information necessary to determine the student’s family income.

### **Reporting of tuition rates**

(R.C. 3310.13, 3310.41, 3310.581, and 3313.976; Section 265.570)

The act requires each of the following entities, by September 30, 2023, for the 2023-2024 school year, and by June 30 prior to each subsequent school year, to submit to the Department the entity’s tuition rates for that year:

1. Chartered nonpublic schools enrolling Ed Choice scholarship recipients;
  2. Private schools enrolling Cleveland scholarship recipients;
  3. Alternative public or register private providers enrolling Autism scholarship recipients;
- and
4. Alternative public or registered private providers enrolling Jon Peterson Special Needs scholarship recipients.

## **Applications after the start of the school year**

(R.C. 3310.16 and 3313.978; Section 265.570)

The act delays the application deadline for receiving the full amount of an Ed Choice or Cleveland scholarship from July 1 to October 15 of the school year for which a scholarship is sought. The act specifies that the Department prorate the amount of a student's scholarship for an application submitted on and after October 15 based on how much of the school year remains after the date of the student's enrollment in school.

## **VI. Community schools**

### **Community school sponsors**

#### **Sponsor changing for schools that serve students with disabilities**

(R.C. 3314.034)

The act makes two changes to the general prohibition against lower-performing community schools entering into a contract with a new sponsor, both of which apply only to schools that primarily serve students with disabilities receiving special education and related services.

First, the act requires that when the Department decides to approve a request to change sponsors from a community school that primarily serves students with disabilities it must at least consider the school's performance against the average performance of all other community schools that primarily serve students with disabilities.

Second, the act permits a community school that primarily serves students with disabilities to enter into a contract with a new qualified sponsor without submitting a request if (1) the school received a rating of at least three stars for progress on its most recent report card and (2) as calculated for the most recent school year, the school's performance index score for students with disabilities is higher than that of the school district in which the school is located.

#### **Community school FTE reporting**

(Section 5 of H.B. 554 of the 134<sup>th</sup> G.A., amended in Sections 610.35 and 610.36)

The act extends through the 2023-2024 and 2024-2025 school years the option for a qualifying community school to elect to report its number of enrolled students to the Department on a full-time equivalent basis using the lesser of:

1. The maximum full-time equivalency for the portion of the school year for which a student is enrolled in the school; or
2. The sum of  $\frac{1}{6}$  of the full-time equivalency based on attendance for the portion of the school year for which a student is enrolled and  $\frac{1}{6}$  of the full-time equivalency for each credit of instruction earned during the enrollment period, up to five credits.

For more information on the provision and the community schools that qualify under it, see the LSC [Final Analysis \(PDF\) for H.B. 554 of the 134<sup>th</sup> General Assembly](#), which is also available at [legislature.ohio.gov](http://legislature.ohio.gov).

## **Dropout prevention and recovery schools**

### **End-of-course exams for DOPR community schools**

(R.C. 3301.0727)

Under the act, a DOPR community school must do both of the following with regard to the administration of end-of-course exams:

1. In addition to the annual testing windows established by the Director, administer the exams in an online or paper format, based on the needs of the student;
2. Adhere to security requirements prescribed under continuing law for those exams.

The Director of Education and Workforce must establish extended ten-week testing windows in the fall and spring for DOPR community schools so that exams may be administered in closer proximity to when students complete related coursework. The Director also must establish a summer testing window for students participating in summer instruction.

The act expressly states this provision does not relieve a DOPR community school from its obligation to administer in-person testing as otherwise required under continuing law.

### **DOPR community school report card**

(R.C. 3314.017)

The act requires the Department to base its rules prescribing performance levels and benchmarks for performance indicators on the DOPR community school state report card, in part, on simulations created by the Department. The act also requires the Department to gather and analyze data from prior school years, rather than leaving that to the Department's discretion. It removes several obsolete provisions related to developing the rating and report card systems.

### **DOPR Advisory Council**

(R.C. 3314.381)

The act establishes the DOPR Advisory Council to provide a forum for communication and collaboration between the Department and parties involved in the establishment and operation of DOPR community schools, including sponsors and operators. The Council consists of the following members appointed by the Director of Education and Workforce:

1. Two members of the State Board of Education;
2. One employee of the Department who works directly with DOPR community schools;
3. Seven individuals with experience in DOPR community schools, their operators, and their sponsors that represent a diverse array of schools in terms of enrollment, programs, learning models, and methods of instruction.

The Advisory Council is required to collaborate with the Director to review all existing rules and guidance previously developed or adopted by the Department imposing on a DOPR community school.

## **Rules and guidelines for DOPR community schools**

(R.C. 3314.382)

The act requires the Department to adopt rules in accordance with the Administrative Procedure Act to impose any requirement on a DOPR community school. It prohibits the Department from developing guidelines – rather than a formally adopted rule – imposing requirements on their general and uniform operation. Prior to adoption of any rules, the newly created DOPR Advisory Council must review those rules. As of October 3, 2023, the act voids any guidance document previously developed by the Department that establishes general and uniform operations for DOPRs.

### **E-school standards**

(R.C. 3314.23)

The act changes the source for the standards with which internet- or computer-based community schools (e-schools) must comply. It requires e-schools to comply with the National Standards for Quality Online Learning developed under a project led by a partnership between Quality Matters, the Virtual Learning Leadership Alliance, and the Digital Learning Collaborative, or any other successor organization. Formerly, e-schools were required to comply with standards developed by the International Association for K-12 Online Learning.

### **Community school closing audit bonds and guarantees**

(R.C. 3314.50)

The act revises the law related to community school closing audit bonds. (For more information, see “**Community school closing audit bonds and guarantees**” in the Treasurer of State portion of this analysis.)

### **JCARR review of changes regarding community schools (VETOED)**

(R.C. 3301.85)

The Governor vetoed a provision that would have required the Department to submit to the Joint Committee on Agency Rule Review (JCARR) any proposed changes to the Education Management Information System (EMIS) or the Department’s “business rules and policies” that may have affected community schools. Once submitted, JCARR would have had to hold public hearings regarding the changes, consider testimony, and vote to determine whether community schools can reasonably comply with those changes.

The act also would have prohibited the Department from implementing any changes to EMIS or its business rules and policies that may affect community schools unless and until JCARR issued a determination that community schools could reasonably comply with the proposed changes.

## VII. Schools

### **Intradistrict open enrollment**

(R.C. 3313.984)

The act requires each school district to report to the Department, in the manner prescribed by the Department, the number of students who attend a school building in the district that is different from the one to which the students are assigned.

If a school district that conducts an enrollment lottery for students through an intradistrict open enrollment policy, the act requires that the district conduct that lottery on the second Monday of June prior to the school year for which the student is seeking enrollment. Continuing law and administrative rule require that each board of education adopt an intradistrict open enrollment policy, under which a resident student may enroll in a different school within the same district, but does not require a school district to assign placement to students based on a lottery system.<sup>69</sup>

### **Virtual education during school closure**

(R.C. 3313.482)

The act addresses how a school district, community school, STEM school, or chartered nonpublic school may make up hours of instruction during a period of school closure for disease epidemic, hazardous weather conditions, law enforcement emergencies, inoperability of school buses or other equipment, damage to a school building, or other temporary circumstances rendering a school building unfit for use.

The act repealed the process under which a district, community school, or chartered nonpublic school could adopt a plan to require students to complete lessons posted on the district or school's website, or paper copies of those lessons distributed to students (known as "blizzard bags"), to make up the equivalent of up to three school days when a school is closed. Instead, it requires a district, community school, STEM school, or chartered nonpublic school to adopt a plan to provide instruction through a virtual education delivery model during school closure.

Under the act, the governing body of each district or school must adopt a plan by August 1 of each school year to provide instruction via online delivery to make up the equivalent of up to three school days. A governing body does not have to adopt a plan for any school it operates that uses an online or blended learning model.

Each plan must ensure continuity of learning and contain the following:

1. A statement that the school, to the extent possible, will provide for teacher-directed synchronous learning in real-time on a virtual learning platform;

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<sup>69</sup> R.C. 3313.97, not in the act, and O.A.C. 3301-48-01.

2. The school's attendance requirements, including how the school will document participation in learning opportunities and how the school will reach out to students to ensure engagement;

3. A description of how equitable access to quality instruction will be ensured, including how the school will address the needs of students with disabilities, English learners, and other vulnerable student populations;

4. The process by which the school will notify staff, students, and parents that the school will be using online delivery of instruction;

5. Information on contacting teachers by telephone, email, or virtual learning platform;

6. A description of how the school will meet the needs of staff and students regarding internet connectivity and technology.

The act requires that each adopted plan include the written consent of the respective teacher's union.

### **Joint vocational school districts**

The board of education of any joint vocational school district, in addition to making up the three school days permitted under the act's general provision, may include in its plan other options to make up any number of additional hours missed as a result of a permitted closure at one of its member school districts, including additional online lessons, planned student internships, and student projects.

### **Minimum number of hours compliance**

If a public or chartered nonpublic school implements a plan that complies with the act's provisions, the school must not be considered to have failed to comply with the minimum number of hours required by continuing law with respect to the number of make-up hours for which the plan is utilized.

### **Seizure action plans**

(R.C. 3313.7117, 3314.03, 3326.11, and 3328.24; Section 733.20)

The act requires each public and chartered nonpublic school to create an individualized seizure action plan for each enrolled student who has an active seizure disorder diagnosis. It must be created by the school nurse, or another district or school employee if a school district or school does not have a school nurse, in collaboration with the student's parent or guardian.

Each plan must include:

1. A written request signed by a parent, guardian, or other person having care or charge of the student to have drugs prescribed for a seizure disorder administered to the student;

2. A written statement from the student's treating practitioner providing the drug information for each drug prescribed for the student for a seizure disorder; and

3. Any other component required by the State Board.

The plan is effective only for the school year in which a written request is submitted and must be renewed at the beginning of each school year. Plans must be maintained in the school nurse's office, or school administrator's office if the school does not employ a full-time school nurse.

For each student who has a seizure action plan in force, a school nurse or school administrator must notify each school employee, contractor, and volunteer who (1) regularly interacts with the student, (2) has legitimate educational interest in the student, or (3) is responsible for the direct supervision or transportation of the student in writing regarding the existence and content of the student's plan.

Further, each school nurse or school administrator must identify each individual who has received training under the seizure action plan in the administration of drugs prescribed for seizure disorders (see below). A school nurse or another district employee also must coordinate seizure disorder care at each school and ensure that all required staff are trained in the care of students with seizure disorders.

Finally, a drug prescribed for a student with a seizure disorder must be provided to the school nurse or another person at the school who is authorized to administer it to the student. The drug also must be provided in the container in which it was dispensed by the prescriber or licensed pharmacist.

### **Training on seizure action plans**

The act requires districts and schools once every two years to train or arrange training for at least one employee at each school, aside from a school nurse, on the implementation of seizure action plans. Training must be consistent with guidelines and best practices established by a nonprofit organization that supports the welfare of individuals with epilepsy and seizure disorders, such as the Epilepsy Alliance Ohio, Epilepsy Foundation of Ohio, or other similar organizations as determined by the Department.

Training must address the following:

1. Recognizing the signs and symptoms of a seizure;
2. Appropriate treatment for a student exhibiting the symptoms of a seizure; and
3. Administering seizure disorder drugs prescribed for the student.

The act limits a seizure training program to one hour and qualifies the required seizure disorder training as a professional development activity for educator license renewal. If the training is provided to a district or school on portable media by a nonprofit entity, the training must be provided free of charge.

Districts and schools also must require each person employed as an administrator, guidance counselor, teacher, or bus driver to complete a minimum of one hour of self-study or in-person training on seizure disorders by October 3, 2025. Any such individual employed after that date must complete a training within 90 days of employment.

## **Qualified immunity**

The act provides a qualified immunity in a civil action for money damages for a school, school district, members of a school district board or school governing authority, and a district's or school's employees for injury, death, or other loss allegedly arising from providing care or performing duties under the act. The immunity does not apply if any act or omission constitutes willful or wanton misconduct.

### **Title**

The act entitles the provisions "Sarah's Law for Seizure Safe Schools Act."

## **Cash payments for school-affiliated events**

(R.C. 3313.5319, 3314.03, 3326.11, and 3328.24)

The act requires qualifying schools to accept cash payments for tickets and concessions at school-affiliated events.

Regarding the sale of concessions specifically, it requires qualifying schools that offer concessions for sale at a school-affiliated event to provide at least one location where an individual may pay cash for concessions. If concessions are sold on multiple floors, at least one location on each floor must accept cash payments.

The act defines "qualifying school" as a school district, community school, STEM school, college preparatory boarding school, or chartered nonpublic school that elects to participate in athletic events regulated by an interscholastic conference or an organization that regulates interscholastic conferences (for example, the Ohio High School Athletic Association). The act also defines "school-affiliated event" as an athletic event, play, musical, or other school-affiliated event or activity that a district or school conducts, sponsors, or participates in and for which a district or school charges admission to attend. However, events conducted in a public facility leased by a professional sports team or a privately owned facility are exempt from this requirement.

## **School meals**

(R.C. 3301.91, 3313.819, 3314.03, and 3326.11)

The act makes school breakfasts and lunches free to all students who qualify for a reduced-priced lunch. It does so by requiring the Department to provide reimbursements to schools and other facilities that participate in the National School Breakfast or Lunch program and by requiring those schools and facilities to provide those meals at no cost to students who qualify for a reduced-price lunch.

Schools and facilities that must provide meals at no cost to qualifying students include:

1. Public schools (including community and STEM schools);
2. Chartered nonpublic schools;
3. Special education programs operated by a county board of developmental disabilities;

and

#### 4. Facilities offering juvenile day treatment services.

The National School Breakfast and Lunch programs are federally assisted meal programs operating in public schools, nonprofit private schools, and residential childcare institutions. For more information on both of the programs please see the [National School Breakfast Program \(PDF\)](#) and [National School Lunch Program \(PDF\)](#) fact sheets prepared by the U.S. Department of Agriculture available at: [www.usda.gov](http://www.usda.gov).

### **Free feminine hygiene products**

(R.C. 3313.6413; conforming changes in 3314.03, 3326.11, and 3328.24)

The act requires all public and chartered nonpublic schools that enroll girls in grades 6-12 to provide free feminine hygiene products for those students. The act further permits schools to offer free feminine hygiene products to students below sixth grade if they so choose. Schools must determine where the products are to be kept in the school. The act specifies that all such products are for use on school premises.

### **Auxiliary services personnel**

(R.C. 3317.06)

The act prohibits school districts from denying a nonpublic school's request for personnel to provide auxiliary services who are properly licensed by a state board or agency.

### **Auxiliary services reimbursement for educational service centers**

(R.C. 3317.06)

The act specifies that if a school district contracts with an educational service center (ESC) to provide auxiliary services, only the ESC may be reimbursed for administrative costs incurred in providing those services.

### **Transmission of transferred student's records**

(R.C. 3319.324; conforming changes in R.C. 3314.03, 3326.11, and 3328.24)

The act requires school districts, community schools, STEM schools, college-preparatory boarding schools, and chartered nonpublic schools to transmit a transferred student's school records upon the request of the district or school that the student is currently attending. A school district or school must transmit the records within five school days after receiving the request unless there is \$2,500 or more of debt attributed to the student. In that case, a school may withhold a student's school records until the debt is paid. Once the debt is paid, the school district or school must transmit the records. If the district or school does not have a record of the student's attendance, it must provide a statement of that fact to the requestor.

### **Pecuniary interest of school board members**

(R.C. 3313.33)

The act creates an additional exception to the general prohibition that no member of a school district board of education or educational service center governing board may have,

directly or indirectly, any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which the person is a member.

Under the new exception, a board member may have a pecuniary interest in a contract of the board if the member is employed by a private institution of higher education that is contracting with the board. Consistent with the requirements of continuing law, the member may not participate in any discussion or debate regarding the contract, nor may the member vote on the contract. Finally, the member must file with the school district or service center treasurer an affidavit stating the member's exact employment status with the private institution of higher education.

### **Nonchartered nonpublic schools**

(R.C. 3301.0732 and 3301.132)

As discussed above, the act transfers the responsibility for adopting minimum education standards from the State Board of Education to the Director of Education and Workforce. However, the act also codifies the State Board's administrative rule establishing standards for nonchartered nonpublic schools and expressly requires the Director to comply with it. Furthermore, the act requires the Director, by January 1, 2024, to amend or rescind any rules necessary to conform to those changes. Thereafter, it prohibits the Director and the Department from adopting any additional rules for nonchartered nonpublic schools.

Nonchartered nonpublic schools, which are also referred to as nonchartered nontax-supported schools, are private schools that choose not to seek a state charter because of a truly held religious belief. They do not receive any state funds. Students enrolled in a nonchartered nonpublic school may participate in extracurricular activities offered by their resident school district and the College Credit Plus Program.

### **Minimum education standards compliance report**

The act requires each nonchartered nonpublic school to annually certify in a report to the parents of its students that the school meets the minimum education standards for nonchartered nonpublic schools. The school must file a copy of that report with the Department by September 30 of each year.

### **Hours of instruction**

A nonchartered nonpublic school must be open for instruction the same number of hours as schools operated by a school district, with students in attendance for:

1. 455 hours for students in half-day kindergarten;
2. 910 hours for students in full-day kindergarten through grade 6;
3. 1,001 hours for students in grades 7-12.

### **Attendance report**

The act requires the parent of a student to report to the student's resident school district the student's enrollment or withdrawal from a nonchartered nonpublic school. The act permits

but does not require the nonchartered nonpublic school, as a matter of convenience, to report to the treasurer on behalf of the parents.

Each attendance report must include the name, age, and place of residence of each student below 18 years of age. The report must be made within the first two weeks of the beginning of each school year. When a student withdraws or enrolls during the school year, that notice must be given within the first week of the next school month.

### **Teachers and administrators – educational requirements**

The act requires teachers and administrators at nonchartered nonpublic schools to hold at least a bachelor's degree, or the equivalent, from a recognized college or university.

Continuing law, unchanged by the act, requires teachers, supervisors, and administrators in nonchartered nonpublic schools to receive a certificate from the State Board. The State Board must issue a certificate to any individual who has received:

1. A bachelor's or master's degree from an accredited college or university in the United States;
2. At the State Board's discretion, a degree from a foreign college or university that is equivalent to a bachelor's degree from an accredited U.S. college or university;
3. A diploma from a bible college or bible institute.

### **Curriculum requirements**

Each nonchartered nonpublic school must include in its curriculum the study of:

1. Language Arts;
2. Geography, U.S. and Ohio history, and national, state, and local government;
3. Math;
4. Science;
5. Health;
6. Physical Education;
7. The fine arts, including music;
8. First aid, safety, and fire prevention;
9. Other subjects as determined by the school.

### **Grade promotion**

Each nonchartered nonpublic school must also follow regular procedures for promotion from grade to grade for students who have met the school's educational requirements.

### **Health and safety**

The act requires each nonchartered nonpublic school to comply with all applicable health, fire, and safety laws.

## **Transportation, auxiliary services, and administrative cost reimbursement**

Finally, the act clarifies that students attending nonchartered nonpublic schools are not entitled to transportation or auxiliary services, and that nonchartered nonpublic schools are not entitled to reimbursement for administrative costs.

## **Home education and school attendance**

(R.C. 3301.132 and 3321.042; conforming changes in numerous R.C. sections)

The act exempts from the compulsory school attendance law any child who is receiving a home education in the subject areas of English language arts, math, science, history, government, and social studies. For the purposes of the provision, a “home education” is the education of a child between 6 and 18 years old that is directed by the child’s parent, so long as that child is not enrolled full time in a public or chartered nonpublic school.

A child’s parent or guardian must transmit a notice to the superintendent of the child’s school district of residence within five days of commencing home education, moving into a new school district, or withdrawing from a public or nonpublic school and by August 30 of each year thereafter. The notice must provide the parent’s name and address, the child’s name, and an assurance that the child will receive an education in the required subject areas. The child’s exemption is effective immediately upon receipt of the notice.

The superintendent must provide the parent or guardian with a written acknowledgement of the superintendent’s receipt of the notice within 14 calendar days after receiving the notice. A child with an exemption is not required to receive an excuse for the purposes of home instruction under continuing law.

A child who is enrolled in a public school after any period of home education must be placed in the appropriate grade level, without discrimination or prejudice, based on the policies of the child’s district of residence.

The act expressly states that the law regarding exemptions for the purposes of home education is not subject to any rules adopted by the Department of Education and Workforce or the Director of Education and Workforce. It also requires the Director to rescind any rules regarding the issuance of excuses from compulsory attendance for the purposes of home education.

However, if there is evidence that a child who has received an exemption is not receiving an education in the required subject areas, that child may be subject to state truancy law.

## **VIII. Educator and other school employee licensing and permits**

### **Ohio Teacher Residency Program**

(R.C. 3319.223)

The act makes changes to the three components of the Ohio Teacher Residency (OTR) program: (1) mentoring, (2) counseling, and (3) measures of appropriate progression through the program (successful completion of the Resident Educator Summative Assessment (RESA)).

## **Mentoring**

The act specifically permits both online and in-person mentoring to participants. It also requires the state Superintendent to provide participants and mentors with no-cost access to online professional development resources and sample videos of Ohio classroom lessons submitted for the RESA.

## **Counseling**

The act requires the state Superintendent to provide to each participant who does not receive a passing score on the RESA the opportunity to meet online with an instructional coach who is a certified assessor of the RESA to review the participant's results and discuss improvement strategies and professional development. These participants must receive the training at no cost.

Participants who choose to meet with an instructional coach must select from an online pool of instructional coaches who have completed training and are approved by the state Superintendent. The characteristics of each coach's school or district, including its size, typology, and demographics, must be made available. However, participants are not required to choose an instructional coach from a similar district and school.

The act also permits participants who have not taken the RESA to meet with approved coaches if the participant's district or school pays the costs associated with the meetings.

## **Measures of progression**

The act invalidates an administrative rule prohibiting participants from attempting the RESA more than three times and instead permits an unlimited number of attempts.

The act creates a window of time within which participants may submit the RESA. Participants may send RESA submissions between the first Tuesday of October and the first Friday of April of participants' second year in the program. The results of each RESA must be returned within 30 days after submission unless a new assessor is contracted. In that case, the results of each RESA must be returned within 45 days.

## **Alternative resident educator license**

(R.C. 3319.26)

The act reduces the length of the alternative resident educator license from four to two years and reduces the number of years that an individual must teach under the alternative resident educator license before receiving a professional educator license from four to two years. It also specifies that an individual must complete at least 12 hours or the equivalent in the principles and practices of teaching to convert to a professional educator license. It makes the alternative resident educator license renewable generally, rather than renewable only for reasons determined by the State Board or as necessary to complete the Ohio Teacher Residency Program.

The act also permits the holder of an alternative resident educator license to teach preschool students.

## **Conversion to alternative educator license**

The act removes participation in the Ohio Teacher Residency Program from the conditions of holding an alternative resident educator license. Instead, the holder of an alternative resident educator license is permitted to convert that license to a renewable alternative educator license, provided the license holder (1) shows satisfactory progress in taking and successfully completing professional development provided by a teacher preparation program that has been approved by the Chancellor of Higher Education and (2) passes an assessment of professional knowledge in the second year of teaching under the alternative resident educator license.

An alternative resident educator license holder may still apply for and receive a professional educator license after completing certain prescribed requirements unchanged by the act, including completion of the Teacher Residency Program.

## **Temporary substitute teacher license**

(R.C. 3319.102; Sections 107.30 and 107.31)

The act makes permanent a provision permitting a public or chartered nonpublic school or educational service center to hire a substitute teacher who does not hold a post-secondary degree, provided the teacher is of good moral character, meets the district's or school's own set of educational requirements, and passes a background check. (A similar provision applied for the 2021-2022, 2022-2023, and 2023-2024 school years only.) The act also establishes a one-year temporary substitute teaching license for individuals who meet the specified criteria, and requires the State Board to establish procedures and criteria under which that license may be renewed.

## **Out-of-state teacher license**

(R.C. 3319.2210)

The act permits an applicant for a one-year nonrenewable out-of-state teaching license who passes Ohio's Foundations of Reading Exam on the first try to forgo the required completion of coursework in the teaching of reading. Continuing law, unchanged by the act, requires an applicant for a resident educator license designated for teaching children in grades K-6 or the equivalent to have successfully completed at least six semester hours, or the equivalent, of coursework in the teaching of reading that includes at least one separate course of at least three semester hours, or the equivalent, in the teaching of phonics in the context of reading, writing, and spelling.

## **Licensure grade bands**

(R.C. 3319.22)

The act amends the grade bands for which an individual may receive a resident educator license, professional educator license, senior professional educator license, or a lead professional educator license to pre-K through 8 or grades 6 through 12. However, the act permits a school district or community school to employ a licensed educator to teach not more than two grade levels outside of the grade band designated on that educator's license for not more than two school years at a time. The school district superintendent or community school governing

authority may opt to renew the educator's eligibility to teach outside of grade band every two years.

Under prior law, the grade bands for licensure are pre-K through 5, grades 4 through 9, or grades 7 through 12.

### **Pre-service teaching for compensation**

(R.C. 3319.0812 and 3319.088; conforming changes in R.C. 3314.03 and 3326.11)

The act creates a three-year pre-service teaching permit for student teachers. Under the permit, student teachers may substitute teach and receive compensation for it. The State Board must adopt rules establishing the permit for students enrolled in educator preparation programs. Students must obtain the permit to student teach, participate in other training experiences, and serve as substitute teachers. A permit holder may substitute teach for up to one full semester, and be compensated for that service.

The act permits the school district or school employer to approve one or more additional subsequent semester-long period of teaching for the permit holder. It also permits the State Board, on a case-by-case basis, to extend the permit's duration to enable the permit holder to complete the educator preparation program in which the permit holder is enrolled.

Applicants for a pre-service teacher permit must submit to a criminal records check and be enrolled in the retained applicant fingerprint database (RAPBACK) in the same manner as any other licensed teacher. The act requires the Department to notify an educator preparation program if an applicant has been arrested or convicted and authorizes the school district or school to take any action prescribed by law. Upon receiving that notice, the educator preparation program must provide to the Department a list of all school districts and schools to which the pre-service teacher has been assigned as part of the program.

The act eliminates provisions of law that conflict with the act's changes. Namely, it eliminates the law that prohibits requiring students preparing to become licensed teachers or educational assistants from holding an educational aide permit or paraprofessional license when they are assigned to work with a teacher in a school district. The act also eliminates the prohibition from those students receiving compensation.

### **Alternative military educator teaching license**

(R.C. 3319.285)

The act requires the State Board, in consultation with the Chancellor of Higher Education, to establish an alternative military educator license that permits eligible military individuals to receive an educator license on an expedited timeline. For the license, the State Board must allow eligible military individuals to apply leadership training or other military training toward requirements for college coursework, professional development, content knowledge examinations, and other licensure requirements. Under the act, an "eligible military individual" includes:

1. An active-duty member of any branch of the U.S. armed forces;

2. A veteran of any branch of the U.S. armed forces who separated from service with an honorable discharge;
3. A member of the National Guard or a member of a reserve component of the U.S. armed forces; or
4. A spouse of an eligible member or veteran.

The act permits the State Board to work with the Credential Review Board to determine the types of military training that correspond with the educational training needed to be a successful teacher.

Under continuing law, a qualifying unlicensed veteran may teach a noncore course at a school district if the veteran has meaningful teaching or other instructional experience.<sup>70</sup>

### **Computer science educator licensure**

(R.C. 3319.236; Section 610.120, amending Section 733.61 of H.B. 166 of the 133<sup>rd</sup> General Assembly)

#### **40-hour license for industry professionals**

Under continuing law, an individual generally must hold a valid license in computer science, or have a licensure endorsement in computer technology and a passing score in a computer science content exam, to teach computer science courses.

As an exception to that general requirement, the act requires the State Board to create a teaching license for industry professionals to teach computer science courses for up to 40 hours each week. A license holder may not teach any other subject. The Superintendent of Public Instruction must consult with the Chancellor of Higher Education in revising the requirements for licensure in computer science.

#### **Grade band specifications**

The act requires that each license for teaching computer science specify whether the educator is licensed to teach in grades K-12, pre-K-5, 4-9, or 7-12.

#### **Temporary exemption from licensure**

The act extends through the 2024-2025 school year an exemption that permits a public school to permit an individual who holds a valid teaching license to teach computer science in any of grades K-12, if, prior to teaching the course, the individual completes a professional development course that provides computer science content knowledge. The superintendent or principal must approve any professional development program endorsed by the College Board, the organization that creates and administers the national Advanced Placement examinations, as appropriate for the course the individual will teach. The individual may not teach a computer science course in a school district or school other than the one that employed the individual when the individual completed the professional development program. Beginning July 1, 2025, a

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<sup>70</sup> R.C. 3319.283, not in the act.

district or school may allow an individual to teach a computer science course only if the individual satisfies the requirements of permanent law.

It also extends the grade bands for which a license holder who takes advantage of the exemption must be licensed to teach from any of grades 7-12 to any of grades K-12.

### **Financial literacy license validation**

(R.C. 3319.238 and 3319.239)

The act exempts all chartered nonpublic schools from the general requirement that teachers who provide high school financial literacy instruction have a financial literacy license validation. Prior law exempted only chartered nonpublic schools that do not accept students with state scholarships. The act also disqualifies chartered nonpublic schools from receiving state reimbursement for costs associated with financial literacy license validation for teachers.

### **School counselor licensure**

(R.C. 3319.2213)

The act requires the State Board to enter into an agreement with a construction trade organization located in Ohio, such as ACT Ohio, to develop a mandatory training program to educate school counselors about building and construction trades career pathways. Each licensed school counselor serving students in any of grades 7-12 must complete four hours of this training every five years. Those four hours may count toward meeting professional development activity requirements established by the State Board for licensure renewal. However, the act permits an individual who begins working with students in grades 7-12 and is in the last two years of the individual's five-year renewal period to complete this training during the next renewal period.

The training must be completed at a building and construction trades training facility and include information about:

1. The pay and benefits available to people who work in the building and construction trades; and
2. Job opportunities and available apprenticeships for boilermakers, electrical workers, bricklayers, insulators, laborers, iron workers, plumbers and pipefitters, roofers, plasterers and cement masons, sheet metal workers, painters and glazers, elevator constructors, operating engineers, teamsters, and carpenters.

The act requires local professional development committees to incorporate the training as part of the independent professional development programs for school counselors that serve students in any of grades 7-12. Participating building and construction trades are required under the act to ensure ample opportunities for school counselors to complete the training during each licensure renewal cycle. Additionally, participating trades training facilities (or the entity with which the State Board enters into an agreement) must bear all costs associated with the training.

## **Community school employee misconduct**

(R.C. 3314.03 and 3314.104)

The act prohibits a community school from employing a person if the State Board permanently revoked or denied the person's educator license or if the person entered into a consent agreement in which the person agreed not to apply for an educator license in the future. It also requires that each community school sponsorship contract include the same prohibition.

## **Private school educator certification**

(R.C. 3301.071)

The act makes explicit that the State Board must issue teaching certificates to private school administrators, supervisors, and teachers who hold master's degrees from an accredited college or university without further educational requirements. Continuing law already requires the same for individuals who hold bachelor's degrees.

## **Mental health training for athletic coaches**

(R.C. 3313.5318 and 3319.303; conforming changes in R.C. 3313.5310, 3314.03, 3326.11, and 3328.24)

The act prohibits an individual from coaching an athletic activity at a public or nonpublic school unless the individual has completed a student mental health training course approved by the Department of Mental Health and Addiction Services. The prohibition applies only to schools that are subject to rules of an interscholastic conference or an organization that regulates such conferences (for example, the Ohio High School Athletic Association). An individual must (1) complete the training each time the individual applies for or renews a pupil-activity program permit and (2) present evidence of each successful completion to the State Board. However, the individual may complete the training at any time within the duration of the individual's new or renewed permit.

The act also directs the State Board to require each individual applying for a pupil-activity program permit renewal to present evidence that the individual has completed the training. The training may be completed as part of another training course.

### **Frequency of other trainings required for permit renewal**

The act changes the frequency of trainings required to renew a pupil-activity program permit as follows:

- For sudden cardiac arrest training, from annually to within the duration of an individual's previous permit; and
- For brain trauma and brain injury management (concussion) training, from within the previous three years to within the duration of an individual's previous permit.

## **RAPBACK and criminal records checks**

(R.C. 3319.316, 3319.391, and 3327.10)

### **Nonlicensed school employees**

The act requires the State Board, rather than the Department on its behalf, to enroll the following individuals employed by or engaged in providing services to a school district, educational service center (ESC), or chartered nonpublic school in the Retained Applicant Fingerprint Database (RAPBACK):

1. Any nonlicensed employee, including a bus driver;
2. Any contractor not licensed by the State Board;
3. Any contractor that holds a position that does not require a registration issued by the State Board.

The act authorizes and requires the State Board to promptly transmit any notification received regarding a person subject to RAPBACK to the person's employer. To facilitate that process, the Bureau of Criminal Identification and Investigation (BCII) must first make the initial criminal records check requested by an employer available to the State Board. The act requires the State Board to use that information to enroll the person in RAPBACK in the same manner as licensed teachers. If the State Board is unable to enroll the person because the person has not satisfied enrollment requirements, the State Board must notify the employer of the person's failure to satisfy those requirements. BCII is not required to make available to the State Board the records check of anyone who is already enrolled in RAPBACK on the date the person's employer requests a records check. The act requires the State Board to inform the employer of any arrest, guilty plea or conviction of any person subject to the act's RAPBACK provisions.

The act requires that when the most recent criminal records check requested for a person subject to the act's RAPBACK provisions was completed more than one year prior to the date of the most recent request, or if the records check does not include adequate information, the employer must request a new criminal records check that includes all required information, by a date prescribed by the State Board and every six years thereafter.

### **School volunteers**

The act specifically excludes from RAPBACK enrollment and criminal records checks any person who volunteers at a school building within a district, ESC, or chartered nonpublic school, including a parent volunteer in a student's classroom.

## **IX. Student performance data**

### **Online high school graduation rates**

(R.C. 3302.0310)

The act requires the Department to include a modified graduation rate measure on the state report card issued for an online high school operated by a school district or an internet- or computer-based community school (e-school), including dropout prevention and recovery schools. However, the modified graduation rate is a performance measure without an assigned

performance rating, meaning the graduation rate is used as an indicator of the school's performance but is not factored into the school's report card rating.

The modified graduation rate is calculated in the same manner as the four-year adjusted cohort graduation rate, except that it only includes students who are deemed "graduation eligible students." Graduation eligible students are students who, when enrolling in the school for the first time, are in the twelfth grade and have earned at least 15 high school credits. The modified calculation does not include students who are automatically withdrawn from the online school due to an unexcused failure to participate in learning opportunities for 72 consecutive hours and who do not re-enroll in a school from the modified graduation rate's calculation.

Except as required by federal law, the Department must report the modified graduation rate as data without an assigned performance rating beginning with the report card for the 2023-2024 school year.

### **Individual student performance reports on value-added data**

(R.C. 3302.021)

The act requires the Department to make individual student performance data reports available to districts and schools that have an overall value-added progress dimension score calculated on the state report card. The reports must include data regarding student level percentiles, normal curve equivalents, unique identifiers, and other data each school year that a district or school has an overall value-added progress dimension score calculated. The act also requires the Department to make available the data used to calculate the district's or school's overall growth rating. The reports must be made available in an electronic spreadsheet form, as soon as practicable each school year. Finally, the act explicitly subjects the data sharing requirements to state and federal student privacy laws.

### **Report of state assessment scores**

(R.C. 3313.6029, 3314.03, 3326.11, and 3328.24)

The act requires each public and chartered nonpublic school, by June 30 of each school year, to provide a student's parent with the student's score on any state assessment administered to the student in that year. Specifically, the school must mail or email the scores to the parent or post them in an accessible portal on the school's website.

## **X. Career-technical education and workforce development**

### **Career-technical cooperative education districts**

(R.C. 3313.831, 5705.2114, and 5705.01)

#### **Establishment and purpose**

On and after July 1, 2024, the act authorizes the boards of education of two or more city, local, or exempted village school districts that are members of the same compact career-technical education provider, by adopting identical resolutions, to enter into an agreement to create a career-technical cooperative education district. The purpose of a cooperative district is to fund and provide students enrolled in grades 7-12 in member districts with a career-technical

education adequate to prepare them for an occupation. The act limits eligibility only to the member districts of compact career-technical education providers that exist on October 3, 2023.

A cooperative district is not a joint vocational school district. Rather, it must be considered a career-technical education compact for the purposes of state education law. The cooperative district must be a lead district of a career-technical planning district and provide career-technical education leadership to its member districts. The Department of Education and Workforce must create an internal retrieval number for the cooperative district.

An agreement establishing a cooperative district may be amended under terms and procedures mutually agreed to by member districts. A cooperative district's territory is composed of the combined territories of its member districts. Services funded by a cooperative district must be available to all individuals enrolled in member districts.

## **Governance**

### ***Board of directors***

Each cooperative district is governed by a board of directors. The superintendent of each member district must serve on the board of directors. The board of directors is a public body for the purposes of Ohio's open meetings law. Its records and the cooperative district's records are public records. The cooperative district is a public office and its directors are public officials with respect to the Ohio law that grants the Auditor of State authority to conduct audits of public offices. The district is also a political subdivision for the purposes of state law governing political subdivision tort liability.

The board of directors is a body corporate and politic. The board of directors is capable of suing and being sued, contracting within the limits of the provision and the district agreement, and accepting gifts, donations, bequests, or other grants of money.

Directors cannot receive compensation, but must be reimbursed for reasonable and necessary expenses incurred in the performance of their duties of the cooperative district. The district agreement must provide for the terms of office of directors, the conduct of the board's initial organizational meeting, the frequency of subsequent meetings, and quorum requirements. The board of directors, at its first meeting, must designate from among its members a president and secretary, in a manner provided in the district agreement.

The district agreement must require the board of directors to designate a permanent location for its office and meeting place. The agreement also may provide for the use of facilities and property for the provision of services by the agencies with which the board of directors contracts to provide services.

### ***Fiscal officer***

The district agreement must provide for the manner of appointment of an individual or entity to perform the duties of fiscal officer for the cooperative district. The agreement must specify the length of time an individual or entity must perform those duties and whether the individual or entity may be reappointed upon completion of a term. The fiscal officer may receive compensation for performing those duties and be reimbursed for reasonable expenses related to performing those duties from the cooperative district's special fund.

### ***Legal adviser***

The prosecuting attorney of the most populous county containing a cooperative district's member district must serve as the cooperative district's legal adviser. The prosecuting attorney must prosecute all actions against a member of the board of directors for malfeasance or misfeasance in office. Additionally, the prosecuting attorney must be legal counsel for the board of directors and its members in all other actions brought by or against them and conduct those actions in the prosecuting attorney official capacity. A prosecuting attorney cannot receive compensation in addition to the prosecuting attorney's regular salary.

### ***Insurance***

The board of directors of a cooperative district must procure a policy or policies of insurance insuring the board, its fiscal officer, and its legal representative against liability on account of damage or injury to persons and property. Before procuring such insurance, the board of directors must adopt a resolution setting forth the amount of insurance to be purchased, the necessity of the insurance, and a statement of its estimated premium cost. The procured insurance must be from one or more recognized insurance companies authorized to do business in Ohio. The cost of the insurance must be paid from the district's special fund.

### **Career-technical education services**

To provide career-technical education services, the board of directors of a cooperative district must provide for the hiring of employees or contract with one or more entities, including a cooperative district's member district, an educational service center, or a state institution of higher education. The district agreement must:

1. Provide for the distribution of services provided by the cooperative district and a resident district. The agreement must specify which services will be provided by the employees of member districts and which will be provided by the cooperative district.
2. Include a statement of how transportation of students to and from school will be provided by the cooperative district. The statement must include at least both of the following:
  - a. How special education students will be transported as required by their individualized education program; and
  - b. Whether the transportation to and from school will be provided to any other students of the cooperative district and, if so, the manner in which transportation will be provided.

### **Funding**

In addition to its authority to accept gifts, donations, bequests, and other grants of money, the act authorizes a cooperative district to levy voter-approved property taxes throughout the district. To do so, a majority of the boards of education of the school districts that make up the district must approve of the levy proposal before the board of directors may adopt a resolution to submit the question to the voters. The question may be submitted at a general or primary election at least 90 days after the resolution is certified to the county board of elections. The resolution must specify the rate or amount of the tax, up to three mills, and either the number of years that the tax will be levied or that the tax will be levied for a continuing period of time. The tax may be renewed by and must otherwise follow procedures applicable to other,

similar tax levies. The board of directors must create a special fund to hold the proceeds of its property tax levy and its gifts, donations, bequests, and other grants.

The act also requires the Department to compute and make payments to a cooperative district in the same manner as it makes payments to a lead district of a career-technical planning district.

### **Addition of a new member district**

The board of education of a school district may join an existing cooperative district by adopting a resolution requesting to join and upon approval by the boards of education of current member districts. If the cooperative district has levied a property tax in the district, a board of education may join the district only after a majority of qualified electors in the school district voting on the question vote in favor of levying the tax throughout the district. A board of education joining an existing cooperative district must have the same powers, rights, and obligations under the district agreement as other member districts.

### **Withdrawal of a member district**

The act permits the board of education of a member district to withdraw that district from a cooperative district by adopting a resolution. If a property tax is levied on the cooperative district, the resolution must take effect no later than the first day of January following the resolution's adoption. Beginning with the first day of January following the resolution's adoption, any property tax levied by the cooperative district cannot be levied in the withdrawing district.

Any tax collected in the territory of the withdrawing district that has not been settled and distributed when the resolution takes effect must be credited to the district's special fund.

### **Dissolution of a cooperative district**

A district agreement must provide for the manner of the cooperative district's dissolution. The cooperative district must cease to exist when no more than one member district remains in the district and the property tax levied cannot be extended beginning the year after the district's dissolution. The district agreement must provide that, upon dissolution of the district, an unexpended balance in the district's special fund must be divided among the member districts party to the agreement immediately before dissolution of the district, in proportion to the taxable valuation of the taxable property in the member districts, and credited to their respective general funds.

### **Courses at Ohio technical centers**

(R.C. 3313.901)

Upon approval by the Department, the act permits school districts to contract with an Ohio technical center (OTC) to serve students in grades 7-12 who are enrolled in a career-technical education program at the district but cannot enroll in a course at the district due to one of the following reasons:

1. The course is at capacity and cannot serve all students who want to enroll in the course.
2. The student has a scheduling conflict that prevents the student from taking the course at the time offered by the district.

3. The district does not offer the course due to lack of enrollment, lack of a qualified teacher, or lack of facilities.

4. Any other reason determined by the Department.

Districts must apply to the Department for approval to contract with an OTC and submit a plan describing how the district and the OTC will establish a collaborative partnership to provide career-technical education to students.

The act also requires a district approved by the Department to do the following:

1. Award a student high school credit for completion of a course at an OTC;

2. Report in EMIS a student who spends time in an OTC course as being enrolled in the district for that time, but also indicate the student is taking a course at the OTC. However, the act prohibits the district from counting a student taking a course at an OTC as more than one full-time equivalent student, unless the student is enrolled full-time in the district during the regularly scheduled school day and takes an OTC course outside normal school hours;

3. Pay to the OTC, per student, the lesser of the standard tuition charged for the course at the OTC or one of the following:

a. If the OTC is located on the same campus as the student's high school, the sum of the statewide average base cost per pupil and the appropriate career-technical category amount, multiplied by the student's full-time equivalency while enrolled in the OTC course, and without the district's state share percentage applied; or

b. If the OTC is not located on the same campus as the student's high school, \$7,500.

The act permits a district and an OTC to enter into an agreement to establish alternate amounts that the district must pay to the OTC.

Under the act, districts may use career-technical education funds to pay for any costs incurred by students enrolling in courses at an OTC. Further, the Department must consider the cost of student OTC enrollment as an approved career-technical education expense. Finally, the act permits an individual who holds an adult education permit issued by the State Board and is employed by an OTC to provide instruction to a student in grades 7-12 enrolled in a course at an OTC.

## **DOPRs and career-technical programs**

(R.C. 3317.161)

The act adds dropout prevention and recovery programs (DOPRs) of school districts, community schools, and STEM schools to the approval process for state funding for career-technical education programs.

It also requires the Department to authorize a payment for any DOPR offering career-technical education that is in its first year of operation and that submits an application for approval after the May 15 deadline established under continuing law for the fiscal year for which the application was submitted.

## **Workforce Development**

(R.C. 3313.6020, 6301.04, 6301.11, 6301.111, and 6301.112)

### **Career opportunity informational materials**

The act requires the Department to develop and make available informational materials for seventh and eighth graders about career opportunities available to them, including in-demand jobs. The materials also must address how a career-technical education may help those students satisfy state high school graduation requirements.

### **In-demand jobs list**

The act requires the Department to participate in the process established under continuing law to identify and publicize in-demand jobs. Specifically, the act:

1. Adds the Department to the entities required to develop a methodology to identify in-demand jobs and use that methodology to create an in-demand jobs list;
2. Requires the Department to post the in-demand jobs list on its website;
3. Adds the Department to the entities required to conduct a survey of employers about in-demand jobs and use the survey's results to update the in-demand jobs list; and
4. Adds the Department to the entities required to establish the OhioMeansJobs website.

### **Governor's Executive Workforce Board**

The act adds the Deputy Director of Primary and Secondary Education and the Deputy Director of Career-Technical Education to the Governor's Executive Workforce Board.

## **XI. Other**

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

(R.C. 3317.13)

The act amends the statutory minimum teaching salary schedule. It increases the minimum base salary for beginning teachers with a bachelor's degree from \$30,000 to \$35,000 and proportionally increases the minimum salaries for teachers with different levels of education and experience.

Under continuing law, each school district board of education and each educational service center governing board must adopt an annual teacher salary schedule that complies with the statutory minimum. That schedule must be either merit-based or contain provisions for increments based on training and years of service. In practice, however, the compensation rate is generally set by way of collective bargaining between the employing board and the organization representing the teachers.<sup>71</sup>

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<sup>71</sup> R.C. 3317.14 and 3317.141, neither in the act.

## **English learners**

(R.C. 3301.0711, 3301.0731, and 3302.03; conforming in R.C. 3313.61, 3313.611, 3313.612, and 3317.016)

The act eliminates an exemption that excused English learners who have been enrolled in a school in the United States for less than a full school year from being required to take any reading, writing, or English language arts assessment. The act maintains an exemption for English learners who have been enrolled in a U.S. school for less than two years and for whom no appropriate accommodations are available.

The act also eliminates an exemption that excluded, except as required by federal law, English learners who have been enrolled in a U.S. school for less than one school year from state report card performance measures. It requires English learners to be included on the state report card in accordance with the state's federally approved plan to comply with federal law.

Finally, the act requires the Director to adopt rules regarding the identification, instruction, assessment, and reclassification of English learners. The rules must conform to the Department's plan, as approved by the U.S. Secretary of Education, to comply with the federal "Elementary and Secondary Education Act of 1965."

## **School emergency management plans**

(R.C. 5502.262)

The act clarifies that all records *related to* a school's emergency management plan and emergency management tests are security records and are not subject to Ohio's public records laws. Continuing law specifies that copies of the emergency management plan and all of the following information incorporated into the plan are security records and are not subject to Ohio's public records laws:

1. Protocols for addressing serious threats to the safety of property, students, employees, or administrators;
2. Protocols for responding to any emergency events that occur and compromise the safety of property, students, employees, or administrators;
3. A threat assessment plan;
4. Protocols for school threat assessment teams; and
5. Information posted to the Contact and Information Management System.

The act extends the deadline for a school administrator to submit the school district's or school's annual emergency management plan to the Director of Public Safety from July 1 to September 1.

## **School counselor liaison**

(R.C. 3301.139)

The act requires the Director to designate at least one Department employee to serve as a liaison to school counselors across the state to support their efforts to advance students'

academic and career development. In determining who to designate as liaison, the Director must give preference to individuals who hold a valid pupil services license in school counseling.

### **Innovative Schools and Pilot Program waivers**

(R.C. 3302.063 and 3302.07)

The act prohibits the Department from waiving the requirements associated with blended learning or online learning for an innovation school in a school district of innovation or online learning school as part of an Innovative Education Pilot Program.

### **Academic distress commissions**

#### **Moratorium**

(Section 265.540)

The act prohibits the Director from establishing any new academic distress commissions (ADCs) for the 2023-2024 and 2024-2025 school years.

#### **Lorain City School District**

(R.C. 3302.111)

The act dissolves the Lorain City School District's ADC and academic improvement plan on October 3, 2023. It requires that upon dissolution of the ADC, the chief executive officer relinquish management and control of the school district to the district board of education and the district superintendent.

The Lorain City School districts has been subject to an ADC since 2013.

### **State share of local property taxes in five-year forecasts**

(R.C. 5705.391)

Beginning with FY 2024, the act requires the Department and Auditor of State to label the property tax allocation projections in a school district's five-year forecast as the "state share of local property taxes."

Each fiscal year a school district must submit a five-year projection of its operational revenues and expenditures to the Department and Auditor of State. The property tax allocation projection accounts for the reimbursements a district may receive from the state for property tax rollbacks, the homestead exemption, and tangible personal property tax losses.<sup>72</sup>

### **Private before and after school care programs – licensure**

(R.C. 3301.52, 3301.57, and 3301.58)

Continuing law requires before and after school child care programs to be licensed as child care providers by the Department of Job and Family Services (ODJFS), although it exempts

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<sup>72</sup> See [How to Read a Five-Year Forecast \(PDF\)](#), available at the Department's website: [education.ohio.gov](http://education.ohio.gov).

school child programs that are subject to licensure by the Department from that requirement.<sup>73</sup> The act allows an “authorized private before and after school care program” to obtain from the Department a school child program license, thereby exempting one with such a license from ODJFS licensure. Law unchanged by the act authorizes each of the following entities to obtain a school child program license from the Department: a school district board of education, county board of developmental disabilities, community school, or eligible nonpublic school.

Under the act, an authorized private before and after school care program is a child care program operated only for school children that is all of the following:

- Operated by a nonprofit or for-profit private entity;
- Operated under a contract with a school district board of education, community school, or eligible nonpublic school;
- Conducted only outside of school hours and in a building owned or operated by the contracting board or school.

### **State Report Card Review Committee**

(Repealed R.C. 3302.039)

The act eliminates the State Report Card Review Committee which was required to be established on July 1, 2023. Accordingly, the act also eliminates the requirement that the Committee conduct a study of the state report card and submit a report by June 30, 2024, with its findings and recommendations for improvements, corrections, and clarifications to the state report card.

### **Study on services for economically disadvantaged students**

(Section 265.409)

The act requires the Department to conduct a study to determine the needs of Ohio’s economically disadvantaged students, the most effective services for those needs, and the cost of implementing those services using Ohio cost data. The Department must issue a report on the study’s results, including recommendations regarding measures and parameters for determining student eligibility for the identified services. The recommendation must take into account existing state and federal resources used to support those services.

### **Competency-based diploma pilot program**

(Section 733.50)

The act requires the Department to operate a competency-based diploma pilot program in FY 2024 and FY 2025 for students who are at least 18, but under 22 years old. The pilot program must be aligned to the rules and standards prescribed for the 22+ Adult High School Diploma Program under continuing law. The Department must issue a report on the pilot program by July 30, 2025, which must be posted on the Department’s publicly available website.

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<sup>73</sup> R.C. 5104.02(B)(6).

## **Adult Diploma Pilot Program minimum age**

(R.C. 3313.902)

The act lowers the minimum age to participate in the Adult Diploma Pilot Program from 20 to 18. The program provides job training and an alternative pathway for adults who have not received a high school diploma or certificate of high school equivalence to earn an industry-recognized credential aligned to one of Ohio's in-demand jobs and earn a state-issued high school diploma.

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## **BOARD OF EMBALMERS AND FUNERAL DIRECTORS**

- Reestablishes the requirement that an individual obtain a crematory operator permit to perform cremations.
- Corrects an error in the law prohibiting unauthorized removal of items from a body before or after cremation.
- Requires the executive director of the Board of Embalmers and Funeral Directors to notify law enforcement of persons engaged in unlicensed funeral directing.

### **Cremations**

#### **Reinstate crematory operator permit**

(R.C. 4717.01, 4717.02, 4717.03, 4717.04, 4717.06, 4717.07, 4717.08, 4717.09, 4717.11, 4717.13, 4717.15, 4717.36, and 4717.41; Sections 2, 3, and 8 of H.B. 509 of the 134<sup>th</sup> G.A., amended in Sections 125.11 to 125.13)

The act reestablishes the requirement that an individual obtain a crematory operator permit in order to perform cremations in Ohio. H.B. 509 of the 134<sup>th</sup> General Assembly repealed the permit, effective December 31, 2024, and instead required that a crematory operator maintain, and file with the Board of Embalmers and Funeral Directors, an active certification from a national crematory operator certification program. The act reverses that future repeal and the associated national certification requirement. It extends application of prior law, requiring a prospective crematory operator to apply to the Board, submit an initial permit fee, prove that they are at least 18 years old, and provide evidence of completing a Board-approved crematory operation certification program.

#### **Removal of items before or after cremation**

(R.C. 4717.26)

Continuing law prohibits a crematory facility from removing dental gold, body parts, organs, or other items of value from a body before or after cremation, unless the removal is authorized by the cremation authorization form. The act corrects an error in the law by adding a missing word.

### **Funerals**

#### **Unlicensed funeral directing**

(R.C. 4717.04)

The act requires the Board's executive director to notify law enforcement if the executive director is aware of a person engaged in funeral directing without a license or in any place other than a licensed funeral home. Under former law, the executive director was required to investigate the alleged violation and, upon finding probable cause, direct an attorney under contract with the Board, a county prosecutor, or the Attorney General to prosecute the offender.

The act eliminates those duties and leaves the investigation and, if appropriate, referral for prosecution to local law enforcement.

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## ENVIRONMENTAL PROTECTION AGENCY

### OEPA policies (PARTIALLY VETOED)

- Revises the statute governing Ohio Environmental Protection Agency (OEPA) policies by prohibiting a policy from establishing any substantive duty, obligation, prohibition, or regulatory burden not imposed by a statute or rule, or from impairing any right or permitted conduct.
- Revises what constitutes a policy by stating that it includes any clarification, explanation, or interpretation of a statute or rule that is initiated or used by OEPA for regulatory purposes, but that is not a rule.
- Would have additionally revised the meaning of the term policy to include an elaboration based on OEPA authority or expectations (VETOED).
- States that:
  - OEPA may exercise quasi-legislative, quasi-judicial, permitting, enforcement, or other regulatory functions based only on an applicable statute or valid rule;
  - The application of a policy by OEPA in a manner that makes the policy the functional equivalent of, or a substitute for, a statute or rule, or that effectively alters or amends a statute or rule, or that assumes powers not plainly delegated to OEPA by statute, is prohibited;
  - Each policy must be displayed on, and searchable through, OEPA's website, and proposed policies must be advertised on the website; and
  - The first page of each policy must have printed on it a statement that "this policy is not law."

### E-Check extension

- Continues the motor vehicle inspection and maintenance program (E-Check) in the counties where this program is implemented by:
  - Authorizing the OEPA Director to request the Director of Administrative Services (DAS Director) to extend the existing contract with the contractor that conducts the program, beginning July 1, 2023, for a period of up to 24 months; and
  - Requiring the OEPA Director, before the contract extension expires, to request the DAS Director to enter into a contract (with a vendor to operate a decentralized program) through June 30, 2027, with an option to renew the contract for up to 24 months through June 30, 2029.

### Solid waste transfer and disposal fees

- Revises and reallocates solid waste transfer and disposal fees (while maintaining the total fees charged at \$4.75 per ton) as follows:
  - Reduces a 90¢ per ton fee to 71¢ per ton and allocates the proceeds as follows:

- ❖ 11¢ per ton, rather than 20¢ per ton, to the Hazardous Waste Facility Management Fund, which must be used by OEPA to administer the hazardous waste program;
- ❖ 60¢ per ton, rather than 70¢ per ton, to the Hazardous Waste Clean-Up Fund, which must be used by OEPA to administer hazardous waste clean-up programs.
- Increases, from 75¢ per ton to 90¢ per ton, the fee that is deposited in the Waste Management Fund, which is used by OEPA to administer and enforce laws governing solid and infectious waste and construction and demolition debris;
- Reduces, from \$2.85 per ton to \$2.81 per ton, the fee that is deposited in the Environmental Protection Fund, which is used by OEPA to administer and enforce environmental protection laws;
- Maintains the 25¢ per ton fee that is used to provide assistance to soil and water conservation districts; and
- Imposes a new additional fee on the transfer or disposal of solid waste of 8¢ per ton, through June 30, 2026, which must be deposited in the National Priority List Remedial Support Fund created by the act.
- Extends the sunset on the other four solid waste transfer and disposal fees from June 30, 2024, to June 30, 2026.
- Requires the OEPA Director to use money in the National Priority List Remedial Support Fund for the state’s removal action and remedial action and long term operation and maintenance costs or applicable cost shares for actions taken under the federal “Comprehensive Environmental Response, Compensation, and Liability Act.”
- Authorizes the Director to use money in the new fund to contract with federal, state, or local government agencies, nonprofit organizations, colleges, and universities to carry out the responsibilities specified above on behalf of OEPA.

### **Construction and demolition debris (C&DD) fees**

- Reallocates the 50¢ per cubic yard or \$1 per ton disposal fee charged for construction and demolition debris (C&DD) by:
  - Reducing the portion of the fee (currently 37.5¢ per cubic yard or 75¢ per ton) that is for recycling and litter prevention by 2.5¢ per cubic yard and 5¢ per ton, respectively; and
  - Allocating the reduced amount (2.5¢ per cubic yard and 5¢ per ton) for waste management under the solid, hazardous, and infectious waste and C&DD laws.

### **Environmental fee sunsets**

- Extends all of the following fees, which remain unchanged by the act, for two years:
  - The sunset on the annual emissions fees for synthetic minor facilities;

- The sunset of the annual discharge fees for holders of National Pollution Discharge Elimination System (NPDES) permits issued under the Water Pollution Control Law;
- The sunset of the \$200 application fee for an NPDES permit and the decrease of that fee to \$15 at the end of two years;
- The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works under the Water Pollution Control Law;
- The annual discharge fees paid by the holder of an NPDES permit and the surcharge paid by holders of NPDES permits that are major dischargers;
- The sunset of initial and renewal license fees for public water system licenses issued under the Safe Drinking Water Law;
- The levying of higher fees, and the decrease of those fees at the end of the two years, for plan approvals for public water supply systems under the Safe Drinking Water Law;
- The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;
- The levying of higher fees, and the decrease of those fees at the end of the two years, for applications and examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law;
- The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law; and
- Fees on the sale of tires.

## **Scrap tires**

- Reduces the financial assurance amount that a person must submit to the OEPA Director to obtain a registration to transport scrap tires from at least \$20,000 to \$10,000 or less.
- Eliminates the (up to) \$300 fee for registering and renewing a certificate to transport scrap tires.
- Exempts certain nonprofit, governmental, educational, and civil organizations from the scrap tire transporter registration requirements if the organization is conducting a scrap tire clean up event or community tire amnesty collection event that has received written concurrence from the OEPA.
- Expands the allowable uses of the Scrap Tire Grant Fund.
- Removes the requirement that a person who was issued an order by the Director to remove scrap tires do so within 120 days after the issuance of the order, and instead

requires that person to comply with each milestone established in the order within the timeframe specified in the order.

- Allows the Director, when performing a scrap tire removal action, to remove, transport, and dispose of any additional solid wastes or construction and demolition debris (C&DD) that was illegally disposed of on the land named in a removal order.
- Allows the Director to recover the costs associated with the solid waste and C&DD removal.
- Allows, instead of requires, the Director to record scrap tire removal costs at the county recorder of the county in which the accumulation of scrap tires was located.
- Allows the Director to record solid waste and C&DD removal costs at the county recorder of the county in which the accumulation of solid wastes and C&DD was located.

### **Original signatories to environmental covenant**

- Authorizes an applicable agency that is party to an environmental covenant to determine that the signature of a person who originally signed the covenant is not necessary in order to amend or terminate it.
- Eliminates the need to provide notice to an original signatory specified above when an environmental covenant is subject to termination or amendment via an eminent domain proceeding.
- Retains the ability of an original signatory to an environmental covenant who is not a current owner of the subject property in fee simple to file a civil action to enforce the covenant.

### **Advanced recycling**

- Exempts advanced recycling conducted at an advanced recycling facility from regulation under the Solid Waste Law, rather than solely exempting the process of converting post-use polymers and recoverable feedstocks using gasification and pyrolysis, as in prior law.
- Specifies that “advanced recycling” generally means a manufacturing process for the conversion of post-use polymers and recovered feedstocks into basic raw materials, feedstocks, chemicals, and other products.
- Specifies that an “advanced recycling facility” generally means a manufacturing facility that stores and converts post-use polymers and recovered feedstocks it receives using advanced recycling.
- Expands the processes by which post-use polymers and recovered feedstocks may be converted to include depolymerization, catalytic cracking, reforming, hydrogenation, solvolysis, chemolysis, and other similar technologies.
- Retains pyrolysis and gasification as mechanisms by which post-use polymers and recovered feedstocks may be converted, but alters the meaning of those terms.

- Exempts legitimate recycling from solid waste disposal regulations.
- Exempts depositing of waste at a legitimate recycling facility or at an advanced recycling facility from open dumping penalties.
- Subjects disposing of scrap tires in a nonlicensed building, vehicle, or trailer to open dumping penalties.
- Makes additional definitional changes necessary for the expanded exemption established by the act.

## **Coal combustion residuals**

- Requires the OEPA Director to establish a program for the regulation of coal combustion residuals (CCR) storage and disposal.
- Requires the Director to adopt rules for the program that are no more stringent than federal requirements governing CCR.
- Requires the rules to address siting criteria and ground water monitoring, financial assurance, design and construction, and closure and post-closure requirements governing CCR units, which generally include CCR landfills and CCR surface impoundments.
- Exempts CCR units from laws governing solid, hazardous, and infectious waste.
- Exempts CCR units from specific prohibitions under the Water Pollution Control Law, but allows the Director to require the owner or operator of a CCR unit to obtain a permit to install or an NPDES permit under that law.
- Authorizes the Director to cooperate with other local, state, or federal government entities to carry out the program purposes.

## **OEPA policies (PARTIALLY VETOED)**

(R.C. 3745.30)

The act revises the statute governing OEPA policies. Specifically, it prohibits a policy from establishing any substantive duty, obligation, prohibition, or regulatory burden not imposed by a statute or rule, or from impairing any right or permitted conduct. It also declares that a policy has no force *or effect* of law, rather than declaring that it does not have the force of law as in former law. Further, the act states that:

1. OEPA may exercise quasi-legislative, quasi-judicial, permitting, enforcement, or other regulatory functions based only on an applicable statute or valid rule;
2. The application of a policy by OEPA in a manner that makes the policy the functional equivalent of, or a substitute for, a statute or rule, or that effectively alters or amends a statute or rule, or that assumes powers not plainly delegated to OEPA by statute, is prohibited;
3. Each policy must be displayed on, and searchable through, OEPA's website, and proposed policies must be advertised on the website; and

4. The first page of each policy must have printed on it a statement that “this policy is not law.” Prior law required the statement to read “this policy does not have the force of law.”

The act retains law stating that a policy must comply with the statutes and rules that exist at the time the policy is established, and that a policy may not establish a new requirement.

The act expands the meaning of the term policy to include any clarification, explanation, or interpretation of a statute or rule that is initiated or used by OEPA for regulatory purposes, but that is not a rule. Prior law stated that a policy only included a clarification or explanation of a statute or rule that is initiated by OEPA. The act also stipulates that a policy includes documents, manuals, advisories, protocols, forms, and other written or electronic materials provided to the public, a regulated party, or OEPA personnel regarding substance, requirements, procedures, or interpretation of a statute or rule. The act specifies that a policy does not include:

1. Any matters relating only to OEPA’s internal management;
2. Any final adjudicatory order applicable only to specific parties; or
3. An emergency order.

Former law, eliminated by the act, also specified that a policy did not include educational guidelines, suggestions, or case studies regarding how to comply with a statute or rule or any document or guideline regarding the internal organization or operation of OEPA. The Governor vetoed a provision that would have stated that a policy included an elaboration based on OEPA authority or expectations.

## **E-Check extension**

(R.C. 3704.14)

The act continues the operation of the motor vehicle inspection and maintenance program (E-Check) in the seven counties where it operates (Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit) by:

1. Authorizing the OEPA Director to request the Director of Administrative Services (DAS Director) to extend the existing contract (with the contractor that conducts the program) beginning July 1, 2023, for a period of up to 24 months; and
2. Requiring the OEPA Director, before the contract extension expires, to request the DAS Director to enter into a contract (with a vendor to operate a decentralized program) through June 30, 2027, with an option to renew the contract for up to 24 months through June 30, 2029.

The act retains the requirement that the new contract ensure that the program achieves at least the same emissions reductions achieved under the prior contract. It also retains the requirement that the DAS Director must use a competitive selection process when entering into a new contract with a vendor. The act retains all statutory requirements governing the program, including requirements that E-Check be a decentralized program (meaning tests do not take place at dedicated testing centers) and include a new car exemption for motor vehicles that are up to four years old.

## Solid waste transfer and disposal fees

(R.C. 3734.57 and 3734.579)

The act revises and reallocates the fees collected on the transfer or disposal of solid waste and imposes one new fee, while maintaining a total per ton charge collected of \$4.75 per ton. The table below illustrates the revisions to each fee and the imposition of one new fee:

Fee under prior law	Fee under the act
<p>The 90¢ fee, collected until June 30, 2024, was allocated as follows:</p> <ul style="list-style-type: none"> <li>▪ 20¢ per ton, to the Hazardous Waste Facility Management Fund, which must be used by OEPA to administer the hazardous waste program; and</li> <li>▪ 70¢ per ton, to the Hazardous Waste Clean-Up Fund, which must be used by OEPA to administer hazardous waste clean-up programs.</li> </ul>	<p>The act extends the sunset of the fee to June 30, 2026, reduces the fee to 71¢ per ton, and allocates the proceeds as follows:</p> <ul style="list-style-type: none"> <li>▪ 11¢ per ton to the Hazardous Waste Facility Management Fund; and</li> <li>▪ 60¢ per ton to the Hazardous Waste Clean-Up Fund.</li> </ul>
<p>The 75¢ per ton fee, collected until June 30, 2024, is deposited in the Waste Management Fund, which is used by OEPA to administer and enforce laws governing solid and infectious waste and construction and demolition debris.</p>	<p>The act increases the fee to 90¢ per ton and extends the sunset of the fee to June 30, 2026.</p>
<p>The \$2.85 per ton fee, collected until June 30, 2024, is deposited in the Environmental Protection Fund, which is used by OEPA to administer and enforce environmental protection laws.</p>	<p>The act reduces the fee to \$2.81 per ton and extends the sunset of the fee to June 30, 2026.</p>
<p>The 25¢ per ton fee, collected until June 30, 2024, is used to provide assistance to soil and water conservation districts.</p>	<p>The act maintains the 25¢ fee and extends the sunset of the fee to June 30, 2026.</p>
<p>Not applicable: this fee was not collected under prior law.</p>	<p>The act imposes a new 8¢ per ton fee, until June 30, 2026, which must be deposited in the National Priority List Remedial Support Fund created by the act.</p> <p>The OEPA Director must use the Fund for the state’s removal and remedial actions and long-term operation and maintenance costs or applicable cost shares for actions taken under the federal “Comprehensive Environmental Response, Compensation, and Liability Act” (CERCLA). The Director may use money in the</p>

Fee under prior law	Fee under the act
	fund to contract with federal, state, or local government agencies, nonprofit organizations, colleges, and universities to carry out those responsibilities on behalf of OEPA.

## Construction and demolition debris (C&DD) fees

(R.C. 3714.073)

The act reallocates one of the disposal fees charged for both construction and demolition debris (C&DD) and asbestos or asbestos-containing materials. It retains the overall amount of the fee (50¢ per cubic yard or \$1 per ton), but reallocates the fee by:

1. Reducing the portion of the fee (previously 37.5¢ per cubic yard or 75¢ per ton) that is for recycling and litter prevention by 2.5¢ per cubic yard and 5¢ per ton, respectively; and
2. Allocating the reduced amount (2.5¢ per cubic yard and 5¢ per ton) to waste management under the solid, hazardous, and infectious waste and C&DD laws; and
3. Retaining the 12.5¢ per cubic yard or 25¢ per ton portion of the fee for soil and water conservation districts.

## Environmental fee sunsets

(R.C. 3745.11 and 3734.901)

The act extends the period of validity for various OEPA-administered fees that remain unchanged under the laws governing air pollution control, water pollution control, safe drinking water, and scrap tires. The following table sets forth each fee, its purposes, and the time period OEPA is authorized to charge the fee under prior law and the act:

Type of fee	Description	Fee under prior law	Fee under the act
Synthetic minor facility: emission fee	Each person who owns or operates a synthetic minor facility must pay an annual fee in accordance with a fee schedule that is based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead. A synthetic minor facility is a facility for which one or more permits to install or permits to operate have been issued for the air contaminant source at the facility that include terms and conditions that	The fee was required to be paid through June 30, 2024.	The act extends the fee through June 30, 2026.

Type of fee	Description	Fee under prior law	Fee under the act
	lower the facility's potential to emit air contaminants below the major source thresholds established in rules.		
Wastewater treatment works: plan approval application fee	<p>A person applying for a plan approval for a wastewater treatment works is required to pay one of the following fees depending on the date:</p> <ul style="list-style-type: none"> <li>▪ A tier one fee of \$100 plus 0.65% of the estimated project cost, up to a maximum of \$15,000; or</li> <li>▪ A tier two fee of \$100 plus 0.2% of the estimated project cost, up to a maximum of \$5,000.</li> </ul>	An applicant was required to pay the tier one fee through June 30, 2024, and the tier two fee on and after July 1, 2024.	The act extends the tier one fee through June 30, 2026; the tier two fee begins on or after July 1, 2026.
Discharge fees for holders of NPDES permits	Each NPDES permit holder that is a public discharger or an industrial discharger with an average daily discharge flow of 5,000 or more gallons per day must pay an annual discharge fee based on the average daily discharge flow. There is a separate fee schedule for public and industrial dischargers.	The fees were due by January 30, 2022, and January 30, 2023.	The act extends the fees and the fee schedules to January 30, 2024, and January 30, 2025.
Surcharge for major industrial dischargers	A holder of an NPDES permit that is a major industrial discharger must pay an annual surcharge of \$7,500.	The surcharge was required to be paid by January 30, 2022, and January 30, 2023.	The act extends the fee to January 30, 2024, and January 30, 2025.
Discharge fee for specified exempt dischargers	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.	The fee was due by January 30, 2022, and January 30, 2023.	The act extends the fee to January 30, 2024, and January 30, 2025.

Type of fee	Description	Fee under prior law	Fee under the act
License fee for public water system license	A person is prohibited from operating or maintaining a public water system without an annual license from OEPA. 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.	The fee for an initial license or a license renewal applied through June 30, 2024, and is required to be paid annually in January.	The act extends the initial license and license renewal fee through June 30, 2026.
Fee for plan approval to construct, install, or modify a public water system	Anyone who intends to construct, install, or modify a public water supply system must obtain approval of the plans from OEPA. The fee for the plan approval is \$150 plus 0.35% of the estimated project cost. However, continuing law sets a cap on the fee.	The cap on the fee was \$20,000 through June 30, 2024, and \$15,000 on and after July 1, 2024.	The act extends the cap of \$20,000 through June 30, 2026; the cap of \$15,000 applies on and after July 1, 2026.
Fee on state certification of laboratories and laboratory personnel	<p>In accordance with two schedules, OEPA charges a fee for evaluating certain laboratories and laboratory personnel.</p> <p>An additional provision states that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay \$500 for each additional survey requested.</p>	<p>The schedule with higher fees applied through June 30, 2024, and the schedule with lower fees applied on and after July 1, 2024.</p> <p>The \$500 additional fee applied through June 30, 2024.</p>	<p>The act extends the higher fee schedule through June 30, 2026; the lower fee schedule applies on and after July 1, 2026.</p> <p>The act extends the additional fee through June 30, 2026.</p>
Fee for examination for certification as an operator of a water supply system or wastewater system	A person applying to OEPA to take an examination for certification as an operator of a water supply system or a wastewater system (class A and classes I-IV) must pay a fee, at the time an application is submitted, in accordance with a statutory schedule.	A schedule with higher fees applied through November 30, 2024, and a schedule with lower fees applied on and after December 1, 2024.	The act extends the higher fee schedule through November 30, 2026; the lower fee schedule applies on and after December 1, 2026.
Application fee for a permit (other than an	A person applying for a permit (other than an NPDES permit), a variance, or plan approval under the Safe Drinking	If the application was submitted through June 30,	The act extends the \$100 fee through June 30,

Type of fee	Description	Fee under prior law	Fee under the act
NPDES permit), variance, or plan approval	Water Law or the Water Pollution Control Law must pay a nonrefundable fee.	2024, the fee was \$100. The fee was \$15 for an application submitted on or after July 1, 2024.	2026; the \$15 fee applies on and after July 1, 2026.
Application fee for an NPDES permit	A person applying for an NPDES permit must pay a nonrefundable application fee.	If the application was submitted through June 30, 2024, the fee was \$200. The fee was \$15 for an application submitted on or after July 1, 2024.	The act extends the \$200 fee through June 30, 2026; the \$15 fee applies on and after July 1, 2026.
Fees on the sale of tires	A base fee of 50¢ per tire is levied on the sale of tires to assist in the cleanup of scrap tires.  An additional fee of 50¢ per tire is levied to assist soil and water conservation districts.	Both fees were scheduled to sunset on June 30, 2024.	The act extends the fees through June 30, 2026.

## Scrap tires

(R.C. 3734.74, 3734.822, 3734.83, and 3734.85)

The act reduces the financial assurance amount that a person must submit to the OEPA Director to obtain a registration to transport scrap tires from *at least \$20,000 to \$10,000 or less*. Under continuing law, financial assurance may consist of a surety bond, letter of credit, or other financial assurance acceptable to the Director. The Director determines the exact amount by considering what is necessary to cover:

1. The costs of cleanup of tires improperly accumulated or discarded by the transporter; and
2. Liability for sudden accidental occurrences that result in damage or injury to persons or property or to the environment.

The act eliminates the (up to) \$300 fee for registering and renewing a certificate to transport scrap tires. The fee was required to be deposited in the Scrap Tire Management Fund.

The act exempts from the scrap tire transporter registration requirements any of the following entities conducting a scrap tire clean up event or community tire amnesty collection event that has received written concurrence from the OEPA:

1. A nonprofit organization;
2. A federal, state, or local government;
3. A university; or
4. Other civic organization.

In addition, it allows the Scrap Tire Grant Fund to be used for both:

1. Scrap tire amnesty and cleanup events hosted or sponsored by a state agency or political subdivision (e.g., a county, municipal corporation, and township); and
2. A scrap tire amnesty and cleanup event hosted by a solid waste management district, in addition to an event sponsored by a district, as under prior law.

Under continuing law, the Scrap Tire Grant Fund may be used to support market development activities for scrap tires and synthetic rubber from tire manufacturing processes and tire recycling processes. It also may be used to support scrap tire amnesty cleanup events sponsored by solid waste management districts.

The act removes the requirement that a person who has been issued an order by the Director to remove scrap tires do so within 120 days after the issuance of the order. Instead, it requires a person to comply with each milestone established in the order within the timeframe specified in the order. Under continuing law, if the person who has been issued the order fails to comply with the order, the Director may then perform scrap tire removal and the person is liable to the Director for the costs associated with the removal. The act allows the Director, when performing a scrap tire removal action, to also remove, transport, and dispose of any additional solid wastes or construction and demolition debris (C&DD) that was illegally disposed of on the land named in a removal order if the removal of the waste or debris is required by the order. Accordingly, the Director may recover the costs associated with the solid waste and C&DD removal.

The act allows, instead of requires, the Director to record scrap tire removal costs at the county recorder of the county in which the accumulation of scrap tires was located. It also allows the Director to record solid waste and C&DD removal costs at the county recorder of the county in which the accumulation of solid wastes and C&DD removed was located.

## **Original signatories to environmental covenant**

(R.C. 5301.90 and 5301.91)

The act authorizes an applicable agency (for example, OEPA) that is party to an environmental covenant to determine that the signature of a person who originally signed the covenant is not necessary in order to amend or terminate it. Prior to the act, an environmental covenant could only be amended or terminated by consent and with the signature of all of the following:

- The applicable agency;
- The current owner in fee simple of the real property (unless waived by the agency);

- Each original signer of the covenant, unless:
  - The person waived in a signed record the right to consent; or
  - A court finds the person no longer exists or cannot be located.

As a result, the act eliminates the need to provide notice to an original signatory (who the agency determines is not necessary to amend or terminate the environmental covenant) when the environmental covenant is subject to termination or amendment via an eminent domain proceeding. However, the act retains the ability of an original signatory who is not a current owner of the subject property in fee simple to file a civil action to enforce the covenant.

## **Advanced recycling and legitimate recycling**

(R.C. 3734.01)

The act exempts from solid waste regulation under the Solid Waste Law, advanced recycling of post-use polymers and recovered feedstocks conducted at an advanced recycling facility that is subject to OEPA regulations for air, water, waste, and land use.

Advanced recycling generally involves a manufacturing process for the conversion of post-use polymers and recovered feedstocks into basic raw materials, feedstocks, chemicals, and other recycled products. The conversion of these materials may be conducted via pyrolysis, gasification, depolymerization, catalytic cracking, reforming, hydrogenation, solvolysis, chemolysis, and other similar technologies. An advanced recycling facility includes any manufacturing facility that stores and converts post-use polymers and recovered feedstocks for advanced recycling. However, an advanced recycling facility does not include any of the following:

1. A solid waste facility;
2. A solid waste disposal facility;
3. A solid waste management facility;
4. A solid waste processing facility;
5. A solid waste recovery facility;
6. An incinerator;
7. A waste-to-energy facility; or
8. A legitimate recycling facility.

Under the act, a legitimate recycling facility is any site, location, tract of land, installation, or building that (1) is used or intended to be used for processing, storing, or recycling solid waste that was generated off the premises of the facility, (2) at least 60% of the weight of solid waste received in any nine months during a rolling 12-month period is recycled monthly as shown by records, and (3) the receipt, storage, and processing activities do not cause a nuisance, do not pose a threat from vectors, or do not adversely impact public health, safety, or the environment, or cause or contribute to air or water pollution.

Under prior law, only the process of converting post-use polymers and recoverable feedstocks using gasification or pyrolysis was exempt from the Solid Waste Law. Thus, the act expands the processes by which these materials may be converted and still be exempt under that law.

The act specifies that a post-use polymer generally includes a plastic derived from industrial, commercial, agricultural, or domestic activities, and includes pre-consumer recovered materials and post-consumer materials that are processed at an advanced recycling facility or held at the facility prior to processing. Its intended use must be for use as a feedstock for the manufacturing of feedstocks, raw materials, other intermediate products, or final products using advanced recycling. Post-use polymers must be sorted from solid waste and other regulated waste, but may contain incidental contaminants or impurities. Additionally, post-use polymers cannot be mixed with solid waste or hazardous waste on site during processing at the advanced recycling facility and cannot be accumulated before being recycled. Prior law specified that post-use polymers are plastic polymers, derived from any source, that are not being used for their intended purpose. Prior law required the intended use for post-use polymers to be for manufacturing crude oil, fuels, other raw materials, and other products using pyrolysis or gasification. Thus, the act appears to expand the scope of what is considered a post-use polymer.

The act specifies that a recovered feedstock is a post-use polymer or nonwaste (as designated by USEPA) that has not been mixed with solid or hazardous waste on-site or during processing at an advanced recycling facility and has been processed for use as a feedstock in a gasification facility. A recovered feedstock does not include unprocessed municipal solid waste. Prior law did not include the specification that a recoverable feedstock cannot be mixed with solid or hazardous waste.

The act alters the meaning of pyrolysis and gasification as follows:

Process changes		
Process	Prior law	The act
Pyrolysis	A process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed, and are then cooled, condensed, and converted into oil, fuel, feedstocks, diesel and gasoline blendstocks, chemicals, waxes, or lubricants.	A manufacturing process that melting and thermally decomposing post-use polymers may occur either noncatalytically or catalytically.  The act expands the types of materials that may result from pyrolysis, including valuable raw materials, intermediate products, or final products, plastic monomers, chemicals, naphtha, waxes, or plastic and chemical feedstocks that are returned to economic utility in the form of raw materials and products.

Process changes		
Process	Prior law	The act
Gasification	A process through which feedstocks are heated and converted into a fuel gas mixture in an oxygen deficient atmosphere, and the mixture is converted into fuel, chemicals, or other chemical feedstocks.	A manufacturing process through which post-use polymers or recovered feedstocks are heated in an oxygen-controlled atmosphere and converted into syngas.  Following that conversion, the process involves conversion into valuable raw, intermediate, and final products, including plastic monomers, chemicals, waxes, lubricants, coatings, and plastic and chemical feedstocks that are returned to economic utility in the form of raw materials or products.

The act further defines various terms for purposes of the expanded exemption established by the act. Those changes are as follows:

Terminology added by the act	
Term	Explanation
Depolymerization	A manufacturing process where post-use polymers are broken into smaller molecules such as monomers and oligomers or raw, intermediate, or final products, plastics and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, and coatings.
Solvolysis	A manufacturing process to make useful products (products produced through solvolysis, including monomers, intermediates, valuable chemicals, plastics and chemical feedstocks, and raw materials) through which post-use polymers are purified by removing additives and contaminants with the aid of solvents and are heated at low temperatures or pressurized. "Solvolysis" includes hydrolysis, aminolysis, ammonolysis, methanolysis, and glycolysis.
Mass balance attribution	A chain of custody accounting methodology with rules defined by a third-party certification system that enables the attribution of the mass of advanced recycling feedstocks to one or more advanced recycling products.

Terminology added by the act	
Term	Explanation
Recycled plastic	Products that are produced from either of the following: <ol style="list-style-type: none"> <li>1. Mechanical recycling of pre-consumer recovered feedstocks or plastics, and post-consumer plastics;</li> <li>2. The advanced recycling of pre-consumer recovered feedstocks or plastics, and post-consumer plastics via mass balance attribution under a third party certification system.</li> </ol>
Recycled products	Products produced at advanced recycling facilities including, monomers, oligomers, recycled plastics, plastic and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, coatings, and adhesives. Products sold as fuel are not recycled products.
Legitimate recycling	Processing, storing, or recycling of solid waste and returning the material to commerce as a commodity for use in a beneficial manner, including as a raw ingredient in a manufacturing process or as a legitimate fuel that does not constitute disposal.

The act also expands the types of activities that are exempt from solid waste disposal regulations to include all of the following:

1. A disposition or placement of wastes that constitutes legitimate recycling; and
2. Advanced recycling or the storage of post-use polymers and recovered feedstocks prior to conversion through advanced recycling.

Prior law exempted the process of converting post-use polymers and recoverable feedstocks using gasification or pyrolysis.

Finally, the act expands the types of activities that are exempt from solid waste open dumping regulations (and thus not subject to open dumping penalties) to include the depositing of wastes at a legitimate recycling facility or advanced recycling facility. However, it subjects the disposal of scrap tires in a trailer, vehicle, or nonlicensed building to open dumping regulations and penalties.

## Coal combustion residuals

(R.C. 3734.48)

The act requires the OEPA Director to establish a program for the regulation of the storage and disposal of coal combustion residuals (CCR). CCR includes fly ash, boiler slag, and flue gas desulfurization materials generated from burning coal for generating electricity by electric utilities and independent power producers.

To implement the program, the Director must adopt rules governing CCR storage, treatment, and disposal sites referred to as “CCR units.” These units include any CCR landfill, CCR surface impoundment (e.g., a topographic depression or manmade excavation), including any lateral expansion of a CCR unit, or a combination thereof. A CCR landfill is an area of land that receives CCR (that is not a CCR impoundment), an underground injection well, a salt dome or salt bed formation, an underground or surface mine, or a cave. CCR landfills include sand and gravel pits and quarries that receive CCR, CCR piles (noncontainerized accumulations of solid CCR), and any practice that does not include the beneficial use of CCR.

The rules adopted by the Director must be no more stringent than federal requirements governing CCR and must address the following:

1. Siting criteria;
2. Ground water monitoring requirements;
3. Design and construction requirements;
4. Financial assurance requirements;
5. Closure and post-closure requirements; and
6. Any other requirement that the Director determines is necessary for the program, including any additional term definitions.

The act exempts CCR units from regulation under the laws governing solid, hazardous, and infectious waste. Further, the act exempts these units from prohibitions under the law governing water pollution control specifically related to the discharge of pollution into the waters of the state. However, it states that the Director may require the owner or operator of a CCR unit to obtain a water pollution control facility permit-to-install and a discharge permit (known as a National Pollutant Discharge Elimination [NPDES] permit) under the Water Pollution Control Law. Thus, a violation of any of the terms and conditions of those permits could result in criminal and civil penalties under that law.

The Director must prescribe and furnish any forms necessary to administer and enforce the program. Further, the Director may cooperate with and enter into agreements with other local, state, or federal government entities to carry out the purposes of the program.

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## **FACILITIES CONSTRUCTION COMMISSION**

- Abolishes the Community School Classroom Facilities Loan Guarantee Program and the Community School Classroom Facilities Loan Guarantee Fund.
- Adds three months to the time by which the voters of a school district must approve bond and tax levies related to a state-assisted school facilities project.

### **Community School Classroom Facilities Loan Guarantee**

(Repealed R.C. 3318.50 and 3318.52; conforming changes in R.C. 3314.08)

The act abolishes the Community School Classroom Facilities Loan Guarantee Program and Fund.

### **Levies for school facilities projects**

(R.C. 3318.032, 3318.05, 3318.054, and 3318.41)

The act extends, from 13 to 16 months, the time in which the voters of a city, local, exempted village, or joint vocational school district must approve bond and tax levies related to a school facilities project, after the Ohio Facilities Construction Commission grants the project conditional approval.

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## GOVERNOR

- Requires the Small Business Advisory Council to meet at the Director of the Common Sense Initiative Office's discretion, instead of at least quarterly as under former law.

### **Small Business Advisory Council meetings**

(R.C. 107.63)

The act alters when the Small Business Advisory Council must meet by requiring it to meet at the Director of the Common Sense Initiative Office's (CSIO) discretion. Former law required the Council to meet at least quarterly. Under continuing law, the Council advises the Governor, Lieutenant Governor, and CSIO on the adverse impact that proposed and existing rules might have on Ohio small businesses.

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## DEPARTMENT OF HEALTH

### Infant mortality scorecard

- Requires the Department of Health (ODH) to automate its infant mortality scorecard to refresh data in real time on a publicly available data dashboard, as opposed to updating the scorecard quarterly.

### Newborn safety incubators

- Authorizes remote monitoring of newborn safety incubators under limited circumstances.
- Permits video surveillance of newborn safety incubator locations but provides that the footage can be reviewed only when a crime is suspected to have been committed within view of the surveillance system.

### Newborn screening – Duchenne muscular dystrophy

- Requires the ODH Director to specify in rule Duchenne muscular dystrophy as a disorder for newborn screening.

### WIC vendors

- Requires ODH to process and review a WIC vendor contract application within 45 days of receipt under specified circumstances.

### Program for Children and Youth with Special Health Care Needs

- Changes the name of ODH's Program for Medically Handicapped Children to the Program for Children and Youth with Special Health Care Needs.
- Expands the Program for Children and Youth with Special Health Care Needs age limit from 23 to 25 by July 1, 2024.

### Dentist Loan Repayment Program

- Requires ODH to designate clinics and dental practices that serve a high proportion of individuals with developmental disabilities as dental health resource shortage areas under the existing Dentist Loan Repayment Program.
- Authorizes dentists who work at those clinics or practices to participate in the program.

### Stroke registry database

- Requires ODH to establish a stroke registry database and requires certain hospitals to collect and transmit stroke care data for inclusion in the database.
- Authorizes ODH to establish an oversight committee to advise and assist in the stroke registry database's implementation.

## **Recognition of thrombectomy-capable stroke centers**

- Establishes state recognition of thrombectomy-capable stroke centers under the same process used for recognition of hospitals as comprehensive stroke centers, primary stroke centers, or acute stroke ready hospitals.

## **Parkinson's Disease Registry**

- Requires the Director to establish and maintain a Parkinson's Disease Registry.
- Requires health care professionals and facilities to report cases of Parkinson's disease and Parkinsonisms to the Registry.
- Creates the Parkinson's Disease Registry Advisory Committee to assist with the development and maintenance of the Registry.
- Requires the Director to submit an annual report to the General Assembly regarding the prevalence of Parkinson's disease in Ohio by county.

## **Plasmapheresis supervision**

- Revises the law governing the operation of ODH-certified plasmapheresis centers, by expanding the types of health care providers who must attend, supervise, and maintain sterile technique during plasmapheresis.

## **Regulation of surgical smoke**

- Requires ambulatory surgical facilities and hospitals to adopt and implement policies designed to prevent human exposure to surgical smoke during planned surgical procedures.

## **HIV testing**

- Eliminates law that authorizes HIV testing only if necessary to provide diagnosis and treatment of an individual.
- Instead, authorizes HIV testing if the individual, or the individual's parent or guardian, has given general consent for care and has been notified that the test is planned.
- Eliminates law requiring that individuals be notified of the right to an anonymous HIV test, but retains the right to anonymous testing.

## **Admission and medical supervision of hospital patients**

- Cancels the scheduled repeal of statutory law governing the admission and medical supervision of hospital patients, including admissions initiated by advanced practice registered nurses and physician assistants.

## **Nursing home change of operator**

- Adds additional circumstances that constitute a change of operator of a nursing home.

- Eliminates a requirement that an individual or entity submit specified documentation to the ODH Director when a nursing home undergoes a change of operator, and instead requires an entering operator to complete a nursing home change of operator license application.
- Specifies the type of information that must be provided to ODH as part of a nursing home change of operator license application and the procedures ODH must follow when granting or denying a license application.

### **Nursing home investigations and penalties**

- Eliminates the time frame in which ODH must initiate an investigation after receiving a complaint that a nursing home resident's rights have been violated.
- Modifies the penalties that ODH may impose against a nursing home upon a finding that the nursing home has violated a nursing home resident's rights.

### **Long-term care facility discharges and transfers**

- Adds to the Residents' Bill of Rights for residents of nursing homes and assisted living facilities additional protections related to transfers and discharges.
- Requires ODH in hearings regarding a notice of transfer or discharge to determine if the proposed transfer or discharge complies with the act's new rights and existing notification requirements.

### **Certificates of need – maximum capital expenditures**

- Eliminates laws that (1) prohibited the holder of a certificate of need (CON) from obligating more than 110% of an approved project's cost (without obtaining a new CON) and (2) authorized penalties of up to \$250,000 for violations.
- Specifies that the CON changes apply to currently valid CONs, pending CON applications, and pending actions for imposing sanctions.

### **Fees for copies of medical records**

- Makes the following changes regarding costs that a health care provider may charge for copies of medical records requested by a patient or patient's personal representative:
  - Generally eliminates specific dollar caps and instead specifies that costs must be reasonable and cost-based, and can include only costs that are authorized under federal laws and regulations; also specifies such costs cannot exceed continuing law limits that are applicable when records are requested by other individuals;
  - Caps the cost at \$50 for requests for electronic access and transmission of records;
  - Adds that an individual authorized to access a patient's medical records through a valid power of attorney is subject to the same cost provisions as the patient and the patient's personal representative.

## **Second Chance Trust Fund Advisory Committee**

- Removes the term limits for members of the Second Chance Trust Fund Advisory Committee (currently limited to two consecutive terms, whether full or partial).
- Removes the requirement that the Committee's election of a chairperson from among its members be annual, instead leaving the details of a chairperson's term to Committee rules.

## **Home health licensure exception**

- Exempts from home health licensure individuals providing self-directed services to Medicaid participants and residential facilities licensed by the Department of Mental Health and Addiction Services.

## **Home health screening pilot program (PARTIALLY VETOED)**

- Requires the ODH Director to establish a two-year home health screening pilot program in collaboration with CareStar Community Services.
- Would have required the Medicaid Director to enter into a data sharing agreement with the ODH Director regarding the pilot program (VETOED).

## **Center for Community Health Worker Excellence**

- Creates the Center for Community Health Worker Excellence and establishes its duties.
- Provides for a board of directors to oversee the Center and requires the board to issue an annual report on the Center's activities, including any recommendations pertaining to the practice of community health workers.
- Authorizes Health Impact Ohio and Ohio University's OHIO Alliance for Population Health to assist the Center in implementing its duties.

## **Smoking and tobacco**

### **Minimum age to sell tobacco products**

- Prohibits tobacco businesses from allowing an employee under 18 to sell tobacco products.

### **Shipment of vapor products and electronic smoking devices**

- Prohibits shipment of vapor products and electronic smoking devices to persons other than licensed vapor distributors, vapor retailers, operators of customs bonded warehouses, and state and federal government agencies or employees.
- Prohibits shipping vapor products or electronic smoking devices in packaging other than the original container unless the packaging is marked with the words "vapor products" or "electronic smoking devices."

## **Delivery services**

- Prohibits a delivery service from accepting, transporting, delivering, or allowing pick-up of tobacco products other than cigarettes, alternative nicotine products, or papers used to roll cigarettes to or from a person under 21, as evidenced by proof of age.

## **Electronic liquids (VETOED)**

- Would have specified that only electronic smoking liquids containing nicotine are subject to the law governing the giveaway, sale, and other distribution of tobacco products (VETOED).

## **Proof of age**

- Requires tobacco product vendors to verify proof of age prior to selling or otherwise distributing tobacco products.

## **Free samples (PARTIALLY VETOED)**

- Explicitly prohibits giving away or otherwise distributing free samples of cigarettes, other tobacco products, alternative nicotine products, or coupons redeemable for such products.
- Would have permitted giving away or distributing free samples to persons 21 and over after verifying proof of age, if state and local taxes had already been paid, and to the extent permissible under cigarette minimum pricing laws (VETOED).

## **Moms Quit for Two**

- Continues the Moms Quit for Two grant program for the delivery of tobacco cessation interventions to women who are pregnant or living with children and reside in communities with the highest incidence of infant mortality.

## **Retail tobacco stores**

- Modifies an existing exemption from the Smoke Free Workplace Law for retail tobacco stores.

## **Environmental health specialists**

- Recodifies R.C. Chapter 4736, the law governing environmental health specialists (EHSs) and environmental health specialists in training (EHSs in training), in new R.C. Chapter 3776.
- Adds that EHSs and EHSs in training may administer and enforce the law governing tattoos and body piercing.
- Clarifies that EHSs and EHSs in training may administer and enforce the law governing hazardous waste.
- Clarifies that all fees collected under the EHS law are deposited into the ODH General Operations Fund, and eliminates a conflict in prior law that required the fees to be deposited in both that fund and the Occupational Licensing and Regulatory Fund.

- Broadens the ODH Director’s rulemaking authority regarding EHSs and EHSs in training, including allowing any rulemaking that is necessary to administer and enforce the EHS law.
- Requires EHSs in training to comply with the same continuing education requirements as are required for EHSs, which includes a requirement to biennially complete a 24-hour continuing education program in specified subjects.
- Requires the ODH Director to provide, at least once annually, to each EHS in training a list of approved courses that satisfy the continuing education program and supply a list of continuing education courses to an EHS in training upon request, in the same manner as the Director does for EHSs under continuing law.
- Clarifies that the ODH Director may renew an EHS or EHS in training registration 60 days prior to expiration, provided the applicant pays the renewal fee and proof of compliance with continuing education requirements.
- Specifies that an EHS in training has up to four years (with a two-year possible extension) to apply as an EHS instead of three years (with a two-year possible extension) as under prior law.
- Prohibits a person who is not a registered EHS in training from using the title “registered environmental health specialist in training” or the abbreviation “E.H.S.I.T.,” or representing themselves as a registered EHS in training.
- Repeals the requirements that the ODH Director assign a serial number to each certificate of registration and include it in EHS and EHS in training registration records.
- Removes the requirement that the ODH Director obtain the advice and consent of the Senate when appointing members of the Environmental Health Specialist Advisory Board.

## **Infant mortality scorecard**

(R.C. 3701.953)

The act requires the Ohio Department of Health (ODH) to build and automate a publicly available data dashboard to refresh data from the Department’s infant mortality scorecard in real time. The infant mortality scorecard tracks statewide data related to infant mortality. Previously, ODH was required to publish the scorecard on its website and update the data quarterly.

## **Newborn safety incubators**

(R.C. 2101.16, 2151.3515, 2515.3516, 2151.3517, 2151.3518, 2151.3527, 2151.3528, 2151.3532, and 2151.3533)

Regarding Ohio’s Safe Haven Law, the act establishes an option for remote monitoring of newborn safety incubators. Under continuing law, ODH has rulemaking authority to set monitoring standards for newborn safety incubators. Continuing ODH rules require in person

monitoring by an individual who is present and on duty in the facility where the incubator is located at all times, 24 hours a day, seven days a week.<sup>74</sup> The act permits peace officers, peace officer support employees, emergency medical service workers, and certain hospital employees to either (1) monitor an incubator directly, or (2) be designated as an alternate, to be dispatched when an infant is placed in the incubator and the incubator is not directly monitored. Additionally, the act provides that persons authorized to take possession of a newborn from a newborn safety incubator are not liable for failure to respond to the incubator's alarm within a reasonable time, unless the failure was willful or wanton misconduct.

The act also provides that a facility that has installed a newborn safety incubator may use video surveillance to monitor the area where the incubator is located, but may review the footage only when a crime is suspected to have been committed within view of the video surveillance system.

Ohio's Safe Haven Law authorizes a parent to voluntarily and anonymously surrender the parent's newborn child – who is not more than 30 days old – by delivering the child to any of the following:

- A law enforcement agency or peace officer or peace officer support employee employed by the agency;
- A hospital or individual practicing at or employed by the hospital;
- An emergency medical service organization or emergency medical service worker employed by or providing services to the organization;
- A newborn safety incubator provided by a law enforcement agency, hospital, or emergency medical service organization.

The act provides that a parent also may surrender the newborn child to any authorized person by calling 9-1-1 and waiting with the child until the authorized person arrives and takes possession of the child.

## **Newborn screening – Duchenne muscular dystrophy**

(R.C. 3701.501)

The act requires the ODH Director to specify in rule Duchenne muscular dystrophy as a disorder for newborn screening beginning 240 days after the act's effective date. Generally, each newborn is required to be screened for the disorders specified in rules adopted by the ODH Director. Statutory law requires the rules to specify Krabbe disease, spinal muscular atrophy, and X-linked adrenoleukodystrophy for screening.

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<sup>74</sup> O.A.C. 3701-86-03(B) and (F).

## WIC vendors

(Section 291.40)

WIC is the Special Supplemental Nutrition Program for Women, Infants, and Children. The act maintains a requirement in uncodified law that ODH process and review a WIC vendor contract application pursuant to existing ODH regulations within 45 days after receipt if the applicant is a WIC-contracted vendor and (1) submits a complete application and (2) passes the required unannounced preauthorization visit and completes the required in-person training within that 45-day period. If the applicant fails to meet those requirements, ODH must deny the application. After denial, the applicant may reapply during the contracting cycle of the applicant's WIC region.

## Program for Children and Youth with Special Health Care Needs

(R.C. 3701.021 and 3701.023 with conforming changes in numerous other R.C. sections; Section 812.20)

The act renames the Program for Medically Handicapped Children as the Program for Children and Youth with Special Health Care Needs.

The program is administered by ODH and serves families of children and young adults with special health care needs, including AIDS, hearing loss, cancer, juvenile arthritis, cerebral palsy, metabolic disorders, cleft lip/palate, severe vision disorders, cystic fibrosis, sickle cell disease, diabetes, spina bifida, scoliosis, congenital heart disease, hemophilia, and chronic lung disease.

The program has three core components:

- Diagnostic – An individual under age 21 who meets medical criteria, regardless of income, may receive services from program-approved providers for up to six months to diagnose or rule out a special health care need or establish a plan of care;
- Treatment – An individual under age 23 who meets both medical and financial criteria may receive treatment from program-approved providers for an eligible condition;
- Service coordination – The family of an individual under age 23 who meets medical criteria, regardless of income, may receive assistance locating and coordinating services for the individual with the medical diagnosis.<sup>75</sup>

The act requires the Director to increase the maximum age of participants by establishing eligibility requirements that progressively increase the maximum age of an individual who can be

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<sup>75</sup> Service coordination information published on the ODH website indicates that eligible applicants must be under the age of 21 ([Service Coordination Program](#), which may be accessed by conducting a keyword “service coordination” search on ODH’s website: [odh.ohio.gov](http://odh.ohio.gov)). However, R.C. 3701.023(D) requires ODH to authorize necessary service coordination for each eligible child, and R.C. 3701.021(D) prohibits the Director from specifying an age restriction that excludes from eligibility an individual who is less than 23 years of age.

served by the program. In 2023 and 2024 on July 1, the Director's rules must increase the age limit by one year. The final increase, on July 1, 2024, allows individuals under 25 to participate. This annual increase does not apply to the diagnostic component of the program. The act specifies that the age limit increase is exempt from the referendum and takes immediate effect. The act appropriates an additional \$500,000 to the program in each fiscal year.

## **Dentist Loan Repayment Program**

(R.C. 3702.87)

The act authorizes dentists who work at dental clinics and practices that serve a high proportion of individuals with developmental disabilities to apply to participate in the preexisting Dentist Loan Repayment Program. Under the act, ODH must designate such clinics and practices as "dental health resource shortage areas."

Under continuing law, the program provides loan repayment on behalf of individuals who agree to provide dental services in dental health resource shortage areas. Expenses that may be repaid under the program include tuition, books and other educational expenses, and room and board.<sup>76</sup> The act does not modify any other provisions of the program, including related to eligibility requirements or the application process.

## **Stroke registry database**

(R.C. 3727.131)

The act requires ODH to establish and maintain a process for collecting, transmitting, compiling, and overseeing data related to stroke care. As part of the data collection process, ODH must establish or utilize a stroke registry database to store the data, including data that aligns with nationally recognized treatment guidelines and performance measures. The act also requires the stroke care data to be collected, transmitted, compiled, and overseen in a manner prescribed by the ODH Director.

### **Existing database**

If, before October 3, 2023, ODH established or utilized a stroke registry database that meets the act's requirements, both of the following apply:

- The act must not be construed to require ODH to establish or utilize another database.
- ODH must maintain both the process for collecting, transmitting, compiling, and overseeing data required by the act as well as the stroke registry database itself, even if federal moneys are no longer available to support the process or database.

### **ODH rulemaking**

The act requires the ODH Director to adopt rules as necessary to implement its provisions, including rules specifying both the data to be collected and the manner in which it is to be

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<sup>76</sup> R.C. 3702.85, not in the act.

collected and later transmitted for inclusion in the stroke registry database. The rules must be adopted by April 3, 2024, in accordance with the Administrative Procedure Act (R.C. Chapter 119).

### **Data to be collected**

The data to be collected must align with stroke consensus metrics developed and approved by (1) the federal Centers for Disease Control (CDC) and (2) accreditation organizations that are approved by the federal Centers for Medicare and Medicaid Services (CMS) and that certify stroke centers. In addition, the data must be consistent with nationally recognized treatment guidelines for patients with confirmed stroke. With respect to mechanical endovascular thrombectomy, the data must relate to the treatment's processes, complications, and outcomes, including data required by national certifying organizations.

### **Data samples**

When adopting rules under the act, the Director may specify that, of the data collected, only samples are to be transmitted for inclusion in the stroke registry database.

### **Stroke care performance measures**

The act requires the Director, when adopting the rules, to consider nationally recognized stroke care performance measures.

### **Electronic platform**

The Director must designate in rule an electronic platform for collecting and transmitting data. In doing so, the Director must consider nationally recognized stroke data platforms.

### **Coordination**

The Director, when adopting the rules, must coordinate with (1) hospitals recognized by ODH as stroke centers and stroke ready hospitals and (2) national voluntary health organizations involved in stroke quality improvement. The act specifies that this coordination is to be done in an effort to avoid duplication and redundancy.

### **Patient identity**

The data collected and transmitted under the act must not identify or tend to identify a particular patient.

### **Duties of hospitals**

Under the act, each hospital recognized by ODH as a comprehensive stroke center, thrombectomy-capable stroke center, or primary stroke center must collect the data specified by the Director in rule and then transmit it for inclusion in the stroke registry database. In the case of a hospital that is recognized by ODH as an acute stroke ready hospital, the act instead encourages the collection and transmission of such data.

The act also specifies that data relating to mechanical endovascular thrombectomy, in particular the treatment's processes, complications, and outcomes, is to be collected and transmitted only by a hospital recognized as a thrombectomy-capable stroke center.

The act authorizes a hospital to contract with a third-party organization to collect and transmit the data. If a contract is entered into, the organization must then collect and transmit the data.

### **Oversight committee**

The act authorizes ODH to establish an oversight committee to advise and monitor the act's implementation and assist ODH in developing short- and long-term goals for the stroke registry database.

If established, the committee's membership must consist of individuals with expertise or experience in data collection, data management, or stroke care, including the following:

- Individuals representing organizations advocating on behalf of those with stroke or cardiovascular conditions;
- Individuals representing hospitals recognized by ODH as comprehensive stroke centers, thrombectomy-capable stroke centers, primary stroke centers, or acute stroke ready hospitals.

### **Recognition of thrombectomy-capable stroke centers**

(R.C. 3727.11, 3727.12, 3727.13, and 3727.14)

The act permits a hospital to obtain recognition by ODH as a thrombectomy-capable stroke center. The process for doing so is the same as the process that ODH uses under continuing law for recognition of hospitals as comprehensive stroke centers, primary stroke centers, or acute stroke ready hospitals.

To be eligible for ODH's recognition in this new category, a hospital must be certified as a thrombectomy-capable stroke center by either (1) an accrediting organization approved by the federal Centers for Medicare and Medicaid Services (CMS) or (2) an organization acceptable to ODH by using nationally recognized certification guidelines. As with the other recognized categories of stroke care hospitals, the act prohibits a hospital from representing itself as a thrombectomy-capable stroke center unless it is recognized as such by ODH. The act does not specify a penalty for violating the prohibition.

### **Parkinson's Disease Registry**

(R.C. 3701.25 to 3701.255)

The act requires the ODH Director to establish and maintain a Parkinson's Disease Registry before October 3, 2025. The Registry is for the collection and monitoring of Ohio-specific data related to Parkinson's disease and Parkinsonisms. Parkinsonisms are conditions related to Parkinson's disease that cause a combination of the movement abnormalities seen in Parkinson's disease that often overlap with and can evolve from what appears to be Parkinson's disease. Parkinsonisms can include multiple system atrophy, dementia with Lewy bodies, corticobasal degeneration, and progressive supranuclear palsy.

The Director is responsible for describing the Registry and providing any relevant information about the Registry on ODH's website.

## **Health care provider reporting**

The act requires each individual case of Parkinson's disease or a Parkinsonism to be reported to the Registry by the certified nurse practitioner, clinical nurse specialist, physician, or physician assistant who diagnosed or treated the individual's Parkinson's disease or Parkinsonism, or by the group practice, hospital, or other health care facility that employs that health care professional. Reporting must begin on a date and at intervals determined by the Director. Only cases diagnosed after a date determined by the Director must be reported. Each medical professional or health care facility that reports to the Registry is not liable in any cause of action that originates from the submission of the report.

When a patient is first diagnosed or treated for Parkinson's disease, the medical professional must inform the patient of the Registry. The act does not require a patient to submit to any medical examination or supervision by ODH or a researcher.

The Director or a representative of the Director may inspect a representative sample of the medical records of patients with Parkinson's disease at a health care facility.

## **Contracts and agreements related to the registry**

The act authorizes the Director to enter into contracts, grants, and other agreements to maintain the Registry, including data sharing contracts with data reporting entities and their associated electronic medical records system vendors. It also authorizes the Director to enter into agreements to furnish data collected in the Registry with other states' Parkinson's disease registries, federal Parkinson's disease control agencies, local health officers, or local health researchers. Before confidential information is disclosed, the requesting entity must agree in writing to maintain the confidentiality of the information. If the disclosure is to a researcher, the researcher must also obtain approval from ODH's institutional review board and provide documentation to the Director that demonstrates they have established the procedures and ability to maintain confidentiality.

## **Confidentiality of information**

Generally, all information collected pursuant to the act is confidential. The Director must maintain an accurate record of all researchers who are given access to confidential information in the Registry. The record must include (1) the name, title, address, and organizational affiliation of any person given access, (2) the access dates, and (3) the specific purpose for which information is being used.

Confidential information is not available for subpoena and may not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other tribunal or court for any reason.

The act does not prevent (1) the Director from publishing reports and statistical compilations that do not identify or tend to identify individual cases or individual sources of information or (2) a facility or individual that provides diagnostic or treatment services to individuals with Parkinson's disease from maintaining a separate Parkinson's disease registry.

## **Advisory committee**

The act creates a Parkinson's Disease Registry Advisory Committee in ODH. The Director or the Director's designee must serve on the Committee, and the Director must appoint the following additional members: (1) a neurologist, (2) a movement disorder specialist, (3) a primary care provider, (4) a physician informaticist, (5) a public health professional, (6) a population health researcher with disease registry experience, (7) a Parkinson's disease researcher, (8) a patient living with Parkinson's disease, and (9) any other individuals deemed necessary by the Director. The Committee is responsible for assisting the Director in developing and implementing the Registry and advising the Director on maintaining and improving the registry.

## **Meetings and compensation**

The first meeting must be held by January 2, 2024. Thereafter, meetings must be at least twice a year at the call of the Director or the Director's designee, who is the chairperson. Meetings may take place in person or virtually at the discretion of the Director. Members serve without compensation except to the extent that serving on the committee is considered part of the member's employment responsibilities. ODH must provide meeting space and other administrative support to the Committee.

## **Report**

The act requires the Director to submit a Parkinson's disease report to the General Assembly by October 3, 2025, and annually thereafter. The report must include (1) the incidence of Parkinson's disease in Ohio by county, (2) the number of new cases reported to the Parkinson's disease registry in the previous year, and (3) demographic information, including age, gender, and race.

## **Rules**

The Director must adopt rules that specify the data to be collected and the format in which it is to be submitted to the Registry.

## **Plasmapheresis supervision**

(R.C. 3725.05)

The act revises the law governing the operation of ODH-certified plasmapheresis centers, by expanding the types of health care providers who must attend, supervise, and maintain sterile technique during plasmapheresis. Prior law had limited such providers to medical technologists approved by the ODH Director, physicians, and registered nurses. Under the act, the providers also include other qualified medical staff persons approved by the Director, licensed practical nurses, emergency medical technicians-intermediate, and emergency medical technicians-paramedic. In the case of an emergency medical technician (EMT), the act specifies that the individual is not attending or supervising the procedure or maintaining sterile technique in the individual's capacity as an EMT.

## **Regulation of surgical smoke**

(R.C. 3702.3012 and 3727.25)

The act requires ambulatory surgical facilities and hospitals offering surgical services to adopt and implement policies designed to prevent human exposure to surgical smoke during planned surgical procedures likely to generate such smoke. “Surgical smoke” is defined as the airborne byproduct of an energy-generating device used in a surgical procedure, including smoke plume, bioaerosols, gases, laser-generated contaminants, and dust.

The policy, which must be in place by October 3, 2024, must include the use of a surgical smoke evacuation system. The system required by the act is described as equipment designed to capture, filter, and eliminate surgical smoke at the point of origin, before the smoke makes contact with the eyes or respiratory tract of an individual.

The ODH Director may adopt rules to implement the act’s requirements. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

## **HIV testing**

(R.C. 3701.242)

The act authorizes an HIV test to be performed on an individual if the individual has given general consent for health care treatment and a health care provider, or an authorized representative of a health care provider, notifies the individual that the HIV test is planned. The notification may be verbal or written and in-person or electronic. The notification does not have to include information on the right to anonymous testing, but the act does not limit the right to anonymous testing. Previously, an HIV test could be authorized only if a health care provider determined the test was necessary for providing diagnosis and treatment, and the notification had to include information on the right to an anonymous test.

## **Admission and medical supervision of hospital patients**

(Section 130.56, primary; sections 130.54 and 130.55, amending Sections 130.11 and 130.12 of H.B. 110 of the 134<sup>th</sup> G.A.; conforming changes in Sections 130.50 to 130.53)

The act cancels the repeal – scheduled for September 30, 2024 – of statutory law governing the admission and medical supervision of hospital patients, including admissions initiated by advanced practice registered nurses and physician assistants, and makes conforming changes in related statutes.<sup>77</sup> Under H.B. 110, the main operating budget of the 134<sup>th</sup> General Assembly, this law was scheduled to be repealed as part of H.B. 110’s provisions requiring each hospital to hold a license issued by the ODH Director by September 30, 2024.

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<sup>77</sup> R.C. 3727.06, not in the act. See also R.C. 3701.351, and R.C. 3727.70 and 4723.431, not in the act.

## **Nursing home change of operator**

(R.C. 3721.01, 3721.026, 5165.01, and 5168.40)

### **Actions that constitute a change of operator**

The act adds several circumstances that, upon their occurrence, constitute a nursing home change of operator. It eliminates the specification that a transfer of all of an operator's ownership interest in the operation of a nursing home constitutes a change of operator of the nursing home, and instead specifies that a change in control of a nursing home operator constitutes a change in operator. A change in control of a nursing home is defined as either (1) any pledge, assignment, or hypothecation of or lien or other encumbrance on any of the legal or beneficial equity interests in an entity operating a nursing home, or (2) a change of 50% or more in the legal or beneficial ownership or control of the outstanding voting equity interests of the entity operating the nursing home necessary at all times to elect a majority of the board of directors or similar governing body and to direct the management policies and decisions.

Under continuing law, the dissolution of a partnership constitutes a change of operator. The act specifies that a merger of a partnership into another entity, or a consolidation of a partnership and at least one other entity also constitute a change of operator. Similarly, the act adds that the dissolution of a limited liability company, a merger of a limited liability company with another entity, or consolidation of a limited liability company with another entity all constitute a change of operator. Finally, the act provides that both of the following constitute a change of operator: (1) a contract for an individual or entity to assume control of the operations and cash flow of a nursing home as an operator's or owner's agent and (2) a change in control of the owner of the real property associated with a nursing home, if within one year after the change of control, there is a material increase in the lease payments or other financial obligations of the operator to the owner.

Conversely, the act specifies that an employer stock ownership plan established under federal law and an initial public offering for which the Securities and Exchange Commission has declared a registration statement to be effective do not constitute a change of operator. Similarly, the act specifies that continuing law specifying that a change of one or more members of a corporation's governing body or transfer of ownership of one or more shares of a corporation's stock does not constitute a change of operator applies only if the corporation has publicly traded securities.

### **Nursing home change of operator license application**

The act modifies a requirement that an individual or entity who is assigned or transferred the operation of a nursing home submit to the ODH Director documentation of certain information before a change of operator may occur. The act instead requires that the individual or entity taking over the operation of a nursing home following a change of operator first complete a nursing home change of operator license application and pay a licensing fee. ODH must prescribe the form for the application. As part of the application, an applicant must provide the following:

- Disclosure of all direct and indirect owners that own at least 5% of:

- The applicant, if the applicant is an entity;
- The owner of the building or buildings in which the nursing home is housed, if the owner of the building or buildings is a different individual or entity from the applicant;
- The owner of the legal rights associated with the ownership and operation of the nursing home beds, if the owner is a different person or entity from the applicant;
- The management firm or business employed to manage the nursing home, if the management firm or business is a different individual or entity from the applicant;
- Each related party that provides or will provide services to the nursing home, whether through contracts with an individual or entity described above.
- Disclosure of the direct or indirect ownership interest that an individual identified above has in a current or previously licensed nursing home in Ohio or another state, and whether any identified nursing home had any of the following occur during the five years immediately preceding the date of application:
  - Voluntary or involuntary closure of the nursing home;
  - Voluntary or involuntary bankruptcy proceedings;
  - Voluntary or involuntary receivership proceedings;
  - License suspension, denial, or revocation;
  - Injunction proceedings initiated by a regulatory agency;
  - The nursing home was listed in Table A, Table B, or Table D on the SFF list under the Special Focus Facilities program administered by the U.S. Secretary of Health and Human Services;
  - A civil or criminal action was filed against the nursing home by a state or federal entity.
- Any additional information the ODH Director considers necessary to determine the ownership, operation, management, and control of the nursing home.

## **Additional requirements**

### **Bond or other financial security**

Under prior law, an individual assuming the operation of a nursing home was required to provide to the ODH Director evidence of a bond or other financial security. Under the act, this requirement applies to all applicants for a change of operator license except those that demonstrate that they own at least 50% of the nursing home and its assets or at least 50% of the entity that owns the nursing home and its assets. For individuals and entities to which the bond or other financial security requirements apply, the act specifies that the bond or other financial security must be for an amount not less than the product of the number of licensed beds in the nursing home, multiplied by \$10,000.

The required bond or other financial security must be renewed or maintained for a period of five years following the effective date of a change of operator. If a bond or other financial security is not maintained, the ODH Director is required to revoke a nursing home operator's

license. The Director may utilize a bond or other financial security if any of the following occur during the five-year period following the change of operator for which the bond or other financial security is required:

- The nursing home is voluntarily or involuntarily closed;
- The nursing home or its owner or operator is the subject of voluntary or involuntary bankruptcy proceedings;
- The nursing home or its owner or operator is the subject of voluntary or involuntary receivership proceedings;
- The license to operate the nursing home is suspended, denied, or revoked;
- The nursing home undergoes a change of operator and the new applicant does not submit a bond or other financial security;
- The nursing home appears in Table A, Table B, or Table D on the SFF list under the Special Focus Facilities program administered by the U.S. Secretary of Health and Human Services.

If none of the events described above occur in the five years immediately following the effective date of the change of operator, the ODH Director is required to release the bond or other financial security back to the applicant.

### **Experience**

The act further requires an applicant to provide information detailing that a person who is a direct or indirect owner of 50% or more of the applicant is an individual with at least five years of experience as (1) an administrator of a nursing home located in Ohio or another state or (2) a direct or indirect owner of at least 50% in an operator or manager of a nursing home located in Ohio or another state.

### **Policies and insurance**

Under continuing law unchanged by the act, an individual or entity assuming control of a nursing home must attest to the ODH Director that the applicant has plans for quality assurance and risk management and general and professional liability insurance of \$1 million per occurrence and \$3 million in aggregate. Additionally, the act requires an applicant to attest that the nursing home has sufficient numbers of qualified staff who will be employed to properly care for the type and number of nursing home residents.

### **License denial and penalty**

The act requires the ODH Director to conduct a survey of a nursing home not later than 60 days after the effective date of the change of operator. Additionally, the act requires the Director to deny a change of operator license application if any of the requirements described above are not satisfied or if the applicant has or had 50% or more direct or indirect ownership in the operator or manager of a current or previously licensed nursing home in Ohio or another state for which any of the following occurred within the five years immediately preceding the date of application:

- Involuntary closure of the nursing home by a regulatory agency or voluntary closure in response licensure or certification action;
- Voluntary or involuntary bankruptcy proceedings that are not dismissed within 60 days;
- Voluntary or involuntary receivership proceedings that are not dismissed within 60 days;
- License suspension, denial, or revocation for failure to comply with operating standards.

If an application is denied, the act authorizes an applicant to appeal the denial in accordance with the Administrative Procedure Act.

Under the act, an applicant is required to notify the ODH Director within ten days of any change in the information or documentation that is required to be submitted before a change of operator may be effective. This notice is required whether the change in information occurs before or after the effective date of a change of operator. If an applicant fails to notify the Director as required, the act requires the Director to impose a civil penalty of \$2,000 per day for each day of noncompliance.

Similarly, if the Director becomes aware that a change of operator has occurred but the entering operator failed to submit a change of operator license application or did submit an application but provided fraudulent information, the act requires the Director to impose a civil penalty of \$2,000 per day for each day of noncompliance after the date on which the Director became aware of the information. If the entering operator fails to submit an application or a new application within 60 days of the ODH Director becoming aware of a change of operator taking place, the Director is required to begin the process of revoking the nursing home's license.

## **Rulemaking**

The act authorizes the ODH Director to adopt any rules necessary to implement these requirements. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

## **Legislative intent**

The act specifies that it is the intent of the General Assembly in establishing a nursing home change of operator license application process to require full and complete disclosure and transparency with respect to the ownership, operation, and management of each licensed nursing home located in Ohio.

## **Nursing home investigations and penalties**

(R.C. 3721.17 and 3721.99; conforming changes in R.C. 173.24, 3721.01, and 3721.08)

Regarding investigations undertaken by ODH following a complaint that a nursing home resident's rights have been violated, the act eliminates a requirement that such an investigation be initiated within 30 days after receiving a complaint, or be referred to the Attorney General within seven days. The act also eliminates a requirement that ODH hold an adjudicative hearing within 30 days after an investigation that finds probable cause to believe a nursing home resident's rights were violated.

The act modifies the disciplinary procedures that may be initiated against a nursing home that is determined to have violated a resident's rights. Under prior law, ODH was required to assess a fine of between \$100 and \$500 for a first offense and between \$200 and \$1,000 for subsequent offenses. Under the act, the ODH Director may do any of the following: (1) request the nursing home licensee submit a corrective action plan, (2) impose a civil monetary penalty, or (3) revoke a nursing home license.

If the Director requests a nursing home licensee to submit a corrective action plan, the plan must state the following:

- The actions being taken or actions to be taken to correct the violation;
- The time frame for completion of the correction plan;
- The means by which continuing compliance with the plan will be monitored.

If the Director elects to impose a civil monetary penalty, the act establishes several tiers of civil penalties that may be assessed, as follows:

- For violations that result in no actual harm with the potential for more than minimal harm that is not a real and present danger<sup>78</sup> to one or more residents, that were cited more than once during the 15-month period following an inspection, a \$2,000 to 3,000 fine;
- For violations that do result in actual harm that is not a real and present danger to one or more residents, a \$3,100 to 6,000 fine;
- For violations that result in a real and present danger to one of more residents, a \$6,000 to 10,000 fine;
- For a violation of a nursing home resident's rights, other than the right to be free from retaliation from a nursing home, a \$1000 to 5,000 fine for a first occurrence and \$2,000 to 10,000 for subsequent offenses;
- For a violation of a nursing home resident's right to be free from retaliation from a nursing home, a fine up to \$5,000 for each occurrence;
- For a violation of the continuing law requirement unchanged by the act prohibiting the operation of a nursing home without a license, a fine of \$5,000 for a first offense and \$10,000 for subsequent offenses.

When determining the amount of a civil monetary penalty within the ranges described above, the act requires the ODH Director to consider all of the following:

- The number of residents directly affected by the violation;
- The number of staff involved in the violation;

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<sup>78</sup> Continuing law unchanged by the act defines a "real and present danger" as "immediate danger of serious physical or life-threatening harm to one or more occupants of a [nursing] home"; R.C. 3721.01(A)(14).

- Any actions taken by the nursing home to correct or mitigate the violation, including the timeliness and sufficiency of the nursing home's response to the violation and the outcomes of that response;
- Whether any concurrent federal penalties are being imposed for the same violations by the U.S. Centers for Medicare and Medicaid Services;
- The nursing home's history of compliance.

The act permits the Director to enter into a settlement agreement with a nursing home after determining a civil monetary penalty is warranted. The act specifies that settlements may include (1) a lesser civil monetary penalty than initially proposed, (2) allowing the nursing home to invest an amount less than or equal to the amount of the civil monetary penalty on remedial measures and quality improvement initiatives, or (3) other penalties warranted by the deficient practices and negotiations between the Director and the nursing home.

### **Long-term care facility discharges and transfers**

(R.C. 3721.13, 3721.16, 3721.161, and 3721.162)

The act adds several rights for long-term care facility residents. Under Ohio law, residents of nursing homes, assisted living facilities (referred to in Ohio law as residential care facilities), and other homes for the aging have various enumerated rights. A resident who believes that any of those rights have been violated may file a grievance with the grievance committee that each facility is required to establish.

Some continuing rights include a guarantee of a safe and clean living environment, participation in decisions that affect the resident's life, the right to privacy in certain situations, and the right not to be transferred or discharged from the home unless the transfer is necessary for one of several reasons, including the resident's needs cannot be met in the home, the safety of individuals in the home is endangered, or the resident has failed to pay after reasonable and appropriate notice. Regarding transfer and discharge, the act adds the following rights:

- The right not to be transferred or discharged to a location that cannot meet the health and safety needs of the resident.
- The right not to be transferred or discharged without adequate preparation in order to conduct a safe and orderly transfer or discharge, including proper arrangements for medication, equipment, health care services, and other necessary services.
- All other rights regarding transfers or discharges provided under federal law.

The act also requires ODH, in hearings regarding a notice of transfer or discharge, to determine if the proposed transfer or discharge complies with these transfer and discharge rights, as well as notification requirements under continuing law.

## **Certificates of need – maximum capital expenditures**

(R.C. 3702.511 and 3702.52; repealed R.C. 3702.541; Section 803.110; related and conforming changes in other sections)

Under Ohio's Certificate of Need (CON) Program, certain activities involving long-term care facilities can be conducted only if a CON has been issued by the ODH Director. The act eliminates the following as a reviewable activity: expenditures of more than 110% of the maximum capital expenditure specified in a CON concerning long-term care beds. Related to this change, the act eliminates the need to obtain a new CON based on a project's cost after a CON has been approved.

The act also does the following:

- Prohibits CON rules from specifying a maximum capital expenditure that a certificate holder may obligate under a CON;
- Eliminates a requirement that rules be adopted to establish procedures for Director-review of CONs where the certificate holder exceeds maximum capital expenditures;
- Eliminates law authorizing civil penalties up to \$250,000 for violations of CON maximum capital expenditure limits;
- Specifies that the CON changes apply to currently valid CONs, pending CON applications, and pending actions for imposing sanctions;
- Repeals uncodified law enacted in H.B. 371 of the 134<sup>th</sup> General Assembly that, for 24 months, prohibited imposition of civil monetary penalties against CON holders who obligate up to 150% of an approved project's cost.

## **Fees for copies of medical records**

(R.C. 3701.741)

The act makes several changes regarding costs that a health care provider or medical records company may charge for copies of medical records. In setting fee caps, the act continues a preexisting distinction between record requests made by the patient or the patient's personal representative and requests made by anyone else. Regarding requests by a patient or a patient's personal representative, the act makes the following changes:

- Adds that a request from an individual who is authorized to access a patient's medical record through a valid power of attorney is in the same category as a request from the patient or the patient's personal representative.
- Related to costs that may be charged for those requests, generally eliminates specific dollar caps based on the number of pages, and instead specifies that costs for the records must be reasonable and cost-based, and can include only costs that are authorized to be charged to the patient under federal law and regulations.<sup>79</sup> The act does, however,

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<sup>79</sup> See 45 C.F.R. 164.524(c)(4).

impose a \$50 cap in the case of requests for access to digital records or electronically transmitted records.

- Clarifies that any per page charges to a patient, or the patient’s personal representative or holder of a power of attorney, cannot exceed the sum of the per page charges permitted under continuing law when a request is made by anyone else. Those per page caps relate to x-ray, MRI, and CAT scan images, and to data recorded on paper or electronically. Related to the latter, the \$50 cap discussed above also applies.

## **Second Chance Trust Fund Advisory Committee**

(R.C. 2108.35)

The act makes changes to the Second Chance Trust Fund Advisory Committee. First, it removes the term limits for members, who currently are limited to two consecutive terms, whether full or partial. Second, it removes the requirement that the Committee annually elect a chairperson from among its members, instead leaving the details of a chairperson’s election and term to the rules of the Committee. Third, as acknowledged in the **BOARDS AND COMMISSIONS** chapter, the act removes two members of the General Assembly from the Committee.

Under continuing law, the Committee makes recommendations to the ODH Director regarding how to spend proceeds of the Second Chance Trust Fund. The fund consists of voluntary contributions and its own investment earnings, used to promote organ donation in Ohio through public education and awareness campaigns, outreach to legal and medical organizations, and recognition of donor families.

## **Home health licensure exception**

(R.C. 3740.01)

The act exempts from licensure under the home health licensure law:

1. Individuals who provide self-directed services<sup>80</sup> to Medicaid participants, including individuals who are certified by the Department of Aging or registered as self-directed individual providers through an area agency on aging; and
2. Residential facilities licensed by OhioMHAS.

Other exemptions not modified by the act include exemptions for residential facilities operated by the Department of Developmental Disabilities and nursing homes and assisted living facilities licensed by ODH.

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<sup>80</sup> Self-directed Medicaid services means that participants have decision making authority over certain services and take direct responsibility to manage their services with the assistance of a system of available supports. Self-direction is a service delivery model that is an alternative to traditionally delivered and managed services. [Self-Directed Services](#), available by searching “self-direction” at [medicaid.gov](http://medicaid.gov).

## Home health screening pilot program (PARTIALLY VETOED)

(Sections 291.10, 291.20, and 291.50)

The act requires the ODH Director to collaborate with CareStar Community Services to conduct a home health screening pilot program during FY 2024 and FY 2025. CareStar is a Cincinnati-based company that provides a variety of health services including case management, population health management, personal in-home services, technology development, and online learning and training. Community Services is CareStar's nonprofit organization that partners with government and private entities.<sup>81</sup> The purpose of the pilot program is to improve early detection of chronic diseases for populations underserved by health care providers and to connect patients with health care services.

The ODH Director must enter into a cooperative agreement with CareStar Community Services before November 2, 2023, granting CareStar Community Services the authority to make decisions regarding program responsibilities. The first pilot program responsibility is to identify a target population underserved by health care providers that is large enough to evaluate best practices for further implementation. The pilot program must then deliver health screening tests directly to the homes of members of the target population, including tests for colorectal cancer, diabetes, heart disease, cervical cancer, and other tests deemed appropriate by CareStar Community Services. To enhance patient engagement and the return of completed tests, the pilot program is responsible for initiating public awareness and education efforts directed at the target population. After the screening tests are complete, the pilot program must deliver the results to those who submitted tests and provide referrals to health care providers for consultations when appropriate and available.

CareStar Community Services, in collaboration with the ODH Director, is required to submit two reports to the Governor, the Speaker of the House, the Senate President, and the chairs of the committees of each house with responsibility for health care policy. The reports are due within 60 days of the end of each fiscal year that the pilot is established. Each report must detail the status of the pilot program, including an estimate of the financial savings anticipated as a result of the early screenings and recommendations for expanding the program statewide.

The Governor vetoed a provision that would have required the Medicaid Director to enter into a data sharing agreement with the ODH Director to provide necessary patient data with protected health information to the ODH Director and CareStar Community Services. The data shared would have been used only to complete the pilot program. Pilot operators and any subcontractors with access to the data would have been required to maintain Health Information Trust Alliance compliance.

The act appropriates \$1 million of GRF, to be distributed to CareStar Community Services in both FY 2024 and FY 2025, to be used for the home health screening pilot program. If CareStar Community Services contracts with an institution of higher education to perform any services

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<sup>81</sup> CareStar, [CareStar Community Services](https://www.carestar.com), available at [carestar.com](https://www.carestar.com).

related to the pilot program, administrative costs may not be more than 15% of the cost of the services provided.

## **Center for Community Health Worker Excellence**

(R.C. 3701.0212; Sections 291.10 and 291.20)

The act creates the Center for Community Health Worker Excellence, which is a public-private partnership to support and foster the practice of community health workers and improve access to community health workers across the state. The act establishes the Center's duties which include: establishing an electronic platform that may be accessed statewide to connect community health workers with individuals or communities, evaluating and reporting on the state of the community health workforce in Ohio, creating and maintaining a website to coordinate resources for individuals practicing as community health workers, making continuing education hours or credits available for free to community health workers certified by the Board of Nursing, and providing financial assistance to employers that host or offer training to community health workers seeking certification.

The act provides for a board of directors, composed of members of the General Assembly, various state departments and agencies, and community organizations. The Board must issue an annual report to the Governor and the General Assembly describing the activities of the Center and any recommendations pertaining to the practice of community health workers. The act also authorizes Health Impact Ohio and the OHIO Alliance for Population Health at Ohio University to assist the Center in implementing its duties.

## **Smoking and tobacco**

### **Minimum age to sell tobacco products**

(R.C. 2927.02(B)(7), (E)(2), and (G))

The act expands the offense of illegal distribution of tobacco products by prohibiting any person from allowing an employee under 18 to sell such products. A violation is a fourth degree misdemeanor for a first offense, and a third degree misdemeanor for subsequent offenses.

The act clarifies that it is not a violation of either of the following for an employer to permit an employee age 18, 19, or 20 to sell a tobacco product:

- The prohibition against distributing tobacco products to any person under 21;
- The prohibition against distributing tobacco products in a place lacking required signage relating to the underage sale of tobacco products.

### **Shipment of vapor products and electronic smoking devices**

(R.C. 2927.023)

Continuing law makes each of the following a criminal offense, punishable by a fine of up to \$1,000 for each violation:

- For any person to cause cigarettes to be shipped to a person in Ohio other than an authorized recipient of tobacco products;

- For a common carrier, contract carrier, or other person to knowingly transport cigarettes to a person in Ohio that the carrier or other person reasonably believes is not an authorized recipient of tobacco products;
- For any person engaged in the business of selling cigarettes to ship cigarettes or cause cigarettes to be shipped in any container or wrapping other than the original container or wrapping without first marking the exterior with the word “cigarettes.”

The act extends the same offenses to vapor products and electronic smoking devices, except that, for the third offense, the container or wrapping must instead be marked with the words “vapor products” or “electronic smoking devices.” In addition, the act specifies that the following persons are authorized recipients of vapor products or electronic smoking devices: licensed tobacco or vapor distributors, vapor retailers (if all taxes have been paid), operators of customs bonded warehouses, state and federal government agencies and employees, and political subdivision agencies and employees.

### **Delivery services**

(R.C. 2927.02(F))

The act prohibits a delivery service from accepting, transporting, delivering, or allowing pick-up of alternative nicotine products, papers used to roll cigarettes, or tobacco products other than cigarettes to or from a person under 21. The delivery service must verify the age of such a person by driver’s license, military identification, passport, or state identification that shows the person is 21 or older.

### **Electronic liquids (VETOED)**

(R.C. 2927.02(A) and (B))

The Governor vetoed a provision that would have exempted liquids used in an electronic smoking device that do not contain nicotine from the law governing the giveaway, sale, or other distribution of tobacco products. Under continuing law, any liquid used in an electronic smoking device is considered to be a tobacco product and is, therefore, subject to regulation regardless of whether or not the liquid contains nicotine.

### **Proof of age**

(R.C. 2927.02(A)(7) and (B)(1))

Continuing law prohibits vendors from selling or otherwise distributing tobacco products to persons younger than 21. The act requires vendors to verify proof of age prior to selling or otherwise distributing tobacco products. Continuing law defines proof of age as a “driver’s license, military identification card, passport or state ID card that shows that a person is 21 or older.”

## **Free samples (PARTIALLY VETOED)**

(R.C. 2927(B)(8))

The Governor partially vetoed a provision that potentially would have authorized a person to give away free samples of cigarettes, other tobacco products, or alternative nicotine products, or coupons redeemable for such products, if all of the following applied:

- The person receiving the free sample or coupon is age 21 or over;
- The person giving the free sample or coupon verifies the recipient's age;
- The transaction is not prohibited by the Consumer Sales Practices Act or state cigarette minimum pricing laws;
- All state and local taxes on the cigarettes, other tobacco products, or alternative nicotine products have been paid.

The provision likely would have been preempted, for the most part, by federal law, which generally prohibits manufacturers, distributors, and retailers from distributing free samples of such products or coupons redeemable for free samples. The federal ban includes components and parts that do not contain nicotine. However, it includes an exception for smokeless tobacco products distributed in a "qualified adult only facility," i.e., a facility that meets several requirements, including verifying that all customers are age 18 or over.<sup>82</sup>

The Governor's partial veto effectively prohibits all persons from distributing free samples or coupons redeemable for free samples in Ohio under any circumstances, even if permitted under federal law. Prior state law did not explicitly prohibit distribution of free samples of other tobacco products or alternative nicotine products. Free samples of cigarettes might be prohibited, in some circumstances, under cigarette minimum pricing laws.<sup>83</sup>

## **Moms Quit for Two grant program**

(Section 291.30)

The act continues Moms Quit for Two. Authorized in each biennium since 2015, it is a grant program administered by ODH that awards funds to government or private, nonprofit entities demonstrating the ability to deliver evidence-based tobacco cessation interventions to women who are pregnant or living with a pregnant woman and reside in communities that have the highest incidence of infant mortality, as determined by the ODH Director.

## **Retail tobacco stores**

(R.C. 3794.03)

The act modifies an exemption from the state Smoke Free Workplace Law for retail tobacco stores. Under continuing law, a retail tobacco store, i.e., an establishment that derives

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<sup>82</sup> 21 C.F.R. 1140.

<sup>83</sup> R.C. 1333.11 through 1333.21, not in the act.

more than 80% of its gross revenue from the sale of lighted or heated tobacco products and related smoking accessories, established before December 7, 2006, is exempt from the Smoke Free Workplace Law so long as it files an annual affidavit with ODH stating the percentage of its gross income derived from such sales. Conversely, a retail tobacco store established after December 7, 2006, or that relocates after that date, qualifies for exemption only if it files the affidavit, is the sole occupant of a freestanding structure, and if smoke from the store does not migrate to an enclosed area where smoking is prohibited.<sup>84</sup>

The act specifies that a change of ownership of a retail tobacco store established before December 7, 2006, does not constitute the beginning of a new operation or require the relocation of an existing operation to a freestanding structure in order to retain its exemption from the Smoke-Free Workplace Law.

## **Environmental health specialists**

(R.C. 3776.01, 3776.02, 3776.03, 3776.04, 3776.05, 3776.06, 3776.07, 3776.08, 3776.09, 3776.10, 3776.11, 3776.12, and 3776.13; R.C. 4736.05 (repealed), 4736.06 (repealed), and 4736.10 (repealed); and conforming changes in R.C. 2925.01, 3701.33, 3701.83, 3717.27, 3717.47, 3718.011, 3718.03, 3742.03, 4743.02, 4743.03, 4743.04, 4743.05, 4743.07, 4776.20, 4799.01, and 5903.12)

The act recodifies R.C. Chapter 4736, the law governing environmental health specialists (EHSs) and environmental health specialists in training (EHSs in training), in new R.C. Chapter 3776. EHSs and EHSs in training are registered professionals who engage in the practice of environmental health. They typically are employed or contracted by local health districts, ODH, or the Department of Agriculture because of their specialized knowledge, training, and experience in the field of environmental health science.

The act adds that EHSs and EHSs in training may administer and enforce the law governing tattoos and body piercing. It also clarifies that EHSs and EHSs in training may administer and enforce the law governing hazardous waste. Under continuing law, an EHS or EHS in training engages in the practice of environmental health by administering and enforcing various laws, including laws governing swimming pools, retail food establishments, food service operations, household sewage treatment systems, solid waste, and construction and demolition debris.

The act also adds conforming changes to various sections in the Occupational Licensing law so that those provisions continue to subject EHSs and EHSs in training licenses to continuing requirements, including all of the following:

1. Allowing applicants to review examination results for at least 90 days after the announcement of the applicant's grade;
2. Provisions regarding restricting entry into the EHS or EHS in training occupation;

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<sup>84</sup> See also, R.C. 3794.01(H), not in the act.

3. Allowing an expired EHS or EHS in training license to be renewed without penalty and without re-examination if the license was not renewed because of the person's service in the armed forces; and

4. Requiring ODH take into consideration an EHS or EHS in training's status on the civil registry.

### **Rulemaking authority**

The act broadens the ODH Director's rulemaking authority regarding EHSs and EHSs in training by authorizing the Director to adopt rules of a general application throughout Ohio for the practice of environmental health that are necessary to administer and enforce the EHS law, including rules governing all of the following:

1. The registration, advancement, and reinstatement of applicants to practice as EHSs or EHSs in training;

2. Educational requirements necessary for the qualification for registration as an EHS or an EHS in training, including criteria for determining what courses may be included toward fulfillment of the science course requirements;

3. Continuing education requirements for EHSs and EHSs in training, including the process for applying for continuing education credits; and

4. Any other rule necessary for the administration and enforcement of the EHS law.

### **Continuing education**

The act requires EHSs in training to comply with the same continuing education requirements as are required for EHSs. The continuing education program requires EHSs (and EHSs in training under the act) biennially to complete 24 hours of continuing education in subjects relating to the practice of the profession. An EHS (and EHS in training under the act) cannot renew registration without submitting proof of completing the 24-hour continuing education requirement.

In addition, it adds that the Director must do both of the following for EHSs in training, in the same manner as the Director does for EHSs under continuing law:

1. Provide, at least once annually, to each EHS in training a list of approved courses that satisfy the continuing education program; and

2. Supply a list of continuing education courses to an EHS in training upon request.

### **EHS and EHS in training registration**

The act clarifies that the ODH Director may renew an EHS or EHS in training registration 60 days prior to expiration, provided the applicant pays the renewal fee and submits proof of compliance with continuing education requirements. Prior law was silent on the amount of time the Director could begin to renew registrations prior to their expiration date.

It also specifies that an EHS in training has up to four years, with a two-year possible extension, to apply as an EHS. Under prior law, an EHS in training had three years to apply to register as an EHS. The Director may allow the two-year extension only for an EHS in training who

provides sufficient cause for not applying for registration as an EHS within the normal time period.

Additionally, the act eliminates the requirement that the Director annually prepare a list of the names and addresses of every registered EHS and EHS in training and a list of every EHS and EHS in training whose registration had been suspended or revoked within the previous year. It also eliminates the requirement that the Director assign a serial number to each certificate of registration and include it in the registration records. However, the act retains other record-keeping requirements, such as the names and addresses of each applicant, the name and address of the employer or business connection of each applicant, application dates, an applicant's educational and employment qualifications, and the action taken by the Director on each application.

The act prohibits a person who is not a registered EHS in training from using the title "registered environmental health specialist in training" or the abbreviation "E.H.S.I.T.," or representing self as a registered EHS in training. Violating this prohibition is a fourth degree misdemeanor. This prohibition mirrors the prohibition against a person who is not a registered EHS from using the title "registered environmental health specialist" or the abbreviation "R.E.H.S.," or representing self as a registered EHS.

### **Advisory Board**

The act removes the requirement that the ODH Director obtain the advice and consent of the Senate when appointing members of the Environmental Health Specialist Advisory Board. The Advisory Board, made up of seven appointees who are all EHSs, advises the Director regarding the registration of EHSs and EHSs in training, continuing education requirements, EHS examinations, the education and employment criteria for EHS and EHS in training applicants, and any other matters as may be of assistance to the Director.

### **Out-of-state reciprocity**

The act eliminates standard license reciprocity provisions that were scheduled to take effect on December 29, 2023, and restores and retains law that generally requires out-of-state applicants to have at least the same qualifications as that of in-state EHS or EHS in training applicants.

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## DEPARTMENT OF HIGHER EDUCATION

### Restriction on instructional fee increases

- For the 2023-2024 and 2024-2025 academic years, prohibits state universities and university branch campuses from increasing instructional and general fees for students above 3% of what was charged in the previous academic year.
- For the 2023-2024 and 2024-2025 academic years, permits community colleges, state community colleges, and technical colleges to increase instructional and general fees by not more than \$5 per credit hour over the previous academic year.
- Excludes from the fee increase restrictions: student health insurance, auxiliary goods or services fees provided to students at cost, pass-through fees for licensure and certification exams, study abroad fees, elective service charges, fines, and voluntary sales transactions.

### Financial aid programs

#### Ohio College Opportunity Grant Program

- Increases the income eligibility threshold for an Ohio College Opportunity Grant Program (OCOG) award from an expected family contribution (EFC) of \$2,190 or less to \$3,750 or less.
- Prescribes OCOG award amounts in uncodified law for FY 2024 and FY 2025 for students enrolled in different types of institutions, as follows:
  - State institutions of higher education, \$3,200 in FY 2024 and \$4,000 in FY 2025;
  - Private nonprofit colleges or universities, \$4,700 in FY 2024 and \$5,000 in FY 2025; and
  - Private for-profit career colleges, \$1,850 in FY 2024 and \$2,000 in FY 2025.
- Prohibits an institution of higher education that enrolls OCOG students from making changes to its scholarship or financial aid programs with the goal or net effect of shifting the cost burden of those programs to OCOG.
- Requires each institution to provide at least the same level of need-based financial aid to its students as in the immediately prior academic year in terms of either aggregate aid or on a per student basis, but permits the Chancellor of Higher Education to temporarily waive this requirement for exceptional circumstances.

#### Second Chance Grant Program

- Increases the award amount for the Second Chance Grant Program from \$2,000 to \$3,000.
- Designates eight months as the minimum disenrollment period to qualify for a grant for students enrolled in institutions that do not operate on a semester calendar.

## **Ohio Work Ready Grant Program**

- Requires the Chancellor to establish the Ohio Work Ready Grant Program to award grants of up to \$3,000 to eligible students enrolled in qualified programs at community, state community, or technical colleges, state university branch campuses, or Ohio technical centers.

## **Governor's Merit Scholarship**

- Establishes the Governor's Merit Scholarship Program to award \$5,000 of merit-based scholarships in FY 2025 to eligible students to pay eligible expenses at qualifying institutions.

## **War Orphans and Severely Disabled Veterans' Children Scholarship**

- Updates eligibility standards for receiving a War Orphans and Severely Disabled Veterans' Children Scholarship by removing references to children of World War I veterans.

## **Veterans' tuition waivers**

- Updates eligibility standards for tuition waivers at state-supported colleges and universities by replacing references to World War I veterans with references to World War II veterans.

## **State institutions of higher education boards of trustees**

### **Ohio State University student trustees (VETOED)**

- Would have prohibited student members of the Ohio State University board of trustees from having voting power on the board, being considered members of the board in determining whether a quorum is present, and being entitled to attend executive sessions (VETOED).

### **Two-year institution boards of trustees**

- Permits a member of a technical, community, or state community college board of trustees whose term has expired to continue in office until the trustee's successor takes office.
- Establishes the quorum for a technical, community, or state community college board of trustees meeting as a majority of the sitting board members at the time of a meeting.

### **Technical college trustee appointments**

- Transfers appointing power for technical college boards of trustees from school district boards of education and educational service center governing boards to trustee selection committees, beginning with trustees appointed after 2023.

## College transcripts

### Notice regarding access to transcript and institutional debts

- Requires each state institution of higher education, private nonprofit college or university, and private for-profit career college to post on its website:
  - An explanation that students have a right to access transcripts for employment-seeking purposes, regardless of whether the student owes an institutional debt; and
  - A list of resources for students who owe an institutional debt.

### Resolution to end transcript withholding

- Requires each state institution of higher education to adopt a resolution by December 1, 2023, determining whether to end the practice of transcript withholding.
- Requires the Chancellor to provide a copy of each resolution to the Governor, the Speaker of the House, and the Senate President by January 1, 2024.

## Centers and institutes at state universities

- Establishes the Salmon P. Chase Center for Civics, Culture, and Society as an independent academic unit at the Ohio State University.
- Establishes the Institute of American Constitutional Thought and Leadership as an independent academic unit at the University of Toledo.
- Establishes centers for civics, culture, and society as independent academic units at Miami University, Cleveland State University, and the University of Cincinnati.

## College student authority to decline vaccines (VETOED)

- Would have authorized a student – if required by a private college or state institution of higher education to receive a vaccine – to decline the vaccine for medical contraindications or reasons of conscience, including religious convictions, and would have established a process by which a student may decline (VETOED).

## Community college housing and dining facilities

- Permits a community college district to acquire, lease, or construct housing and dining facilities if it is located within one-quarter mile of a facility that rented at least 75 rooms to students at the district on January 1, 2023.

## Community college programs in Fairfield County

- Establishes a procedure to permit a community, state community, or technical college that is not co-located with an institution of higher education to develop and offer a program, certificate, or degree in Fairfield County, subject to the Chancellor's approval.

## **Wright State University land lease**

- Permits developers desiring to lease land from Wright State University to first submit their plans for development to the University board of trustees (rather than the Department of Administrative Services (DAS)), if the land to be leased is held in trust by the board.
- Permits the board of trustees to direct the developer to submit the plans instead to DAS, if the board desires that DAS lease the land to the developer.
- Permits the board of trustees to lease land it holds in trust if certain conditions are met.

## **Teacher preparatory programs**

- Requires that the metrics for educator preparation programs ensure that specific coursework and preparation in effective literacy instruction and strategies align with instructional materials selected by the Department of Education and Workforce (DEW).
- Establishes a procedure under which the Chancellor must audit the degree to which each institution of higher education offers educator training programs in alignment with the above literacy requirements..

## **Grow Your Own Teacher College Scholarship program**

- Establishes the Grow Your Own Teacher College Scholarship program to award four-year scholarships for up to \$7,500 per year to qualifying high school seniors and qualifying employees.
- Requires the Chancellor and DEW to oversee the program, including developing the application process and repayment procedures for failure to meet program requirements.

## **High school advanced standing programs**

### **College Credit Plus Program**

- Permits the Chancellor, in consultation with the DEW Director, to take action as necessary to ensure that public colleges and universities and school districts are fully engaging and participating in the College Credit Plus Program (CCP).
- Requires the Chancellor and Director to work with public secondary schools and partnering public colleges and universities to encourage the establishment of model pathways that prepare participants to successfully enter the workforce in certain fields.
- Permits the Chancellor to approve a proposal submitted by a public or private college, in collaboration with an industry partner, to establish a statewide innovative waiver pathway to allow students who do not meet traditional college-readiness criteria to participate in CCP and earn an industry-recognized credential or certificate.

### **International Baccalaureate course credit**

- Requires the Ohio Articulation and Transfer Advisory Council, by April 15, 2025, to recommend standards to the Chancellor for awarding college course credit based on scores attained on International Baccalaureate (IB) exams.

- Requires each state institution to comply with standards adopted by the Chancellor in awarding course credit to students who attain a passing score on an IB exam.
- Requires each state institution to make its standards and policies on course credit for IB courses available to the public in an electronic format.

### **Advanced Placement course credit**

- Requires each state institution to make its standards and policies on course credit for Advanced Placement courses available to the public in an electronic format.

### **FAFSA support team system**

- Requires the Chancellor to establish and administer a statewide system of regional FAFSA support teams to support public schools with FAFSA completion and college access programming.

### **Ohio Computer Science Education Promise Program**

- Creates the Ohio Computer Science Promise Program.

### **“Teach CS” Grant Program**

- Requires the Chancellor to administer the “Teach CS” Grant Program to fund coursework, materials, and exams to support those who wish to teach computer science courses.

### **Eliminate Board of Regents, obsolete programs and reports**

- Abolishes the Ohio Board of Regents.
- Abolishes the Ohio Instructional Grant Program.
- Abolishes the OhioCorps Pilot Program.
- Eliminates a requirement that the Chancellor develop and implement a statewide plan permitting high school students to receive college credit for approved career-technical education courses.
- Eliminates an obsolete requirement that the Ohio Articulation and Transfer Network Oversight Board issue a report to the General Assembly by March 2, 2022, regarding college credit transfer rules for state institutions of higher education.

As used in this chapter of the analysis:

A **state institution of higher education** means any of the 14 state universities and each community college, state community college, technical college, and university branch campus. The state universities are the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Northeast Ohio Medical University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, and Youngstown State University.

**Ohio technical centers** are career-technical centers and schools that provide adult education and are recognized as such by the Chancellor of Higher Education.

## **Restriction on instructional fee increases**

(R.C. 3345.48; Section 381.260)

### **In-state undergraduate instructional and general fees**

#### **State universities**

Under law unchanged by the act, each state university is required to establish an undergraduate tuition guarantee program. Under that program, each entering cohort of in-state undergraduate students pays an immediate increased rate for instructional and general fees, but that rate is guaranteed not to increase again for that particular cohort for the next four years.

For the 2023-2024 and 2024-2025 academic years, the act requires each state university and university branch campus to restrain increases in its in-state undergraduate instructional and general fees. Specifically, they cannot increase the guaranteed amount of instructional and general fees for students entering in those academic years by more than 3% over what was charged in the previous academic year.

Otherwise, under law unchanged by the act, the increase is the sum of the average rate of inflation for the past 36 months and the percentage amount the General Assembly restrains increases on in-state undergraduate instructional and general fees for the fiscal year.

#### **Community, state community, and technical colleges**

For the same years as state universities, each community college, state community college, and technical college may not increase its instructional and general fees more than \$5 per credit hour over what it charged in the previous academic year.

#### **Special fees**

Increases for all other special fees, including newly created ones, are subject to the approval of the Chancellor of Higher Education.

#### **Exclusion**

The act's limits on fee increases explicitly exclude:

- Student health insurance;
- Fees for auxiliary goods or services provided to students at the cost incurred to the institution;
- Fees assessed to students as a pass-through for licensure and certification exams;
- Fees in elective courses associated with travel experiences;
- Elective service charges;
- Fines; and
- Voluntary sales transactions.

As in previous biennia when the General Assembly capped tuition increases, the act's provisions do not apply to increases required to comply with institutional covenants related to the institution's obligations or to meet unfunded legal mandates or legally binding prior obligations or commitments. Further, the Chancellor, with Controlling Board approval, may approve an increase to respond to exceptional circumstances identified by the Chancellor.

## Financial aid programs

### Ohio College Opportunity Grant Program

(R.C. 3333.122; Section 381.490)

#### Awards and eligibility

The act increases the income eligibility threshold for an Ohio College Opportunity Grant Program (OCOG) award from an expected family contribution (EFC) of \$2,190 or less to \$3,750 or less. It also prescribes award amounts for OCOG recipients for FY 2024 and FY 2025, as indicated in the table below.

OCOG recipient award amounts		
Institutional sector	FY 2024	FY 2025
State institution of higher education	\$3,200	\$4,000
Private nonprofit college or university	\$4,700	\$5,000
Private for-profit career college	\$1,850	\$2,000

If the appropriated funds are insufficient to support all eligible students, the Chancellor must either proportionally reduce award amounts or prioritize awards to students with higher financial need.

#### No cost burden shifting

The act prohibits any institution of higher education that enrolls OCOG recipients from making any change to the institution's scholarship or financial aid programs with the goal or net effect of shifting the cost burden of those programs to the OCOG Program.

#### Need-based financial aid requirement

The act also requires each institution to provide at least the same level of need-based financial aid to its students as in the immediately prior academic year in terms of either aggregate aid or on a per student basis. However, the act permits the Chancellor to grant an institution a temporary waiver from that requirement if exceptional circumstances make it necessary.

## **Second Chance Grant Program**

(R.C. 3333.127)

The act increases the amount of a Second Chance Grant from \$2,000 to \$3,000. It also designates eight months as the minimum disenrollment period to qualify for a grant for students enrolled in institutions that do not operate on a semester calendar. Under continuing law, students enrolled in other institutions must be disenrolled for at least two semesters.

## **Ohio Work Ready Grant Program**

(R.C. 3333.24; Section 381.160)

### **Operation**

The act requires the Chancellor to establish the Ohio Work Ready Grant Program. Under the program, the Chancellor must award up to \$3,000 to eligible students who are enrolled in qualified programs at a community, state community, or technical college, a state university branch campus, or an Ohio technical center.

Students may apply in a form and manner prescribed by the Chancellor. The Chancellor must adopt rules about how to compute grant award amounts for full- or part-time students. The Chancellor also must determine the form and manner of payments. A student cannot receive a grant for more than six semesters or the equivalent of three academic years.

The program must be funded in a manner designated by the General Assembly, though the Chancellor may receive funds from other sources to support the program. If the amounts available for the program are inadequate to provide grants to all students who apply in an academic year, the Chancellor may establish different grant amounts based on the number of applicants and the amount of the program's funds.

### **Student eligibility**

The act qualifies a student to participate in the program if the student:

1. Is an Ohio resident;
2. Has completed the Free Application for Federal Student Aid (FAFSA); and
3. Is enrolled in a qualified program.

A qualified program is a credit or noncredit program that leads to an industry-recognized credential, certificate, or degree and which prepares a student for a job that is either:

1. Identified as an "in-demand" or "critical" job, as determined by the Office of Workforce Transformation; or
2. Submitted by a community, state community, or technical college, state university branch campus, or Ohio technical center and will meet regional workforce needs, as approved by the Chancellor.

### **Report**

The act requires the Chancellor, in consultation with qualified program providers, to collect and report program metrics, including:

1. Demographics of recipients, including:
  - a. Age, disaggregated as follows:
    - i. 24 years or younger;
    - ii. 25 to 34 years;
    - iii. 35 to 49 years;
    - iv. 50 years or older;
  - b. Gender;
  - c. Race and ethnicity;
  - d. Enrollment status as full- or part-time;
  - e. Pell grant status.
2. Success rate of recipients, including program retention and completion;
3. Total number of industry-recognized credentials awarded, disaggregated by subject or program area.

## **Governor's Merit Scholarship**

(Section 381.400)

The act establishes the Governor's Merit Scholarship Program to award merit-based aid in FY 2025 to eligible students at qualifying institutions, with the goal of allowing high-achieving high school graduates to remain in Ohio to pursue their postsecondary studies and contribute to Ohio's expanding economic opportunities. Qualifying institutions include any state institution of higher education or any private nonprofit college or university in Ohio.

To the extent that sufficient funds are available, the Chancellor must provide a \$5,000 per academic year scholarship to eligible students in the top 5% of their public or chartered nonpublic high school graduating class, as determined by the Chancellor in consultation with the Director of Education and Workforce (DEW Director). Eligible students may receive the scholarship for up to the equivalent of four academic years of instruction at a qualifying institution, contingent on satisfactory academic progress.

The Chancellor, in consultation with the Director, also must determine merit-based eligibility criteria for students who were home schooled to provide them with a similar level of access to the program.

A scholarship must be used to pay eligible expenses, as determined by the Chancellor, included within a qualifying institution's published cost of attendance.

The act prohibits a qualifying institution from changing its scholarship or financial aid programs with the goal or net effect of shifting the cost burden of those programs to the program. Institutions enrolling scholarship recipients must maintain the same level of merit-based financial aid they offered in the most recent academic year, either in terms of aggregate aid or on a per-student basis.

The Chancellor must establish guidelines to implement the program.

### **War Orphans and Severely Disabled Veterans' Children scholarship**

(R.C. 5910.01)

The act updates the eligibility standards for receiving a War Orphans and Severely Disabled Veterans' Children scholarship by removing references to children of World War I veterans.

### **Veterans' tuition waiver**

(R.C. 3333.26)

The act updates the eligibility standards to qualify for a tuition waiver from any state-supported school, college, or university by replacing references to World War I veterans with references to World War II veterans.

### **State institutions of higher education boards of trustees**

#### **Student trustees at the Ohio State University (VETOED)**

(R.C. 3335.02 and 3335.09)

The Governor vetoed provisions that would have prohibited the student members of the OSU board of trustees from having voting power, being considered members for purposes of quorum requirements, and from attending the board's executive sessions. Under continuing law, OSU's board of trustees is authorized to change the voting status of student trustees by adopting a resolution.

#### **Two-year institution boards of trustees**

(R.C. 3354.05, 3357.05, and 3358.03)

The act permits a member of a technical college, community college, or state community college board of trustees whose term has expired to continue in office until the trustee's successor takes office.

The act also states the quorum for a meeting of the board of trustees of a technical, community, or state community college as a majority of the sitting board members at the time of a meeting.

#### **Technical college trustee appointments**

(R.C. 3357.05 and 3357.021)

Under continuing law, a technical college may be created by school districts, educational service centers (ESCs), or qualified electors residing in school districts or ESCs. The territory of a technical college is the territory of those school districts and ESCs.<sup>85</sup>

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<sup>85</sup> See R.C. 3357.02, not in the act.

Generally, prior law required the board of education and governing board presidents of the school districts and ESCs that comprise a technical college's district to make a specified number of appointments to the technical college's board of trustees. Under continuing law, the Governor appoints the remainder of a technical college's trustees.

Beginning with appointments on or after January 1, 2024, the act transfers the appointing power of board of education and governing board presidents to a trustee selection committee selected by the technical college board of trustee's executive committee.

The selection committee must consist of either three or five members who are local business, civic, or nonprofit leaders who are not current sitting members of the technical college's board of trustees.

Under the act, the board of trustees must nominate individuals for consideration by the selection committee. The act permits a selection committee to select new trustees from those nominees or other applicants.

The act requires trustees appointed by a selection committee to reside within the technical college's district and to be appointed with the advice and consent of the Senate. Trustees appointed by a selection committee must, to the greatest extent possible, be individuals who hold leadership positions within significant industries in the technical college's district. The act establishes three-year terms of office for trustees appointed by a selection committee.

## **College transcripts**

### **Notice regarding access to transcript and institutional debts**

(R.C. 3345.60)

The act addresses information each state institution of higher education, private nonprofit college or university, and for-profit career college must post on its website about college transcripts and institutional debts. It requires those institutions to explain on their websites that a student has a right to access a transcript for the purposes of seeking employment, regardless of whether the student owes an institutional debt. Institutions also must post a list of resources for students who owe an institutional debt, including payment plans, settlement opportunities, and other dropout prevention programs.

Continuing law prohibits a state institution from withholding a student's official transcripts from a potential employer because the student owes the institution money, if the student authorizes transmission of the transcripts and the employer affirms the transcripts are a prerequisite of employment.<sup>86</sup> Neither private nonprofit colleges and universities or private for-profit career colleges are subject to that prohibition.

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<sup>86</sup> R.C. 3345.027.

## **Resolution regarding ending transcript withholding**

(R.C. 3345.027)

The act requires each state institution of higher education board of trustees to adopt a resolution by December 1, 2023, determining whether to end the practice of transcript withholding. The board must submit a copy of the resolution to the Chancellor. When adopting the resolution, each board must consider and evaluate the following factors:

1. The extent to which ending the practice will promote the state's postsecondary education attainment and workforce goals;
2. The rate of collection on overdue balances resulting from the historical practice of transcript withholding; and
3. The extent to which ending the practice will help students who disenroll from the state institution complete an education at the same or a different state institution.

If the board resolves to maintain transcript withholding, the board must include a summary of its evaluation of the required factors.

Finally, the Chancellor must provide a copy of each resolution to the Governor, the Speaker of the House, and the Senate President by January 1, 2024.

## **Centers and institutes at state universities**

### **Salmon P. Chase Center for Civics, Culture, and Society**

(R.C. 3335.39)

The act establishes the Salmon P. Chase Center for Civics, Culture, and Society as an independent academic unit at Ohio State University, initially physically located in the College of Public Affairs. The Center is required to conduct teaching and research in the historical ideas, traditions, and texts that have shaped the American constitutional order and society.

The act grants the Center the authority to establish its own bylaws but requires that the Center do all of the following, and that the following must take priority over any other bylaws adopted by the Center:

1. Educate students by means of free, open, and rigorous intellectual inquiry to seek the truth;
2. Affirm its duty to equip students with the skills, habits, and dispositions of mind they need to reach their own informed conclusions on matters of social and political importance;
3. Affirm the value of intellectual diversity in higher education and aspire to enhance the intellectual diversity of the university;
4. Affirm a commitment to create a community dedicated to an ethic of civil and free inquiry, which respects the intellectual freedom of each member, supports individual capacities for growth, and welcomes the differences of opinion that must naturally exist in a public university community.

The act permits the university board of trustees to change the Center's name in accordance with the university's philanthropic naming policies and practices.

### **Instructional requirements**

The act requires the Center to offer instruction in all of the following:

1. The books and major debates which form the intellectual foundation of free societies, especially the United States;
2. The principles, ideals, and institutions of the American constitutional order;
3. The foundations of responsible leadership and informed citizenship.

The act further requires the Center to focus on offering university-wide programming related to the values of free speech and civil discourse as well as expanding the intellectual diversity of the university's academic community.

The act grants the Center the authority to offer courses and develop certificate, minor, and major programs as well as graduate programs and offer degrees.

### **Academic council**

The university board of trustees must appoint, with the advice and consent of the Senate, a seven-member Chase Center academic council by November 20, 2023. The act further prohibits a new member from beginning service until confirmed by the Senate and states that four members form a quorum.

The act requires the academic council be comprised of scholars with relevant expertise and experience. Not more than one member of the council may be an employee of the university, and best efforts must be made to have not fewer than three members be from Ohio.

The act further prescribes the term length for initial members of the academic council. Three members of the council are required to serve initial terms of two years and four members are required to serve initial terms of four years. The members must determine which members will serve which terms at its first meeting and select replacements for vacant seats as needed. However, the act does not specify the duration of terms after the initial ones.

### **Director search and responsibilities**

The act requires the academic council to conduct a nationwide search for candidates for the director of the Center. The act specifically requires that the nationwide search adhere to all relevant state and federal laws. The academic council must submit to the university's President a list of candidates, from which the President must appoint a director. This appointment is subject to the approval of the board of trustees. Upon appointment, the director will have the protection of tenure or tenure eligibility. The act further requires that the director consult with the dean of the College of Public Affairs; however, the director must report directly to the Provost or the President.

The act requires the director to have the sole and exclusive authority to manage the recruitment and hiring process and to extend offers for employment for all faculty and staff, and

to terminate employment of all staff. Additionally, the director must oversee, develop, and approve the Center's curriculum.

The director must annually submit a report to the university's board of trustees and the General Assembly. The report must provide a full account of the Center's achievements, opportunities, challenges, and obstacles in the development of the academic unit.

### **Faculty**

The act permits, but does not require, faculty appointed to the Center to hold joint appointments within any other division of the university. It requires that the Center be allotted not fewer than 15 tenure-track faculty positions to teach under the Center. The act expressly prohibits faculty from outside of the Center from blocking faculty hires.

### **Institute of American Constitutional Thought and Leadership**

(R.C. 3364.07)

The act establishes the Institute of American Constitutional Thought and Leadership as an independent academic unit (initially physically located in the College of Law) within the University of Toledo. The purpose of the Institute is to create and disseminate knowledge about American constitutional thought and to form future leaders of the legal profession through research, scholarship, teaching, collaboration, and mentorship.

The act requires the Institute to:

1. Enrich the curriculum in American constitutional studies, including the core texts and great debates of western civilization;
2. Educate students in the principles, ideals, and institutions of the American and Ohio constitutional order;
3. Educate students in the foundations of responsible leadership and informed citizenship and to cultivate the next generation of leaders in the legal profession;
4. Offer university-wide programming related to the values of open inquiry and civil discourse;
5. Expand the intellectual diversity of the university's academic community and to create a rich forum for the development of ideas across the political and ideological spectrum;
6. Support faculty and graduate student scholarship that advances understanding of American constitutional thought and institutions;
7. Promote scholarly collaboration within the university and beyond; and
8. Host lectures, debates, and symposia, and sponsor visiting scholars, jurists, and teachers.

The act authorizes the Institute to offer courses and develop certificate, minor, and major programs as well as graduate programs and offer degrees.

The act permits the university board of trustees to change the Institute's name in accordance with the university's philanthropic naming policies and practices.

## **Policy requirements**

The act requires the Institute to:

1. Educate students by means of free, open, and rigorous intellectual inquiry to seek the truth;
2. Equip students with the skills, habits, and dispositions of mind they need to reach their own informed conclusions on matters of legal, social, and political importance;
3. Value intellectual diversity in higher education, including in faculty recruitment, hiring, and appointment, and aspire to enhance the intellectual diversity of academic life at the university; and
4. Create a community dedicated to an ethic of civil and free inquiry, which respects the intellectual freedom of each member, supports individual capacities for growth, and welcomes the differences of opinion that naturally occur in a public university community.

## **Academic council**

The Talent, Compensation, and Governance Committee of the university board of trustees, if such a committee exists, must appoint, with the advice and consent of the Senate, a seven-member Institute academic council by December 2, 2023. If no such committee exists, the board of trustees must appoint the members.

The act requires the academic council be comprised of scholars with relevant expertise and experience. Not more than one member of the council may be an employee of the university, and best efforts must be made to have at least three members from Ohio. The act further prohibits a new member from beginning service until confirmed by the Senate and states that four members form a quorum.

Three members of the council must serve initial terms of two years and four members must serve initial terms of four years. The members must determine which members will serve which terms at its first meeting and select replacements for vacant seats as needed. However, the act does not specify the duration of terms after the initial ones.

To fill a vacancy for the director of the Institute, the act requires the academic council, following a national search, to transmit to the President of the university a list of finalists from which the president must select a director, subject to the approval of the Talent, Compensation, and Governance Committee of the university board of trustees.

## **Director appointment and responsibilities**

The act requires the Institute to be led by a director who must report directly to the President and Provost of the university and consult with the dean of the College of Law. The President must appoint an initial director by November 2, 2023. The director's term is for five years and may be renewed. The act requires the director to be an expert of the western tradition, the American founding, and American constitutional thought, and have shown a commitment to the purposes, goals, and policies of the Institute.

Upon appointment, the director will have the protection of tenure or tenure eligibility. Any existing tenure with the university held by a director must be maintained with the university.

The act requires the director to have the sole and exclusive authority to manage the recruitment and hiring process and to extend offers for employment for all faculty and staff, and to terminate employment of all staff. The director is required to oversee, develop, and approve the Institute's curriculum. The act specifically requires that for any employment contracts offered by the director to tenure-track faculty, those individuals are guaranteed reappointment elsewhere in the university, at the same rank and compensation, in the event the Institute is discontinued.

The act requires the director to submit annually a report to the university's board of trustees and the General Assembly. The report must provide a full account of the Institute's achievements, opportunities, challenges, and obstacles in the development of the academic unit.

### **Faculty**

The act permits, but does not require, faculty appointed to the Institute to hold joint or courtesy appointments within any other division of the university. The act requires that the Institute be allotted not fewer than five tenure-track faculty positions to teach under the Institute. The act also expressly prohibits faculty from outside of the Institute from blocking faculty hires.

### **Other centers for civics, culture, and society**

(R.C. 3339.06, 3344.07, and 3361.06)

The act also establishes centers for civics, culture, and society as independent academic units at Miami University, Cleveland State University, and the University of Cincinnati. The centers at Miami University and the University of Cincinnati must be physically located in the College of Arts and Sciences, while the center at Cleveland State University must be physically located in the Levin College of Public Affairs and Education.

Each center must conduct teaching and research in the historical ideas, traditions, and texts that have shaped the American constitutional order and society. The act grants each center the authority to establish its own bylaws, but requires that it do all of the following, and that the following must take priority over any other bylaws adopted by the center:

1. Educate students by means of free, open, and rigorous intellectual inquiry to seek the truth;
2. Affirm its duty to equip students with the skills, habits, and dispositions of mind they need to reach their own informed conclusions on matters of social and political importance;
3. Affirm the value of intellectual diversity in higher education and aspire to enhance the intellectual diversity of the university;
4. Affirm a commitment to create a community dedicated to an ethic of civil and free inquiry, which respects the intellectual freedom of each member, supports individual capacities for growth, and welcomes the differences of opinion that must naturally exist in a public university community.

The act permits each university's board of trustees to change the center's name in accordance with the university's philanthropic naming policies and practices.

## **Instructional requirements**

The act requires each center to offer instruction in:

1. The books and major debates which form the intellectual foundation of free societies, especially that of the United States;
2. The principles, ideals, and institutions of the American constitutional order;
3. The foundations of responsible leadership and informed citizenship.

The act further requires each center to focus on offering university-wide programming related to the values of free speech and civil discourse as well as expanding the intellectual diversity of the university's academic community.

The act grants each center the authority to offer courses and develop certificate, minor, and major programs as well as graduate programs and offer degrees.

## **Academic council**

Each university's board of trustees must appoint, with the advice and consent of the Senate, a seven-member academic council. A new member cannot begin service until confirmed by the Senate. Four members form a quorum.

The act requires the academic council be comprised of scholars with relevant expertise and experience. Not more than one member of the council may be an employee of the university, and best efforts must be made to have not fewer than three members be from Ohio.

Three members of the council must serve initial terms of two years and four members must serve initial terms of four years. The members must determine which members will serve which terms at the first meeting and select replacements for vacant seats as needed. However, the act does not specify the duration of terms after the initial ones.

## **Director search and responsibilities**

The act requires the academic councils to conduct a nationwide search for candidates for the director of a center. It specifically requires that the nationwide search adhere to all relevant state and federal laws. The academic council must submit a list of candidates to the university president, from which the president must select and appoint a director. This appointment is subject to the approval of the board of trustees. Upon appointment, the director will have the protection of tenure or tenure eligibility. The act further requires that the director consult with the college's dean; however, the director must report directly to the provost or the president.

The act requires the director to have the sole and exclusive authority to manage the recruitment and hiring process and to extend offers for employment for all faculty and staff, and to terminate employment of all staff. Additionally, the director must oversee, develop, and approve the center's curriculum.

The act requires the director to submit annually a report to the university's board of trustees and the General Assembly. The report must provide a full account of the center's achievements, opportunities, challenges, and obstacles in the development of the academic unit.

## **Faculty**

The act permits, but does not require, faculty appointed to the center to hold joint appointments within any other division of the university. The act requires that the center be allotted not fewer than ten tenure-track faculty positions to teach under the center. The act expressly prohibits faculty from outside of the center from blocking faculty hires.

## **College student authority to decline vaccines (VETOED)**

(R.C. 3792.05)

The Governor vetoed a provision that would have authorized a student – if required by a private college or state institution of higher education to receive a vaccine in order to attend class or reside in on-campus housing – to decline the vaccine for medical contraindications or reasons of conscience, including religious convictions.

To decline a vaccine for reasons of conscience, including religious convictions, a student would have had to present to the institution the student’s written statement to that effect. Under the vetoed provision, reasons of conscience, including religious convictions, would have been determined solely by the student.

To decline a vaccine for medical contraindications, a student would have had to present to the institution a physician’s certification in writing that vaccination is medically contraindicated for the student.

The vetoed provision would have stated that a student who presents either a statement or certification to the college or institution was not required to receive the vaccine.

## **Community college housing and dining facilities**

(R.C. 3354.121)

The act permits a community college to acquire, lease, or construct housing and dining facilities if the college is located within one-quarter mile of a facility that, on January 1, 2023, rented at least 75 rooms to students at the district.

## **Community college programs in Fairfield County**

(R.C. 3357.131)

The act establishes a procedure under which a community, state community, or technical college that is not co-located with an institution of higher education may develop and offer an academic or certificate program that grants college credit, an associate’s degree, or certain bachelor’s degree in Fairfield County. Academic programs, certificates, and associate’s degrees offered under this procedure must be issued pursuant to the Chancellor’s standards and procedures for academic program approval. Continuing law permits community and technical colleges to offer applied bachelor’s degrees and bachelor’s degrees in nursing and prelicensure nursing.

To offer those programs, the college must create a document that demonstrates a workforce need in the county and includes a request for the program, certificate, or degree. The

college must submit the document to a workforce advisory board established by the Fairfield County board of county commissioners. The advisory board must consist of:

1. An individual appointed by the board of county commissioners, who must serve as chairperson of the advisory board, or the individual's designee;
2. A representative of the local workforce development board, who is appointed by the board of county commissioners, or the representative's designee;
3. A representative of Hocking College, who is appointed by the board of county commissioners, or the representative's designee;
4. A representative of the Fairfield County Educational Service Center, who is appointed by the board of county commissioners, or the representative's designee; and
5. Ohio University's vice provost for regional higher education and partnerships, or the vice provost's designee.

The advisory board must review the document and vote on:

1. Whether the document demonstrates a legitimate workforce need in Fairfield County;
2. Whether to support an institution of higher education offering the program, certificate, or degree in Fairfield County; and
3. Which institution of higher education to recommend to the Chancellor to offer the program, certificate, or degree in Fairfield County.

If the advisory board unanimously votes that the document demonstrates a legitimate workforce need and to support an institution offering the program, certificate, or degree, it must transmit that fact and its recommended institution to the Chancellor.

The provision states that it does not preclude Ohio University from developing or expanding degrees or programs at its branch campus in Fairfield County. It also states that it does not replace or supersede existing processes for the development and approval of programs, certificates, or degrees.

## **Wright State University land lease**

(Section 733.80)

This provision only applies to a state institution of higher education located in a county with a population between 165,000 and 175,000 as of the 2020 federal decennial census. In practice, this only applies to Wright State University.

The act permits a developer desiring to lease land held in trust by the board of trustees of Wright State University to submit their development plans directly to the board of trustees, rather than to the Department of Administrative Services (DAS) as required for other developers

under continuing law.<sup>87</sup> Under the usual process, DAS leases the land with board of trustee approval. Under the act, the board of trustees may lease the land directly to developers.

The board of trustees may lease the land to the developer if the board finds that five conditions are met. Three are continuing law conditions that normally are determined by DAS: the board must find that the best interests of the university will be promoted by entering into a lease with the developer, the development plans are satisfactory, and the developer has established the developer's financial responsibility and satisfactory plans for financing the development. Additionally, the board must find that the lease has commercially reasonable terms favorable to the university, and the land to be leased is not required for the university's use for the term of the lease.

If a developer submits a plan directly to the board of trustees, but the board desires that the land be leased by DAS under the preexisting process, the board must notify the developer in writing and direct the developer to submit the plans to DAS under that process.

## **Teacher preparatory programs**

(R.C. 3333.048)

The act requires the Chancellor to establish metrics for educator training programs in "consultation" with the DEW Director, rather than in "conjunction" with the Superintendent of Public Instruction under former law. In addition, it requires training programs to include evidence-based strategies for effective literacy instruction aligned to the science of reading, including phonics, phonemic awareness, fluency, comprehension, and vocabulary development, and is part of a structured literacy program.

The act further requires the Chancellor to develop an auditing process that documents the degree to which each institution of higher education that offers an educator training program is aligned with the act's literacy requirements. The Chancellor, by December 31, 2023, must complete an initial survey of educator preparation programs, establish metrics for the audits, and update standards to reflect these new requirements. Furthermore, the Chancellor must grant a one-year grace period to all institutions to meet the new standards and requirements, to begin on January 1, 2024. The Chancellor must begin conducting audits on January 1, 2025.

Upon completion of an audit, the Chancellor must revoke approval for programs that are not in alignment and do not address the findings of the audit within a year. All programs must be reviewed every four years thereafter to ensure continued alignment. The Chancellor also annually must create a summary of literacy instruction strategies and practices in place for all educator preparation programs based on the program audits, including institution level summaries, until all programs reach the required alignment.

In conjunction with the Department of Education and Workforce (DEW), the act further requires the Chancellor to do the following:

1. Complete and publicly release summaries of audits by March 31 of each year;

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<sup>87</sup> R.C. 123.17, not in the act.

2. Identify a list of approved vendors who can provide professional development experiences that are consistent with the science of reading to educators who are responsible for teaching reading, including faculty in educator preparation programs; and

3. Develop a public dashboard that reports the first-time passage rates of students, by institution, on the Foundations of Reading Licensure test.

## **Grow Your Own Teacher College Scholarship program**

(R.C. 3333.393 and 3333.394)

The act establishes the Grow Your Own Teacher College Scholarship program to provide scholarships to eligible high school seniors and district employees who commit to teach in a “qualifying school” operated by their school district after becoming a teacher. If a scholarship recipient does not fulfill that obligation, the scholarship converts to a loan.

Specifically, the Chancellor and DEW must award a four-year scholarship for up to \$7,500 per year to an eligible applicant. To receive a scholarship, the applicant must commit to teaching in a “qualifying school” for at least four years within six years of completing a teacher training program. The teacher training program may be at a state institution of higher education or a private, nonprofit college or university in Ohio.

Under the act, a “qualifying school” is a school building:

1. Identified as “high need” by the Chancellor;
2. That has difficulty attracting and retaining classroom teachers who hold valid educator licenses; and
3. Operated by the same school district from which the scholarship recipient graduated high school or was employed.

### **Eligibility**

To be eligible for a scholarship, an applicant must be either:

1. A low-income high school senior, who must receive a high school diploma to be awarded the scholarship; or
2. An individual who is employed at a qualifying school and holds any of the following:
  - a. An educational aide permit;
  - b. An educational paraprofessional license; or
  - c. A substitute teacher license.

The act expressly permits a qualifying employee to complete coursework associated with a teacher training program on evenings or weekends as necessary while maintaining employment at a qualifying school.

The act further permits a teacher training program, in consultation with DEW, to grant credit to a qualifying employee who has commensurate work experience at a qualifying school for completion of a teacher training program.

## **Application process**

The act requires the Chancellor and DEW to develop an application process, including appointing a highly qualified and diverse application committee to assist in the selection of scholarship recipients

### **Promissory note**

The act requires all scholarship recipients to sign a promissory note payable to the state if the recipient either does not satisfy the four-year teaching commitment within six years of completing the teacher training program or if the scholarship is terminated.

The amount payable under the note must be the amount of total scholarships accepted by the recipient under the program.

The act further stipulates that each recipient be awarded up to \$7,500 at the beginning of each school year in which the recipient begins or maintains qualifying employment. Upon completion of that school year, the amount the recipient received at the beginning of the year is forgiven. Failure to complete a full school year of employment converts the award into a loan to be repaid. The act requires that the loan to be repaid be the amount of the award made at the beginning of that school year.

The act requires that an award be forgiven in the event the recipient dies, becomes totally and permanently disabled, or is unable to complete the commitment as a result of a reduction in force at the recipient's school of employment before the end of the academic year.

For any scholarship that is converted to a loan, the Chancellor and the Attorney General must collect payment on the loan in accordance with continuing law, but may not charge an interest rate on such payments.

### **Termination of scholarship**

Under the act, a scholarship is considered "terminated" if a recipient separates from employment at a qualifying school or fails to meet standards as determined by DEW and the Chancellor. The scholarship is then converted to a loan to be repaid.

## **High school advanced standing programs**

### **College Credit Plus Program**

(Section 381.720)

The act permits the Chancellor, in consultation with the DEW Director, to take action as necessary, to ensure that public colleges and universities and school districts are fully engaging and participating in the College Credit Plus Program (CCP). These actions may include publicly displaying program participation data by district and institution.

For the "model pathways" required under continuing law, the act requires the Chancellor and Director to work with public secondary schools and partnering public colleges and universities, as necessary, to encourage the establishment of model pathways that prepare participants to successfully enter the workforce in certain fields – which may include any of the following:

1. Engineering technology and other fields essential to the superconductor industry;
2. Nursing, with particular emphasis on models that facilitate a participant's potential progression through different levels of nursing;
3. Teaching and other related education professions;
4. Social and behavioral or mental health professions;
5. Law enforcement or corrections; and
6. Other fields as determined appropriate by the Chancellor and Director, in consultation with the Governor's Office of Workforce and Transformation.

Under continuing law, each public secondary school, in consultation with at least one public partnering college, is required to develop two model pathways for courses offered under CCP. One model pathway must be a 15-credit hour pathway and one must be a 30-credit hour pathway. Pathways may be organized by desired major or career path and may include various core courses required for a degree or professional certification by the college. Continuing law does not prescribe specific professional fields for model pathways.<sup>88</sup>

### **CCP statewide innovative waiver pathways**

(R.C. 3365.131)

The act permits one or more public or private colleges, in collaboration with at least one industry partner, to submit to the Chancellor a proposal to establish a CCP statewide innovative waiver pathway. Under a pathway, a student who does not meet traditional college readiness criteria may participate in CCP and earn an industry-recognized credential or certificate aligned with an in-demand job. The act authorizes the Chancellor to approve a pathway. It also permits any public or nonpublic secondary school or public or private college to use an approved pathway.

The Chancellor, in consultation with the DEW Director, may adopt guidelines and procedures regarding statewide innovative waiver pathways.

### **International Baccalaureate course credit**

(R.C. 3333.163 and 3345.38)

The act requires the Ohio Articulation and Transfer Advisory Council, by April 15, 2025, to recommend standards to the Chancellor for awarding course credit toward degree requirements at state institutions of higher education based on scores attained on International Baccalaureate (IB) exams. The recommended standards must include a score on each IB exam that the Council considers a passing score for which course credit may be awarded.

After the Chancellor adopts the standards, the act requires each state institution to comply with them in awarding course credit to any student who has attained a passing score on

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<sup>88</sup> R.C. 3365.13, not in the act.

an IB exam. State institutions also must make standards and policies available to the public in an electronic format.

Under continuing law, each state institution of higher education is required to adopt and implement a policy for granting undergraduate course credit to a student who has successfully completed an IB diploma program.

### **Advanced Placement course credit**

(R.C. 3333.163)

The act requires each state institution of higher education to make its standards and policies on course credit for Advanced Placement (AP) exams available to the public in an electronic format. The Council recommended standards, which state institutions adopted, for awarding course credit for AP exams in 2008.

### **FAFSA support team system**

(R.C. 3333.303)

The act requires the Chancellor to designate a statewide system of Free Application for Federal Student Aid (FAFSA) support teams to support public schools with FAFSA completion and college access programming. The Chancellor must divide the state into regions based on available resources and assign at least one FAFSA support team to each region. A FAFSA support team may include existing efforts by educational service centers, colleges and universities, and community-based organizations.

To administer the FAFSA support team system, the act requires the Chancellor to:

1. Develop, in coordination with state and local stakeholders, a comprehensive, multiyear, and statewide strategy for increasing FAFSA completion in Ohio that coordinates the efforts to increase completion at the state and local level;
2. Oversee the selection and coordination of FAFSA support teams;
3. Provide information updates to FAFSA support teams;
4. Identify strategies that have been successful nationally to increase FAFSA completion and college access and share them with stakeholders;
5. Develop and expand partnerships with existing organizations that work to expand college access and success for the purpose of assisting high school students; and
6. Partner with states that have implemented FAFSA requirements to learn best practices.

The act requires each FAFSA support team to:

1. Offer FAFSA programming and training for all public schools in the team's region, including supplementing existing programming;
2. Provide annual updates on FAFSA changes to all public schools in the team's region;
3. Coordinate and financially support FAFSA and college application completion events for public schools in the team's region;

4. Contribute to the marketing of local FAFSA and college access events;
5. Analyze FAFSA data and report the results of that data to the Chancellor;
6. Partner with local institutions of higher education to expand current strategies and services to public schools in the team's region;
7. Commit to participate in professional development regarding any updated FAFSA requirements; and
8. Develop new strategies to increase FAFSA completion rates based on the team's knowledge and experiences.

## **Ohio Computer Science Promise Program**

(R.C. 3322.20 and 3322.24; conforming changes in R.C. 3314.03 and 3326.11)

The act establishes the Ohio Computer Science Promise Program. Beginning with the 2024-2025 school year, under the program, an Ohio student in any of grades 7-12 may enroll in one computer science course per school year that is not offered by the student's school. Students cannot be charged for tuition, textbooks, or other related fees to participate in the program.

Any eligible student enrolled in a public secondary school or participating nonpublic secondary school may participate. To participate, a student must be accepted into an eligible course offered by an approved provider. DEW, in consultation with the Chancellor, must approve eligible courses and providers. DEW also must publish a list of providers and courses annually.

The Chancellor, in consultation with the DEW Director, must adopt rules governing the program.

### **High school credit**

Public and participating nonpublic schools must award high school credit toward graduation and subject area requirements for successful completion of program courses. If a completed course offered by an approved provider is comparable to one offered by the school, the school must award comparable credit. If no comparable course is available, the school must grant an appropriate number of elective credits. Evidence of completion of each course and the number of credits awarded must be indicated on the student's record with a designation that they were earned through the program and the name of the approved provider.

The act creates an appeals process for disputes regarding the credits granted for approved courses. DEW makes the final decision regarding any appeal.

## **“Teach CS” Grant Program**

(R.C. 3333.129)

The act establishes the “Teach CS” Grant Program. The Chancellor must administer the program and use it to fund coursework, materials, and exams to support the increasing number of existing teachers who qualify to teach computer science through:

1. A supplemental license with a mentorship-based pathway for existing teachers;

2. A university endorsement program involving a coursework-based pathway for existing teachers;

3. An alternative resident educator licensure pathway for industry experts and other nonteachers; and

4. A continuing education program offering professional development to existing teachers, including those that teach pre-k-12 who are generalists and those seeking advanced content knowledge.

The act requires the Chancellor, in consultation with DEW, to develop an application process and criteria for awards. It permits the Chancellor to prioritize education consortia that include economically disadvantaged schools in which there are limited computer science courses offered or where there is an unmet need for teachers able to teach computer science.

## **Elimination of Board of Regents, obsolete programs and reports**

### **Board of Regents**

(R.C. 3333.01, 3333.012, 3333.032, 3333.04, 3333.045, and 3333.70; repealed R.C. 3333.01, 3333.011, and 3333.02)

The act abolishes the Ohio Board of Regents.

### **Ohio Instructional Grant Program**

(Repealed R.C. 3333.12; conforming changes in R.C. 3315.37, 3332.092, 3333.04, 3333.044, 3333.28, 3333.375, 3333.38, 3345.32, and 5107.58)

The act abolishes the Ohio Instructional Grant Program (OIG).

### **OhioCorps**

(Repealed R.C. 3333.80, 3333.801, and 3333.802)

The act abolishes the OhioCorps Pilot Program.

### **Statewide plan on college credit for career-tech courses**

(Repealed R.C. 3333.167)

The act eliminates a requirement that the Chancellor develop and, if appropriate, implement a statewide plan permitting high school students to receive college credit for approved career-technical education courses.

### **College credit transfer study**

(R.C. 3333.16)

The act eliminates the requirement that the Ohio Articulation and Transfer Network Oversight Board issue a report to the General Assembly by March 2, 2022, regarding college credit transfer rules for state institutions of higher education, as the deadline for the report has passed.

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## OHIO HISTORY CONNECTION

- Allows the Ohio History Connection to work with American Indian tribes to select, manage, and use burial sites for the repatriation of American Indian human remains.
- Removes law that allowed fewer than a majority of members of the Ohio Commission for the United States Semiquincentennial to hold hearings or meetings.

### American Indian burial sites

(R.C. 149.3010)

The act allows the Ohio History Connection (OHC) to use land under its control for the purpose of returning American Indian human remains to their respective tribes. The land must be one of the following: (1) owned by OHC, (2) owned by the state and in OHC's custody and control, (3) leased by OHC, or (4) leased from OHC to another entity or organization.

If OHC opts to return American Indian human remains to their respective tribes, it must cooperate with federally recognized Indian tribal governments in the selection, management, and use of the burial sites, and must implement reasonable standards for the use and maintenance of these sites. If OHC no longer retains ownership, custody, or control of an American Indian burial site, OHC must either (1) reserve the right to access and maintain the site or (2) assign its right of access and maintenance to the person acquiring the site.

OHC is not required to register a burial site as a cemetery and is not otherwise subject to the laws that apply to cemetery operators, such as maintenance standards or complaint-filing processes.

### Semiquincentennial Commission

(R.C. 149.309)

The act removes law that allowed fewer than a majority of members of the Ohio Commission for the United States Semiquincentennial to hold hearings or meetings for the purpose of furthering the Commission's work. Under continuing law, the Commission consists of 29 members, a majority of whom constitutes a quorum.

Continuing law states that the purpose of the Commission is "to plan, encourage, develop, and coordinate the commemoration of the [250<sup>th</sup>] anniversary of the founding of the United States and the impact of Ohioans on the nation's past, present, and future." Among the Commission's duties is a requirement to submit an annual report to the Governor and General Assembly detailing the activities of the Commission, including a summary of funds received and spent during the year covered by the report, the outputs and outcomes achieved, and whether those achievements meet the Commission's plan and overall program. The Commission ceases to exist on June 30, 2027.

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## OFFICE OF INSPECTOR GENERAL

- Expands the qualifications for appointment as Inspector General or deputy Inspector General to include individuals with at least five years of experience as a deputy Inspector General in Ohio or any other state.

### Deputy Inspector General qualifications

(R.C. 121.49)

The act expands the qualifications to become Inspector General or a deputy Inspector General in Ohio. It permits an individual with at least five years of experience as a deputy inspector general in Ohio or another state to become Inspector General, and permits an individual with at least five years of experience as a deputy Inspector General in another state to become a deputy inspector general in Ohio. Continuing law requires deputy Inspector Generals of transportation and workers compensation to meet the same qualifications as the Inspector General.<sup>89</sup>

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<sup>89</sup> See. R. C. 121.51 and 121.52, neither in the act.

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## DEPARTMENT OF INSURANCE

### Limiting age for dental and vision coverage

- Requires dental and vision health benefit plans, issued, renewed, or amended on or after January 1, 2024, to provide coverage to unmarried, dependent children until age 26.

### Consolidation of funds

- Abolishes the Superintendent's Examination Fund and the Captive Insurance Regulation and Supervision Fund and transfers the activities of these funds to the Department of Insurance Operating Fund.

### Mine subsidence insurance

- Authorizes a board of county commissioners, in a county where insurers are required to offer mine subsidence insurance on an optional basis, to adopt a resolution requiring insurers to include mine subsidence insurance in each policy of basic homeowners insurance delivered, issued, or renewed in that county.
- Specifies that a mine subsidence insurance requirement applies beginning on the date specified in the resolution, or July 1 of the following year, whichever is later.
- Requires a county that adopts or rescinds a mine subsidence insurance requirement to provide a copy of the resolution to the Superintendent of Insurance and the Director of Natural Resources, for publication to their respective websites.

### Insurance navigator license fees

- Reduces the certification and annual renewal fees for business entities that act as insurance navigators to \$200 and \$100, respectively.
- Requires individual insurance navigators to pay certification and renewal fees specified by the Superintendent of Insurance.
- Specifies that the fee changes are remedial in nature and intended to clarify the law as it existed before October 3, 2023 (the provision's effective date).

### Limiting age for dental and vision coverage

(R.C. 1751.14, 3923.24, and 3923.241)

The act increases the age at which vision and dental health benefit plans may exclude coverage for dependent children. Under the act, dental and vision insurance health benefit plans must cover nonmarried, dependent children until age 26. The requirement applies only to health benefit plans issued, renewed, or amended on or after January 1, 2024. Other health plan types and vision and dental health benefit plans issued before that date are not affected.

Under continuing law, primary care health benefit plans – plans covering things like standard doctor visits or hospital stays – must cover dependent, unmarried children until they

reach age 26 (referred to as the “limiting age”). Prior to the act, the law excluded dental and vision plans and allowed the plans to set their own limiting age.

## **Consolidation of funds**

(R.C. 1739.10, 1751.34, 1761.16, 3901.021, 3901.07, 3901.071, 3919.19, 3921.28, 3930.13, 3931.08, 3964.03, 3964.13, and 3964.15)

Continuing law requires the Superintendent of Insurance to conduct financial examinations of insurance companies at least once every five years. The Department of Insurance monitors the financial solvency of insurance companies by reviewing financial statements and other records, and by conducting regular onsite examinations. The Department’s expenses for conducting such an examination are reimbursed by the insurance company through an assessment by the Superintendent. Prior law required the assessments to be deposited into the Superintendent’s Examination Fund. The act eliminates that fund and instead requires the assessments to be paid to the Department of Insurance Operating Fund.

The act also eliminates the Captive Insurance Regulation and Supervision Fund, which the Superintendent used for expenses related to the oversight of captive insurers. The act redirects the license fees and other fees previously paid to the fund to the Department of Insurance Operating Fund.

## **Mine subsidence insurance**

(R.C. 3929.56)

Continuing law establishes a mine subsidence insurance program to provide coverage to homeowners in counties where abandoned mines are located. The coverage addresses potential losses caused by the “collapse of lateral or vertical movements of structures resulting from the caving in of underground mines.” It does not cover losses caused by earthquakes, landslides, volcanic eruption, or collapse of strip mines, storm and sewer drains, or rapid transit tunnels.<sup>90</sup> Under the program, insurance premiums are paid into the Mine Subsidence Insurance Fund, which is a custodial account. The program is administered by the Ohio Mine Subsidence Insurance Underwriting Association, which in turn is governed by the Mine Subsidence Insurance Governing Board.

Every insurer is required by continuing law to include mine subsidence coverage provided by the Association in each policy of basic property and homeowners insurance that is delivered, issued for delivery, or renewed in the following counties: Athens, Belmont, Carroll, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Hocking, Holmes, Jackson, Jefferson, Lawrence, Mahoning, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Scioto, Stark, Trumbull, Tuscarawas, Vinton, and Washington. In addition, law changed in part by the act requires every insurer that offers basic property and homeowners insurance for structures located in Delaware, Erie, Geauga, Lake, Licking, Medina, Ottawa, Portage, Preble, Summit, and Wayne counties to

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<sup>90</sup> R.C. 3929.50, not in the act.

offer to include mine subsidence insurance coverage provided by the Association on an optional basis.

The act authorizes the boards of county commissioners of Delaware, Erie, Geauga, Lake, Licking, Medina, Ottawa, Portage, Preble, Summit, and Wayne counties, where mine subsidence insurance coverage is optional, to adopt a resolution requiring insurers to provide the coverage in all basic property and homeowners insurance policies. In other words, the act allows the boards of county commissioners of those counties to opt-into the same mandatory coverage requirements that apply to Athens, Belmont, Carroll, Columbiana, Coshocton, Gallia, Guernsey, Harrison, Hocking, Holmes, Jackson, Jefferson, Lawrence, Mahoning, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Scioto, Stark, Trumbull, Tuscarawas, Vinton, and Washington counties under continuing law.

The act specifies that the coverage requirement applies beginning on the date specified in the resolution, or July 1 of the year that begins after the resolution is adopted, whichever is later. If the board of county commissioners later rescinds the resolution, insurers must cease requiring mine subsidence coverage and instead offer it on an optional basis, beginning on or before the date specified in the rescinding resolution, or July 1 of the year that begins after the resolution is adopted, whichever is later.

A board of county commissioners that adopts or rescinds a mine subsidence insurance requirement must promptly send a copy of the resolution to the Director of Natural Resources and the Superintendent of Insurance. They must post the resolution on their agencies' websites.

## **Insurance navigator license fees**

(R.C. 3905.471; Section 803.300)

The act modifies the initial certification and renewal fees for insurance navigators that were recently codified by H.B. 509 of the 134<sup>th</sup> General Assembly, effective April 6, 2023.

Before H.B. 509, initial licensing and renewal fees for both individual and business entity insurance navigators were established by administrative rule. For business entities, the rule imposed different fees based on how many insurance navigators the business entity employed. For business entities with less than 100 employed insurance navigators, an applicant paid an initial application fee not exceeding \$250, and an annual renewal fee not exceeding \$100. For business entities with 100 or more employed insurance navigators, an applicant paid an initial application fee not exceeding \$500, and an annual renewal fee not exceeding \$250. According to the Department of Insurance, no fees were charged for initial certification or renewal of individual insurance navigator licenses.

H.B. 509 required individual insurance navigators to pay \$200 for initial certification and \$100 annually for license renewal, but made no change to the fees for business entities, which were still set by administrative rule. The act reverses the application of those changes. Under the act, individual insurance navigators pay fees specified by rule of the Superintendent of Insurance (currently \$0) for initial licensure and renewal. Conversely, the act reduces fees for business entities to \$200 for initial certification and \$100 for annual renewal, regardless of how many insurance navigators the business entity employs.

The act specifies that this change is remedial in nature and intended to clarify the law as it existed before October 3, 2023 (the provision's effective date).

An insurance navigator performs activities and duties identified in the federal Affordable Care Act, such as:

- Conducting public education activities to raise awareness of the availability of qualified health plans;
- Distributing fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits and cost-sharing reductions;
- Facilitating enrollment in qualified health plans;
- Providing referrals to appropriate state agencies for any enrollee with a grievance or question regarding their health plan.<sup>91</sup>

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<sup>91</sup> R.C. 3905.01, not in the act, and by reference, Section 1311 of the federal "Patient Protection and Affordable Care Act."

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## **DEPARTMENT OF JOB AND FAMILY SERVICES**

### **CHILD WELFARE**

#### **Continuous ODJFS licensure**

- Eliminates renewal requirements for Department of Job and Family Services (ODJFS) licenses for institutions, associations, foster caregivers, and private nonprofit therapeutic wilderness camps, resulting in continuous licensure unless revoked.

#### **Background checks**

- Adds offenses that the Bureau of Criminal Identification and Investigation (BCII) Superintendent must check for on receipt of a request for a criminal records check from:
  - A qualified organization that arranges temporary child hosting;
  - An administrative director of an agency or an attorney who arranges adoptions;
  - An administrative director of a recommending agency that recommends whether ODJFS should issue a certificate to a foster home; or
  - The appointing or hiring officer of an out-of-home care entity.

#### **Referrals for prevention services**

- Requires a public children services agency (PCSA) to make a referral to an agency providing prevention services if the PCSA determines that the child is a candidate for those services.
- Allows a PCSA to disclose confidential information discovered during an investigation to an agency providing prevention services.
- Requires a PCSA to enter into a contract with an agency providing prevention services.

#### **Reporting child abuse or neglect**

##### **Electronic reporting**

- Allows an individual to make a report of child abuse or neglect to a PCSA or peace officer electronically, in addition to the options of making a report by telephone or in person under continuing law.

##### **By ODJFS and CDJFS employees**

- Clarifies that ODJFS, county departments of job and family services (CDJFSs), and their employees are not prohibited from reporting any known or suspected child abuse or neglect, rather than only abuse or neglect of a child receiving public assistance.

##### **Report disposition, search, and expungement policy**

- Requires a PCSA that investigated a report of child abuse or neglect to give the alleged perpetrator written notification of the investigation's disposition and of the person's right to appeal the disposition.

- Requires, when a person requests ODJFS to conduct a search of whether that person's name is in the alleged perpetrator registry in the Statewide Automated Child Welfare Information System (SACWIS), that ODJFS send a letter to the person indicating that a "match" exists if a search reveals a "substantiated" disposition.
- Requires ODJFS to work with stakeholders to establish an expungement policy regarding dispositions of abuse or neglect from Ohio's Central Registry on Child Abuse and Neglect by March 1, 2024.

## **Child abuse**

- Expands the definition of "abused child" by adding a child who is the victim of disseminating, obtaining, or displaying materials or performances that are harmful to juveniles if the activity would constitute a criminal sexual offense.
- Modifies the definition of "abused child" by including a child who because of the acts of the child's caretaker suffers physical or mental injury that harms or threatens the child's health or welfare.
- Modifies the definition of "abused child" by stating that if a child exhibits evidence of physical disciplinary measures by a caretaker the child is not an abused child if the measure is not prohibited under the offense of endangering children.

## **Records of former foster children**

- Requires a PCSA to allow an adult who was formerly placed in foster care to inspect records pertaining to the time in foster care upon request.
- Allows the PCSA's executive director or the director's designee to redact information that is specific to other individuals if that information does not directly pertain to the adult.

## **Ohio Child Welfare Training Program**

- Eliminates the requirements that PCSA caseworkers and PCSA caseworker supervisors complete a specified number of hours of in-service training during the first year of employment and domestic violence training during the first two years of employment.
- Eliminates the requirements that ODJFS establish eight child welfare training regions in Ohio and that each region contain only one training center, but maintains the requirement that ODJFS designate and review training regions.
- Repeals and recodifies various provisions governing the program.

## **Family and Children First Cabinet Council**

### **County councils**

- Removes enumerated focuses for the indicators and priorities that measure progress towards increasing child well-being in Ohio.
- Expands the types of council contracts that are exempt from competitive bidding requirements.

- Clarifies that a council's role in service coordination does not override the decisions of a PCSA regarding child placement.

### **Ohio Automated Service Coordination Information System**

- Requires the Cabinet Council state office to establish and maintain the Ohio Automated Service Coordination Information System (OASCIS).
- Requires county councils to enter all information in OASCIS regarding funding sources and families seeking services from the county councils, and specifies that failure to do so may result in the loss of state funding.
- Establishes that all information in OASCIS is confidential, and requires county councils to establish administrative penalties for inappropriate access, disclosure, and use of information.
- Limits OASCIS access to personnel with training in confidentiality requirements and prohibits researchers from directly accessing it.

### **Substitute care provider licensing rules**

- Repeals a law that established an office to review rules for licensing substitute care providers to minimize differing certification and licensing requirements across various agencies.

### **Wellness Block Grant Program**

- Repeals the Wellness Block Grant Program, an obsolete program formerly overseen by the Ohio Family and Children First Cabinet Council.

### **Multi-system youth action plan**

- Repeals a requirement for the Ohio Family and Children First Council to develop a comprehensive multi-system youth action plan, to be submitted to the General Assembly (the Council submitted the plan in January 2020).

## **Children's Trust Fund Board**

### **Membership**

- Specifies that a public board member of the Children's Trust Fund Board may serve two consecutive terms after serving the remainder of a term for which the member was appointed to fill a vacancy.
- Changes the number of Board members required to be present to have a quorum from eight to a majority of the members appointed to the Board.

### **Acceptance of federal funds**

- Eliminates a requirement that the Board's acceptance of federal or other funds must not require the state to commit funds.

### **Children’s advocacy centers**

- Eliminates the annual report submitted to the Board by each children’s advocacy center that receives funds from the Board.
- Removes a requirement that the Board develop and maintain a list of all state and federal funding that may be available to children’s advocacy centers.

### **Child abuse and child neglect regional prevention councils**

- Adds parent advocates to the list of county prevention specialists who may be appointed to a child abuse and child neglect regional prevention council.
- Removes from each child abuse and child neglect regional prevention council a nonvoting member who is a representative of each council’s regional prevention coordinator.
- Makes various administrative changes to the councils’ operations.

### **State adoption assistance loans**

- Repeals the law governing administration of adoption assistance loans from the State Adoption Assistance Loan Fund and abolishes the fund.

### **Interstate Compact for the Placement of Children**

- Conforms the current Interstate Compact for the Placement of Children (ICPC) governing interstate placement of abused, neglected, dependent, delinquent, or unmanageable children and children for possible adoption with the proposed new ICPC that makes changes primarily to jurisdiction and placement requirements.

### **Scholars residential centers**

- Establishes and regulates scholars residential centers, defined as centers that meet several characteristics, including certification by a national organization with a mission to help underserved children in middle and high school.
- Requires the ODJFS Director to adopt rules to implement standards for scholars residential centers and generally requires them to be substantially similar to those governing other similarly situated providers of residential care for children.
- Requires the Director to certify a scholars residential center that submits an application that indicates to the Director’s satisfaction that the center meets the standards established in the rules adopted under the act.

### **Resource caregiver immunity and authority**

- Expands the general immunity granted to foster caregivers for acts authorized under the public welfare law to kinship caregivers.
- Specifies that any alleged abused, neglected, or dependent child placed with a resource caregiver (a foster caregiver or a kinship caregiver) is entitled to participate in age-appropriate extracurricular, enrichment, and social activities.

- Requires a resource caregiver to consider certain factors when determining whether to give permission for a child to participate in extracurricular, enrichment, and social activities.
- Clarifies that a resource caregiver who grants permission for a child to participate in those activities is immune from liability in a civil action to recover damages for injury, death or loss to the child when those factors were considered.

## **CHILD CARE**

### **Child care license exemptions**

- Exempts any program caring for children operated by a nonchartered, nontax-supported school from the law requiring certain child care providers to be licensed by ODJFS.
- Modifies an exemption from child care licensure to apply to a program that offers not more than two and one-half hours of care each day per child when the child's parent, including an employee, is on the premises and readily accessible.

### **Child care administrator and employee – educational attainment**

- Prohibits the ODJFS Director from adopting rules that require an administrator or employee of a licensed child day-care center or licensed family day-care home to hold or obtain a bachelor's, master's, or doctoral degree.
- Prohibits the tiered ratings developed for the Step Up to Quality Program from taking into consideration whether a child care administrator or employee holds or obtains a bachelor's, master's, or doctoral degree.

### **Publicly funded child care eligibility**

- Revises the law governing income eligibility for publicly funded child care, specifying that the maximum amount of family income for initial eligibility cannot exceed 145% of the federal poverty line, or 150% for special needs child care, but only until June 30, 2025.

### **Step Up to Quality ratings – license capacity exemption (VETOED)**

- Would have expanded the exemption from the Step Up to Quality ratings requirement available to a licensed child care program providing publicly funded child care to less than 25% of its license capacity, by increasing that percentage to less than 50% (VETOED).

### **Child care terminology**

- Changes terminology from "day-care" or "child day-care" to "child care."

## **PARENTAGE AND CHILD SUPPORT**

### **Paternity acknowledgments**

- Allows a child support enforcement agency (CSEA), a local registrar of vital statistics, and hospital staff the option to electronically file an acknowledgment of paternity, in addition to existing law options of filing the acknowledgment in person or by mail.
- Allows each signature of a party to an acknowledgment of paternity to be witnessed by two adult witnesses, in addition to the existing law option of notarizing each signature.
- Requires a CSEA or local registrar to provide witnesses to witness, or a notary public to notarize, an acknowledgment of paternity if the natural mother and alleged father sign an acknowledgment.
- Requires a contract between a hospital and ODJFS to include a provision requiring the hospital to provide witnesses to witness, or a notary public to notarize, an acknowledgment of paternity signed by the mother and father, when an unmarried woman gives birth in or en route to that hospital.
- Requires each hospital to provide staff to notarize or witness the signing of an acknowledgment of paternity.

### **Information required for paternity determination**

- Repeals law that requires certain information about the alleged father, the mother, and the child to be included in a request for an administrative determination of paternity.

### **Child support to nonparent caretakers**

- Permits child support under existing child support orders to be redirected, and under new child support orders to be issued, to a nonparent caretaker who is a child's primary caregiver.
- Allows a caretaker to file an application for Title IV-D services with the CSEA to obtain support for the care of the child.
- Requires the CSEA to investigate whether the child is the subject of an existing child support order, and if so, requires an investigation and certain determinations regarding support for the child.
- Establishes requirements for notice, objection, and effective dates of redirection orders or recommendations if a CSEA determines that an existing support order should be redirected.
- Requires, if no child support order exists, the CSEA to determine whether a child support order should be imposed.
- Establishes procedures that a CSEA must follow if it receives notice that a caretaker is no longer the primary caregiver of a child.

- Requires the impoundment of any funds received on behalf of a child pursuant to a child support order while the CSEA investigates whether a caretaker is no longer the primary caregiver of a child.
- Authorizes the ODJFS Director to adopt rules to implement the redirection process.
- Amends laws regarding the establishment of parentage and bringing an action for child support to permit caretakers to receive child support.
- Adds a statement that appears to attempt to clarify that a parent's duty to support the parent's minor child may be enforced by a child support order.
- Requires, if a child who is the subject of a child support order resides with a caretaker and neither parent is the child's residential parent and legal custodian, the court to issue a child support order requiring each parent to pay that child's child support obligation.
- Repeals language, in the power of attorney form and caretaker authorization affidavit form regarding grandparents caring for their grandchildren, stipulating that the power of attorney or affidavit does not allow a CSEA to redirect child support payments to the grandparent.
- Adds redirection to a list of notices that must be included in each support order or modification.
- Repeals law providing that when a support order is issued or modified, the court or CSEA may issue an order requiring payment to a third person that is agreed upon by the parents.
- Delays the effective date of these provisions for six months, during which time ODJFS may take action to implement them.

## **Fatherhood programs**

- Codifies the authorization of the Ohio Commission on Fatherhood to recommend the ODJFS Director provide funding to fatherhood programs in Ohio that meet at least one of the four purposes of the Temporary Assistance for Needy Families (TANF) block grant.

## **PUBLIC ASSISTANCE**

### **TANF spending plan**

- Extends the time that ODJFS has to submit a TANF spending plan to the General Assembly from 30 days to 60 days after the end of the first state fiscal year of the fiscal biennium (that is, from July 30 to August 29 of even-numbered years).

### **Ohio Works First**

- Expands eligibility for cash assistance under the Ohio Works First program to include any eligible pregnant woman, rather than only those who are at least six months pregnant.
- Corrects a cross-reference to the definition of "fugitive felon" for purposes of the Ohio Works First Program.

- Clarifies that workers' compensation premiums for participants in the Ohio Works First Work Experience Program (WEP) only need to be paid for those participating in WEP.

## **Food Assistance**

### **Supplemental Nutrition Assistance Program (SNAP) employment and training program**

- Requires ODJFS to redesign its existing employment and training program in a manner that meets the needs of employers in the state.
- Requires ODJFS, not later than July 1, 2024, to appear before the House Finance and Senate Finance committees to report on the redesigned employment and training program.

### **SNAP vendor pre-screening**

- Prohibits a third-party vendor from conducting pre-screening activities regarding SNAP eligibility unless the vendor has entered into an agreement with ODJFS.

### **Self-employment income and SNAP eligibility**

- Requires ODJFS to use the same income verification criteria for households with income from self-employment when conducting initial eligibility determination, quarterly review, and recertification.

### **SNAP and WIC benefit trafficking**

- Prohibits SNAP benefit trafficking.
- Prohibits the solicitation of SNAP and WIC benefits by an individual.
- Prohibits organizations from allowing an employee to violate the above prohibitions.

### **Lost, stolen, or damaged benefits cards**

- Generally prohibits ODJFS from replacing the electronic benefit transfer card of a household that requests four or more replacement cards within a 12-month period unless certain requirements are met.

### **Agreement with Ohio Association of Foodbanks**

- Requires ODJFS to enter an agreement with the Ohio Association of Foodbanks regarding food distribution, transportation of meals, and capacity building equipment for food pantries and soup kitchens.
- Requires the Association to purchase food, support capacity building, purchase equipment for partner agencies, and submit quarterly and annual reports to ODJFS.

## **ODJFS disclosure definitions**

- Modifies the definition of "law enforcement agency."

## **Auditor of State report**

- Eliminates a requirement that the Auditor of State prepare an annual report on the outcome of information sharing agreements between law enforcement agencies and ODJFS/CDJFSs.

## **Public assistance quarterly report**

- Requires ODJFS to compile a quarterly report regarding public assistance programs and submit it to the General Assembly.

## **UNEMPLOYMENT**

### **Identity verification for unemployment benefits**

- Requires an individual filing an application for determination of benefit rights for unemployment benefits to furnish proof of identity at the time of filing in the manner prescribed by the ODJFS Director.

### **Benefit reductions based on receiving certain pay**

- Reduces unemployment benefits otherwise payable by the full amount of holiday pay paid to a claimant for that week.
- Reduces unemployment benefits otherwise payable to a claimant who receives bonus pay by the amount of the claimant's weekly benefit amount in the first and each succeeding week following separation from employment with the employer paying the bonus, until the total bonus amount is exhausted.

### **Disclosure of information**

- Allows the ODJFS Director to disclose otherwise confidential information maintained by the Director or the Unemployment Compensation Review Commission if permitted by federal law under specified circumstances.
- Allows the ODJFS Director to require recipients of unemployment compensation information under the act to enter into a written agreement to receive the information.
- Prohibits a recipient of unemployment compensation information, other than an individual or employer receiving information about that individual or employer, from re-disclosing the information without approval to do so from the ODJFS Director and requires that recipient to safeguard the information against unauthorized access or re-disclosure.
- Specifies that failure to comply with the act's disclosure provisions may result in civil or criminal penalties.

### **Participation in certain federal programs**

- Specifies that continuing law does not require the ODJFS Director to participate in, nor precludes the Director from ceasing to participate in, any voluntary, optional, special, or emergency program offered by the federal government to address exceptional unemployment conditions.

## **Acceptable collateral from certain reimbursing employers**

- Makes surety bonds the only acceptable form of collateral that a nonprofit employer wishing to be a reimbursing employer under the Unemployment Compensation Law may submit.

## **Notification to exempt nonprofit employees**

- Requires a nonprofit organization with fewer than four employees that is exempt from Ohio's Unemployment Compensation Law to notify its employees upon hiring that the organization and the employee's employment with the organization are exempt from the Law.

## **OTHER PROVISIONS**

### **Workforce report for horizontal well production**

- Eliminates the requirement that the Office of Workforce Development prepare an annual workforce report for horizontal well production.

### **Migrant Agricultural Ombudsperson**

- Eliminates the Office of the Migrant Agricultural Ombudsperson established under the authority of the ODJFS Director.
- Requires reports of violations regarding agricultural labor camps to be made to the State Monitor Advocate appointed under federal law, instead of the Migrant Agricultural Ombudsperson.

## **CHILD WELFARE**

### **Continuous ODJFS licensure**

(R.C. 5103.02, 5103.03, 5103.032, 5103.033, 5103.036, 5103.0313, 5103.0314, 5103.0322, 5103.0323, 5103.0326, 5103.05, 5103.18, and 5103.181)

The act eliminates the requirement that ODJFS-certified institutions, associations, foster caregivers, and private nonprofit therapeutic wilderness camps renew their certificates and licenses every two years. Instead, licensure is continuous unless ODJFS revokes it for failure to meet continuing law requirements.

Under the act, public children services agencies (PCSAs) and private child placing agencies (PCPAs) must provide ODJFS with evidence of an independent financial statement audit by a licensed public accounting firm no more than two years from the date of initial certification and at least every two years thereafter (rather than, as in former law, when seeking renewal of the certificate).

## Background checks

(R.C. 109.572)

Under continuing law, on receipt of a criminal records check request from a qualified organization that arranges temporary child hosting, an administrative director of an agency or an attorney who arranges adoption, an administrative director of a recommending agency that recommends whether ODJFS should issue a certificate to a foster home, or the appointing or hiring officer of an out-of-home care entity, the BCII Superintendent must conduct a criminal records check to determine whether any information exists that indicates that the person who is the subject of the request previously has been convicted of or pleaded guilty to certain violations.

The act adds the following offenses for which the BCII Superintendent must determine if information exists:

- Failure to report child abuse or neglect as a mandatory reporter;
- Reckless homicide;
- Aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter;
- Aggravated vehicular assault or vehicular assault;
- Female genital mutilation;
- Human trafficking;
- Commercial sexual exploitation of a minor;
- Unlawful possession of dangerous ordnance;
- Illegally manufacturing or processing explosives;
- Improperly furnishing firearms to a minor;
- Illegal assembly or possession of chemicals for manufacture of drugs;
- Permitting drug abuse;
- Deception to obtain a dangerous drug;
- Illegal processing of drug documents;
- Tampering with drugs;
- Abusing harmful intoxicants;
- Trafficking in harmful intoxicants;
- Improperly dispensing or distributing nitrous oxide;
- Illegal dispensing of drug samples;
- Counterfeit controlled substance offenses;
- Ethnic intimidation;

- Any violation of the Ohio Criminal Code that is a felony.

## **Referrals for prevention services**

(R.C. 2151.421, 2151.423, 5153.16, 5153.161, and 5153.162)

The act requires that when a PCSA makes a report and determines after investigation that a child is a candidate for prevention services, the PCSA must make efforts to prevent neglect or abuse, enhance a child's welfare, and preserve the family unit intact by referring the report to an agency providing prevention services for assessment and services. The law previously specified that any child abuse or neglect report (except for one made to the State Highway Patrol) must result in the PCSA making protective services and emergency supportive services available on behalf of the children about whom the report is made, in an effort to prevent further neglect or abuse, enhance the child's welfare, and, whenever possible, to preserve the family unit intact. The act applies these goals to referrals for prevention services.

The act allows a PCSA to disclose confidential information discovered during an investigation to an agency providing prevention services to the child. Continuing law also allows a PCSA to disclose confidential information to any federal, state, or local government, including any appropriate military authority that needs the information to carry out its responsibilities to protect children from abuse or neglect.

Finally, the act requires a PCSA to enter into a contract with an agency providing prevention services in an effort to prevent neglect or abuse, enhance a child's welfare, and preserve the family unit intact.

## **Reporting of child abuse or neglect**

### **Electronic reporting**

(R.C. 2151.421)

The act allows an individual to make a child abuse or neglect report electronically, in addition to the options of making a report by telephone or in person under continuing law. This applies to both mandatory and voluntary reporters.

### **By ODJFS and CDJFS employees**

(R.C. 5101.28(B))

The act expands the authorization of ODJFS, CDJFSs, and their employees to report suspected child abuse and neglect to a PCSA by removing the qualification that the child receive public assistance and circumstances indicate that the child's health or welfare is threatened. Under the act, these individuals are not prohibited from reporting known or suspected physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of *any* child, instead of only a child receiving public assistance, if the circumstances indicate the child's health or welfare is threatened.

## **Report disposition notice, search, and expungement policy**

(R.C. 2151.421, 5101.136, and 5101.137)

The act requires a PCSA that investigated a report of child abuse or neglect to give the person alleged to have inflicted the abuse or neglect written notification of the investigation's disposition, no later than five business days after determination of the disposition. This notice must be made in a form designated by ODJFS and must inform the person of the right to appeal the disposition. The act specifies that if a person requests ODJFS to search whether that person's name has been placed or remains in the SACWIS "Alleged Perpetrator" registry as an alleged perpetrator of child abuse or neglect, and a search reveals that a "substantiated" disposition exists, ODJFS must send a letter to that person indicating that there has been a "match."

The act requires ODJFS to work with stakeholders to establish an expungement policy regarding dispositions of child abuse or neglect in Ohio's Central Registry on Child Abuse or Neglect by March 1, 2024. This registry is a part of SACWIS.

## **Child abuse**

(R.C. 2151.031)

The act expands the definition of "abused child" by adding a child who is the victim of disseminating, obtaining, or displaying materials or performances that are harmful to juveniles if the activity would constitute a criminal sexual offense, except that the court need not find that any person has been convicted of a sexual offense in order to find that the child is an abused child.

The act further modifies the definition of "abused child" by including a child who because of the acts of the child's "caretaker" suffers physical or mental injury that harms or threatens the child's health or welfare.

The act states that if a child exhibits evidence of physical disciplinary measures by a "caretaker" the child is not an abused child if the measure is not prohibited under the offense of endangering children.

## **Records of former foster children**

(R.C. 5153.17)

The act allows an adult who was formerly placed in foster care to request that a PCSA allow the adult to inspect records that the PCSA maintains pertaining to the adult's time in foster care. These records may include medical, mental health, school, and legal records and a comprehensive summary of reasons why the adult was placed in foster care. However, the act allows the PCSA's executive director or director's designee to redact information that is specific to other individuals, if that information does not directly pertain to the requesting adult's records or the comprehensive summary.

Previously, these records were only open to inspection by the PCSA, the ODJFS Director, county job and family services directors, and other persons with written permission of the PCSA's executive director. The act simply adds adults who were formerly in foster care to those who are allowed to inspect these records.

The act does not make any changes to the written records that each PCSA must prepare and maintain. These include:

- Investigations of families, children and foster homes;
- The care, training, and treatment afforded to children; and
- Other records that ODJFS requires.

## **Ohio Child Welfare Training Program (OCWTP)**

(R.C. 5103.37, 5103.41, 5103.422 (5103.42), 5153.122, and 5153.123, with conforming changes in R.C. 5103.391, 5153.124, and 5153.127; repealed R.C. 5103.301, 5103.31, 5103.33, 5103.34, 5103.35, 5103.36, 5103.361, 5103.362, 5103.363, 5103.38, 5103.42, and 5103.421)

### **PCSA caseworker and supervisor training hours**

The act eliminates the requirements that PCSA caseworkers must complete at least 120 hours, and PCSA caseworker supervisors must complete at least 60 hours, of in-service training during the first year of continuous employment as a caseworker or caseworker supervisor. It also eliminates the requirement that they complete at least 12 hours of training in recognizing the signs of domestic violence and its relationship to child abuse during the first two years of continuous employment, and that the 12 hours may be in addition to the training required during the caseworker's first or second years of employment.

Under continuing law, PCSA caseworkers and PCSA caseworker supervisors must still complete in-service training during the first year of continuous employment and domestic violence training during the second year of continuous employment.

### **OCWTP regional training centers**

The act eliminates the requirements that ODJFS designate eight training regions in Ohio and that each region contain only one training center. Under continuing law, ODJFS, in consultation with the OCWTP Steering Committee, must still designate and review the composition of training regions in Ohio and provide recommendations on changes.

The act amends a regional training *staff's* (regional training *centers*, under former law) responsibility under continuing law to analyze the training needs of PCSA caseworkers and caseworker supervisors employed by PCSAs in the training region to also include the training needs of assessors, prospective and current foster caregivers, and case managers and supervisors.<sup>92</sup>

The act repeals laws governing the OCWTP that do the following:

- Require the ODJFS Director to adopt rules for implementation of the OCWTP and that the training comply with ODJFS rules;

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<sup>92</sup> R.C. 5103.30, not in Section 101.01 of the act.

- Require ODJFS to monitor and evaluate the OCWTP to ensure that it satisfies all the requirements established by law and rule;
- Require ODJFS to contract with an OCWTP coordinator each biennium and govern the development, issuance, and responses to requests for proposals to serve as the OCWTP coordinator;
- Require ODJFS to oversee the OCWTP coordinator's development, implementation, and management of the OCWTP;
- Require PCSAs in Athens, Cuyahoga, Franklin, Greene, Guernsey, Lucas, and Summit counties to establish and maintain regional training centers and each executive director of those counties to appoint a manager of the training center;
- Require that the preplacement and continuing training be made available to foster caregivers without regard to the type of recommending agency from which the foster caregiver seeks a recommendation.

Finally, the act recodifies laws that do the following:

- Require the OCWTP Coordinator to (1) identify the competencies needed to do the jobs that the training is for so that the training helps the development of those competencies, and (2) ensure that the training provides the knowledge, skill, and ability needed to do those jobs;
- Permit ODJFS to make a grant to a PCSA that establishes and maintains a regional training center for the purpose of wholly or partially subsidizing the center's operation.

## **Family and Children First Cabinet Council**

### **County councils**

(R.C. 121.37 and 121.381)

#### **County council child well-being indicators and priorities**

The Ohio Family and Children First Cabinet Council is responsible for developing and implementing an interagency process to select indicators to be used to measure child well-being in Ohio, and county family and children first councils are responsible for identifying local priorities to increase child well-being. The act removes the requirement that these indicators and priorities focus on expectant parents and newborns thriving, infants and toddlers thriving, children being ready for school, children and youth succeeding in school, youth choosing healthy behaviors, and youth successfully transitioning into adulthood.

#### **County council grant agreements**

The act expands the categories of council contracts that are exempt from competitive bidding requirements so that contracts and agreements are exempt if they are to purchase services for families and children. Previously, only agreements and contracts to purchase family and child welfare, child protection services, or other social or job and family services for children

were exempted. The act also requires that a council's administrative agent be responsible for ensuring that all expenditures are handled in accordance with applicable grant agreements.

### **Out-of-home placement service coordination**

Continuing law requires that each county's service coordination mechanism include a procedure for conducting a service coordination plan meeting for each child who is receiving or being considered for an out-of-home placement. The act expands the current law clarifying that this plan does not override or affect the decisions of a juvenile court regarding out-of-home placement, to also clarify that the service coordination plan does not override or affect the decisions of a PCSA.

### **Rulemaking**

The act authorizes the Cabinet Council to adopt rules governing the responsibilities of county councils.

### **Technical correction**

The act corrects an incorrect cross-reference to reflect that the responsibility for administering early intervention services rests with the Department of Developmental Disabilities, not the Department of Health.

## **Ohio Automated Service Coordination Information System**

(R.C. 121.376 and 121.37)

The act requires the Cabinet Council state office to establish and maintain the Ohio Automated Service Coordination Information System (OASCIS) to contain county council records detailing funding sources and information regarding families seeking services from county councils. The information includes demographics, financial resource eligibility, health histories, names of insurers and physicians, individualized plans, case file documents, and any other information related to families served, services provided, or financial resources. New information must be updated within five business days of obtaining the information, or the county council may be at risk of losing state funding.

All information in OASCIS is confidential. Release of information is limited to those with whom a county council is permitted by law to share, and access and use is limited to only the extent necessary to carry out duties of the Cabinet Council and county councils. Personnel accessing the system must be educated on confidentiality requirements, security procedures, and penalties for noncompliance (which are to be established by each county council). Each county council must monitor access to the system to prevent unauthorized use, and may not approve access for any researcher.

The Cabinet Council may adopt rules regarding access to, entry of, and use of information in OASCIS. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

## **Substitute care provider licensing rules**

(Repealed R.C. 121.372)

The act eliminates a law requiring the Cabinet Council, in 1999, to establish an office to review rules governing certification and licensure of substitute care providers. The purpose of the office was to minimize the number of differing certification or licensing requirements for substitute care providers between ODJFS, the Department of Mental Health and Addiction Services, and the Department of Developmental Disabilities.

## **Wellness Block Grant Program**

(Repealed R.C. 121.371)

The act repeals the inactive Wellness Block Grant Program that ended in 2009 and was overseen by the Cabinet Council and administered by ODJFS. The program provided funds to county councils for prevention services addressing issues of broad social concern.

## **Multi-system youth action plan**

(Repealed R.C. 121.374)

The act repeals a requirement for the Ohio Family and Children First Cabinet Council to develop a comprehensive multi-system youth action plan, in an effort to cease the practice of relinquishing custody of a child for the sole purpose of gaining access to child-specific services for multi-system children and youth. The Council submitted the plan to the General Assembly in January 2020. The plan is available on the Council's website, at [fcf.ohio.gov](http://fcf.ohio.gov).

## **Children's Trust Fund Board**

### **Membership**

(R.C. 3109.15)

The act specifies that a public member of the Children's Trust Fund Board may serve two consecutive terms after serving the remainder of a term for which the member was appointed to fill a vacancy. Under continuing law, public board members are appointed by the Governor and must have a demonstrated knowledge in programs for children, represent Ohio's demographic composition, and represent the educational, legal, social work, or medical community, voluntary sector, and professionals in child abuse and child neglect services. The public Board members serve terms of three years.

Additionally, the act changes the number of Board members required to be present to have a quorum from eight to a majority of the members appointed to the Board. Under continuing law, the Board consists of 15 appointed members. Because vacancies on the Board may occur, the act permits the quorum to be determined by a majority of the members appointed at the time the Board is meeting, which may not be all 15 members.

Under continuing law, the Board must meet at least quarterly to conduct its official business and a quorum is required to make all decisions.

## **Acceptance of federal funds**

(R.C. 3109.16)

The act eliminates the requirement that the Children’s Trust Fund Board’s acceptance and use of federal and other funds must not entail commitment of state funds, permitting the Children’s Trust Fund Board to accept such funds.

## **Children’s advocacy centers**

(R.C. 3109.17 and 3108.178)

The act removes the requirement that each children’s advocacy center that receives funds from the Children’s Trust Fund Board submit an annual report to the Board. It also removes the requirement that the Board maintain a list of all state and federal funding that may be available to children’s advocacy centers.

## **Child abuse and child neglect regional prevention councils**

(R.C. 3109.172)

Ohio is divided into eight child abuse and child neglect prevention regions. Each region must establish a child abuse and child neglect regional prevention council. Continuing law permits each board of county commissioners to appoint up to two county prevention specialists to the council representing the county. The act adds parent advocates with relevant experience and knowledge of services in the region to the list of county prevention specialists who may be appointed.

The act removes the representative of the council’s regional prevention coordinator from the council, and requires each council’s regional prevention coordinator to select a chairperson from among the county prevention specialists serving on the council. Previously, the representative of the council’s regional prevention coordinator served as the chairperson. Consistent with former law, the chairperson continues to be a nonvoting member, and presides over council meetings.

At the chairperson’s discretion, the act allows the vice-chairperson to preside over council meetings. The vice-chairperson is elected by majority vote at the first regular meeting of each year. When presiding over a council meeting, the vice-chairperson functions in the same capacity as the chairperson and becomes a nonvoting member.

## **State adoption assistance loans**

(Repealed R.C. 3107.018 and 5101.143)

The act repeals the law governing administration of adoption assistance loans from the State Adoption Assistance Loan Fund and abolishes the fund. (H.B. 45 of the 134<sup>th</sup> General Assembly, effective April 7, 2023, established a new Adoption Grant Program to be administered by ODJFS. The act appropriates \$15 million from GRF for the program for each of FY 2024 and FY 2025.)

## Interstate Compact for the Placement of Children

(R.C. 5103.20)

The act makes changes to the Interstate Compact for the Placement of Children (ICPC), primarily regarding jurisdiction and placement requirements. The ICPC is a statutory agreement among all 50 states, Washington, D.C., and the U.S. Virgin Islands that governs the placement of children from one state to another. It establishes requirements for placing a child out-of-state and seeks to ensure that prospective placements are safe and suitable before approval and that the individual or entity placing the child remains legally and financially responsible for the child following placement.<sup>93</sup>

### Jurisdiction

(Article IV)

Under the ICPC, the sending state generally retains jurisdiction over a child regarding all matters of custody and disposition that it would have had if the child had remained in the sending state, including the power to order the return of the child to the sending state. The act makes the following exceptions to this:

- The substantive laws of the state where an adoption will be finalized will solely govern all issues relating to the adoption of the child, and the court in which the adoption proceeding is filed has subject matter jurisdiction on all substantive issues relating to the adoption, except:
  - When the child is a ward of another court that established jurisdiction over the child before the placement;
  - When the child is in the legal custody of a public agency in the sending state;
  - When a court in the sending state has otherwise appropriately assumed jurisdiction over the child, before the submission of the request for approval of placement.
- The second and third bullets under “**Assessments and placement**” (below) regarding private and independent adoptions;
- In interstate placements in which the public child placing agency is not a party to a custody proceeding.

The act also allows, in court cases subject to the ICPC, testimony for hearings before any judicial officer to occur in person or by telephone, audio-video conference, or any other means approved by the rules of the Interstate Commission (IC). Judicial officers may communicate with other judicial officers and persons involved in the interstate process as permitted by their canons of judicial conduct and any rules promulgated by the IC.

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<sup>93</sup> “[ICPC FAQ’s](#),” The American Public Human Services Association, available at [aphsa.org](http://aphsa.org).

Finally, the act specifies that a final decree of adoption cannot be entered in any jurisdiction until the placement is authorized as an “approved placement” by the public child placing agency in the receiving state.

## **Assessments and placement**

(Article V)

The act makes extensive changes with regard to assessments and placement. First, it specifies that for placements by a private child placing agency, a child may be sent or brought into a receiving state, upon receipt and immediate review of the required content in a request for approval of a placement in both the sending and receiving state public child placing agency. The required content to accompany a request for approval must include all of the following:

- A request for approval identifying the child, birth parent(s), the prospective adoptive parent(s), and the supervising agency, signed by the person requesting approval;
- The appropriate consents or relinquishments signed by the birth parents in accordance with the laws of the sending state or, where permitted, the laws of the state where the adoption will be finalized;
- Certification by a licensed attorney or authorized agent of a private adoption agency that the consent or relinquishment is in compliance with the laws of the sending state or, where permitted, the laws of the state where finalization of the adoption will occur;
- A home study;
- An acknowledgment of legal risk signed by the prospective adoptive parents.

The act repeals requirements that before sending, bringing, or causing a child to be sent or brought into the receiving state, the private child placing agency must: (1) provide evidence that the laws of the sending state have been complied with, (2) certify that the consent or relinquishment is in compliance with law of the birth parent’s state of residence or, where permitted, the laws of the state where finalization of the adoption will occur, (3) request through the public child placing agency in the sending state an assessment to be conducted in the receiving state, and (4) upon completion of the assessment, obtain the approval of the public child placing agency in the receiving state.

Second, the act allows the sending state and the receiving state to request additional information or documents before finalizing an approved placement; however, they may not delay the prospective adoptive parents’ travel with the child if the required content for approval has been submitted, received, and reviewed by the public child placing agency in both the sending state and receiving state. Approval from the public child placing agency in the receiving state for a provisional or approved placement is required as specified in the IC rules.

Third, the act requires a public child placing agency in the receiving state to approve a provisional placement and complete or arrange for the completion of the assessment within the timeframes established by the IC rules. The ICPC did not previously require the approval of a provisional placement.

Finally, the act specifies that for a placement by a private child placing agency, the sending state cannot impose any additional requirements to complete the home study that are not required by the receiving state, unless adoption is finalized in the receiving state.

### **Applicability**

(Article III)

The act specifies that the ICPC does not apply to the interstate placement of a child in a custody proceeding in which a public child placing agency is not a party, if the placement is not intended to effectuate adoption. Prior law also specified that the ICPC does not apply to the placement of a child with a noncustodial parent, provided that the court in the sending state dismisses its jurisdiction over the child's case. The act changes this to when the court dismisses its jurisdiction in interstate placements in which the public child placing agency is a party to the proceeding.

### **Placement authority**

(Article VI)

The ICPC grants any interested party standing to seek an administrative review of a receiving state's disapproval of a proposed placement. The act requires this review and any further judicial review associated with the determination to be conducted in the receiving state pursuant to its Administrative Procedure Act. Previously, the ICPC simply required for it to be conducted pursuant to the receiving state's administrative procedures.

### **State responsibility**

(Article VII)

The act repeals a requirement that a private child placing agency be responsible for any assessment conducted in the receiving state and any supervision conducted by the receiving state at the level required by the laws of the receiving state or IC rules.

### **Enforceability**

(Articles XI, XII, and XVII)

The act specifies that rules promulgated by the IC have the force and effect of administrative rules and are binding in the compacting states to the extent and in the manner provided in the Compact. Previous law specified that the rules had the force and effect of statutory law and supersede any conflicting state laws, rules, or regulations.

### **Participation by nonmembers**

(Article XIV)

The act requires that executive heads of the state human services administration with ultimate responsibility for the child welfare program of nonmember states or their designees be invited to participate in IC activities on a nonvoting basis before the adoption of the compact by all states. Previously law specified that governors may be invited.

## Definitions

(Article II)

The act makes numerous changes to definitions of terms used in the ICPC.

### Changes to existing definitions

- Previously, “**approved placement**” meant that the receiving state has determined after an assessment that the placement is both safe and suitable for the child and is in compliance with the laws of the receiving state governing the placement of children. The act clarifies that the public child placing agency in the receiving state has made the determination. It also repeals the provision about being in compliance with the receiving state’s laws.
- The previous ICPC defined “**assessment**” as an evaluation of a prospective placement to determine whether it meets the individualized needs of the child. The act clarifies that it is an evaluation made by a public child placing agency in the receiving state and only applies to a placement by a public child placing agency.
- The previous ICPC defined “**provisional placement,**” in part, to mean that the receiving state has determined that the proposed placement is safe and suitable and, to the extent allowable, the receiving state has temporarily waived its standards or requirements that otherwise apply to prospective foster or adoptive parents so as to not delay the placement. Again, the act clarifies this to mean a determination made by the public child placing agency in the receiving state.
- The act changes the term, “service member’s state of local residence,” to “service member’s state of *legal* residence.” The definition remains the same – it is the state in which the active duty Armed Services member is considered a resident for tax and voting purposes.

### New definitions

- The act defines “certification” to mean to attest, declare, or swear to before a judge or notary public.
- The act defines “home study” as an evaluation of a home environment conducted in accordance with the requirements of the state in which the home is located, and documents the preparation and the suitability of the placement resource for placement of a child in accordance with the laws and requirements of the state in which the home is located.
- The act defines “legal risk placement” (or “legal risk adoption”) as a placement made preliminary to an adoption where the prospective adoptive parents acknowledge in writing that a child can be ordered returned to the sending state or the birth mother’s state of residence, if different from the sending state, and a final decree of adoption cannot be entered in any jurisdiction until all required consents are obtained or are dispensed with in accordance with applicable law.

## Scholars residential centers

(R.C. 5103.021)

The act establishes and regulates scholars residential centers. A scholars residential center (“center”) is defined as a center that:

- Is a certified affiliate in good standing of a national organization with a mission to help underserved children in middle school and high school in a comprehensive manner that is academically focused and service-oriented and in a family-like setting;
- Is private and not-for-profit;
- Does not receive Title IV-E funding or any associated Title IV funds related to child welfare;<sup>94</sup>
- Only accepts children placed by their parents or legal custodian; and
- Is voluntary and uses a competitive selection process.

### Rulemaking authority

The act requires the ODJFS Director to adopt rules in accordance with R.C. Chapter 119 to implement center standards. Generally, the rules must be substantially similar, as determined by the Director, to those governing other similarly situated providers of residential care for children. This includes the rules in Administrative Code Chapters 5101:2-5 (child services agency licensing rules) and 5101:2-9 (children’s residential centers, group homes, and residential parenting facilities).

However, the rules may differ from these existing rules in order to reflect all of the following requirements:

- A center is not subject to any policy that is not specific or relevant to the center.
- A center is not required to provide discharge summaries.
- A center may request agency waivers.
- A center is not required to implement case plans or service plans.
- Training requirements for center staff are limited to completion of:
  - Orientation training;
  - Current American Red Cross, American Heart Association, or equivalent first aid and cardiopulmonary resuscitation (“CPR”) certification; and
  - One hour of annual trauma training.
- A center is not subject to existing rules regarding:

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<sup>94</sup> Title IV-E of the Social Security Act provides federal reimbursement for some of the maintenance, administration, and training costs related to child welfare. 42 U.S.C. 671-679b.

- Recreation and leisure activity requirements, provided that the center has a recreation area available and permits children to swim if a person who has completed life-saving or water safety training is present;
  - Visiting and communications policies, provided that the center ensures that children have contact with their family;
  - Qualified residential treatment program requirements; and
  - Treatment-focused requirements for residential agencies.
- A center must provide notification and documentation of critical incidents to parents and legal custodians.

### **Certification of scholars residential centers**

The act requires the ODJFS Director to certify a center that submits an application that indicates to the Director's satisfaction that the center meets the standards established in the rules. The application form must be prescribed by the Director.

### **Resource caregiver immunity and authority**

(R.C. 2151.315 and 5103.162)

The act expands the general immunity granted to foster caregivers for acts authorized under the public welfare law so that the immunity also applies to kinship caregivers. Foster caregivers are immune in any civil action for damages for injury, death, or loss allegedly caused by an act or omission in connection with the foster caregiver's duties, powers, or responsibilities unless one of the following applies:

1. The foster caregiver acted manifestly outside the scope of the foster caregiver's power, duty, responsibility, or authorization;
2. The foster caregiver committed the act or omission maliciously, in bad faith, or wantonly or recklessly; or
3. Liability is expressly imposed by another provision of the Revised Code.

The act applies these general principles of civil immunity to resource caregivers, which includes both foster caregivers and kinship caregivers.

Under continuing law, a public children services agency (PCSA), a private child placing agency (PCPA), or private noncustodial agency that serves as a child's custodian or as the supervising agency for a foster caregiver is specifically immune from any civil liability resulting from the agency's or foster caregiver's decision to allow a child to participate in extracurricular, enrichment, and social activities. However, the immunity applies **only** when the agency or foster caregiver makes the decision using the reasonable and prudent parent standard. The act applies this immunity to a kinship caregiver and an agency supervising a kinship caregiver who uses the reasonable and prudent parent standard regarding a child's participation in the activities.

The act specifies that any alleged abused, neglected, or dependent child placed with a resource caregiver (a foster caregiver or a kinship caregiver) is entitled to participate in any age-

appropriate extracurricular, enrichment, and social activities. Prior law extended that entitlement only to a child subject to out-of-home care. Correspondingly, the act requires a resource caregiver to consider certain factors when determining whether to give permission for a child to participate in those activities, as is required by continuing law of out-of-home care facilities. Those factors include all of the following:

1. The child's age, maturity, and developmental level to maintain the overall health and safety of the child;
2. The potential risk factors and the appropriateness of the extracurricular, enrichment, or social activity; and
3. The best interest of the child based on information known by the person or facility (under the act, includes a resource caregiver) providing out-of-home care for the child.

The act clarifies that a resource caregiver who grants permission for a child to participate in the activities is immune from liability in a civil action to recover damages for injury, death, or loss to person or property caused to the child, provided the three factors above were considered

## **CHILD CARE**

### **Child care license exemptions**

(R.C. 5104.02)

#### **Programs operated by nonchartered, nontax-supported schools**

The act exempts all programs caring for children operated by nonchartered, nontax-supported schools from the law requiring certain child care providers to be licensed by ODJFS. Prior law exempted only preschool programs operated by these schools.

The act maintains conditions that a nonchartered, nontax-supported school must satisfy in order to be eligible for an exemption, including compliance with health, fire, and safety laws and current law reporting requirements.

#### **Child watch programs**

(R.C. 5104.02)

The act modifies an exemption from child care licensure. Formerly, programs where a parent or guardian who is not an employee of the facility is readily accessible at all times were exempted. The act limits the duration of child care offered by exempt programs to not more than 2½ hours each day per child, provided that the child's parent or guardian is on the premises and readily accessible. The act also allows employees of the facility providing the care to access the child care if they are on the premises and readily accessible, even during employment hours.

### **Child care administrator and employee – educational attainment**

(R.C. 5104.015, 5104.017, 5104.018, and 5104.29)

The act prohibits the ODJFS Director from adopting rules requiring an administrator or employee of a licensed child day-care center or licensed family day-care home to hold or obtain a bachelor's, master's, or doctoral degree.

It also prohibits the tiered ratings developed for the Step Up to Quality Program (SUTQ) from taking into consideration whether an administrator or employee of an early learning and development program that is participating in SUTQ holds or obtains a bachelor's, master's, or doctoral degree.

## **Publicly funded child care eligibility**

(Section 423.130)

The act revises the law governing income eligibility for publicly funded child care, but only until June 30, 2025. Until then, the maximum amount of income that a family may have for initial eligibility must not exceed 145% of the federal poverty line. H.B. 110, the main operating budget for the FY 2022-FY 2023 biennium, set the maximum amount for initial eligibility at 142% until June 30, 2023.

For special needs child care, the act specifies that the maximum amount of family income for initial eligibility must not exceed 150% of the federal poverty line, the same limit set by H.B. 110.

The act further specifies that the maximum amount of income for continued eligibility must not exceed 300% of the federal poverty line. Under continuing law unchanged by the act, ODJFS must adopt rules specifying the maximum amount of income a family may have for initial and continued eligibility, with the maximum amount not to exceed 300% of the federal poverty line.<sup>95</sup>

## **Step Up to Quality ratings – license capacity exemption (VETOED)**

(R.C. 5104.31)

Continuing law exempts a licensed child care program providing publicly funded child care from the requirement that the program be rated in Step Up to Quality if it provides publicly funded child care to less than 25% of its license capacity. The Governor vetoed a provision that would have expanded the exemption by increasing the percentage to less than 50%.

## **Child care terminology**

(R.C. Chapter 5104; conforming changes in numerous other R.C. sections)

The act changes the terms “day-care” and “child day-care” to “child care” throughout the Revised Code.

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<sup>95</sup> R.C. 5104.38.

## **PARENTAGE AND CHILD SUPPORT**

### **Paternity acknowledgments**

(R.C. 3111.23, with conforming changes in R.C. 3111.21, 3111.22, 3111.31, 3111.44, 3111.71, 3111.72, 3705.091, and 3727.17)

#### **Electronic filing of an acknowledgment**

The act allows a child support enforcement agency (CSEA), a local registrar of vital statistics, and hospital staff the option to electronically file an acknowledgment of paternity with ODJFS's Office of Child Support, in addition to continuing law options to file in person or by mail. The act maintains a requirement for the natural mother, the man acknowledging he is the natural father, or another custodian or guardian of a child to file an acknowledgment in person or by mail only.

#### **Witnessing signatures on an acknowledgment**

The act allows each signature of a party to an acknowledgment of paternity to be witnessed by two adult witnesses, in addition to the preexisting option of having each signature notarized. The mother and man acknowledging that he is the natural father may sign the acknowledgment and have the signature notarized or witnessed outside of each other's presence.

The act also requires each CSEA, local registrar of vital statistics, and hospital to provide a witness to witness, or a notary public to notarize, the signing of an acknowledgment if the natural mother and alleged father sign an acknowledgment at the relevant location. The law previously required these places to provide a notary public only. In addition, the act requires a contract between ODJFS and a hospital to include a provision requiring the hospital to provide a notary public to notarize, or witnesses to witness, an acknowledgment of paternity affidavit signed by the mother and father, when an unmarried woman gives birth in or en route to that hospital. Again, law previously required the contract to include a provision to require a notary public only.

The act makes additional conforming changes in Revised Code sections where the notarization of paternity acknowledgments is mentioned.

### **Information required for paternity determination**

(Repealed R.C. 3111.40)

The act repeals a requirement that a request for an administrative determination of whether a parent and child relationship exists include the following information:

- The name, birthdate, current address, and last known address of the alleged father of the child;
- The name, Social Security number, and current address of the mother of the child;
- The name and birthdate of the child.

## Child support to nonparent caretakers

(R.C. 3119.95 to 3119.9541 and 3119.01, with conforming changes in other R.C. sections; repealed R.C. 3121.46; Section 812.11)

### Redirecting child support to caretakers

The act establishes a process to redirect existing child support orders to a caretaker of a child and allows for new child support orders to be directed to the caretaker. It makes changes to several laws to clarify these rights for caretakers. A child support order subject to the process includes both health care coverage and cash medical support required for the child.

The act defines a “caretaker” as any of the following, other than a parent:

- A person with whom the child resides for at least 30 consecutive days, and who is the child’s primary caregiver;
- A person who is receiving public assistance on behalf of the child;
- A person or agency with legal custody of the child, including a CDJFS or a PCSA;
- A guardian of the person or the estate of a child;
- Any other appropriate court or agency with custody of the child.

The definition does not include a “host family” caring for a child at the request of a parent or other individual under an agreement in continuing law. “Caretaker” replaces the terms “guardian,” “custodian,” and “person with whom the child resides” in certain laws addressing parentage and child support (see “**Establishing parentage and bringing a child support action**,” below).

Under the act, in order to obtain support for the care of the child, the child’s caretaker may file an application for Title IV-D services with the CSEA in the county where the caretaker resides.

The act requires that upon receipt of an application from the caretaker, or a Title IV-D services referral regarding the child, the CSEA must determine whether the child is the subject of an existing child support order.

### When a child support order exists

#### *Investigation*

If the CSEA determines that there is an existing child support order, it must determine if any reason exists for the order to be redirected to the caretaker. If the CSEA determines that the caretaker is the primary caregiver for the child, the CSEA must determine that a reason exists for redirection.

If a CSEA determines that a reason for redirection exists, it must determine all of the following not later than 20 days after the application or referral for Title IV-D services is received:

- The amount of each parent’s obligation under the existing child support order;

- Whether any prior redirection has been terminated under the process established in the act;
- Whether any arrearages are owed, and the recommended payment amount to satisfy the arrears;
- If more than one child is subject to the existing child support order, whether the child support order for all or some of the children must be subject to redirection.

If the CSEA determines that more than one child is the subject of a support order and the order for fewer than all of the children should be redirected, it must determine the amount of child support to be redirected. That amount must be the pro rata share of the child support amounts for each such child under the child support order. The CSEA must also make a similar determination regarding health care coverage and cash medical support that may be redirected.

### ***Order for redirection***

Under the act, not later than 20 days after completing an investigation, the CSEA must determine, based on the information gathered, whether the child support order is or is not to be redirected.

If the CSEA determines that the child support order should be redirected, it must either issue a redirection order (for an administrative child support order) or recommend to the court with jurisdiction over the court child support order (which is a child support order issued by a court) to issue a redirection order to include the child support amount to be redirected, as well as provisions for redirection regarding health care coverage and cash medical support.

### ***Notice***

Upon issuing a redirection order or making a redirection recommendation to the court, the CSEA must provide notice to the child's parent or caretaker and include it as part of the redirection order or recommendation. The notice must include the following:

- The results of its investigation;
- For an administrative child support order:
  - That the CSEA has issued a redirection order regarding the child support order and a copy of the redirection order;
  - The right to object to the redirection order by bringing an action for child support without regard to marital status, not later than 14 days after the order is issued;
  - That the redirection order becomes final and enforceable if no timely objection is made;
  - The effective date of the redirection order (see "**Effective date**," below).
- For a court child support order:
  - That the CSEA has made a recommendation for a redirection order to the court with jurisdiction over the court child support order, and a copy of the recommendation;

- The right to object to the redirection by requesting a hearing with the court that has jurisdiction over the court child support order no later than 14 days after the recommendation is issued;
- That the recommendation will be submitted to the court for inclusion in a redirection order, unless a request for a court hearing is made not later than 14 days after the recommendation is issued;
- The effective date of the redirection order (see “**Effective date,**” below).

### ***Objection***

A parent or caretaker may object to an administrative redirection order by bringing an action for a child support order without regard to marital status, not later than 14 days after the redirection order is issued. If no timely objection is made, the redirection order is final and enforceable.

Similarly, a parent or caretaker may object to a redirection recommendation by requesting a hearing with the court with jurisdiction over the court child support order not later than 14 days after the CSEA issued the recommendation to the court. The redirection recommendation must be submitted to the court for inclusion in a redirection order, unless a request for a court hearing is made.

### ***Effective date of redirection***

Both an administrative redirection order that has become final and enforceable and a court-issued redirection order based on a recommendation for redirection must take effect as of, and relate back to, the date the CSEA received the Title IV-D services application or referral that initiated the proceedings.

### **When a child support order does not exist**

If a CSEA determines that the child under the care of a caretaker is not the subject of an existing child support order, it must determine whether any reason exists for which a child support order should be imposed. The CSEA must make the determination not later than 20 days after receiving the Title IV-D services application or referral, and the determination must include whether the caretaker is the child’s primary caregiver.

If the CSEA determines that a reason exists for a child support order to be imposed, it must comply with continuing law regarding issuing an administrative child support order.

### **CSEA action re: notice caretaker is no longer primary caregiver**

If a CSEA receives notice that a caretaker is no longer the primary caregiver for a child subject to a redirection order or recommendation, it must: (1) investigate if that is the case, and (2) take action depending on whether the CSEA determines that the child remains under the primary care of the caretaker, is under the care of a new caretaker, is under the care of a parent, or is not under anyone’s care.

### ***Same caretaker remains primary caregiver***

If the CSEA determines that the caretaker to whom amounts are redirected remains the primary caregiver of the child who is the subject of the redirection order or recommendation, it must take no further action on the notice.

### ***A new caretaker is the primary caregiver***

If the CSEA determines that a new caretaker is the primary caregiver for the child, it must: (1) terminate the existing redirection order (for an administrative order) or request that the court terminate the redirection order based on the recommendation for redirection and (2) direct the new caretaker to file an application for Title IV-D services to obtain support for the child as provided in the act (see “**Filing a request**,” above).

### ***A parent is the primary caregiver***

If the CSEA determines that a parent of the child is the primary caregiver, it must do one of the following:

- If the parent is the obligee under the support order that is subject to redirection, either terminate the existing redirection order (for an administrative order) or request the court to terminate the redirection order based on the recommendation for redirection.
- If the parent is the obligor under the child support order that is subject to redirection, the CSEA must do one of the following (as applicable): (1) terminate the existing redirection order (for an administrative order) or request the court to terminate the redirection order based on the recommendation for redirection, and (2) notify the obligor that the obligor may do the following: (a) request that the child support order be terminated under existing law permitting notification to the CSEA of a reason for termination, (b) request either a review of an administrative child support order under the law governing the review of administrative child support orders or request the court to amend the court child support order.

### ***No one is the primary caregiver***

If the CSEA determines that no one is taking care of the child, it must terminate the existing redirection order (for an administrative order) or request the court to terminate the redirection order based on the recommendation for redirection. If the CSEA becomes aware of circumstances indicating that the child may be abused or neglected, it must make a report under the child abuse and neglect reporting law.

### ***Impoundment***

If a CSEA that receives notification that a caretaker is no longer the primary caregiver for a child subject to a redirection order or recommendation, it must impound any funds received on behalf of the child pursuant to the child support order. Impoundment must continue until any of the following occur:

- The CSEA determines that the caretaker to whom amounts are redirected remains the primary caregiver;

- The CSEA issues a redirection order for a new caretaker;
- The CSEA determines that a parent is the primary caregiver for the child and terminates the redirection order (for an administrative order) or a court terminates its redirection order.

When impoundment terminates, the impounded amounts must be paid to the obligee designated under the child support order or the applicable redirection order.

Impoundment regarding a redirection order that was terminated because no one is caring for the child must continue until further order from the CSEA (for an administrative order) or from the court with jurisdiction over the court child support order.

### **Rulemaking authority**

The act requires the ODJFS Director to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119) to provide:

1. Requirements for CSEAs to conduct investigations and issue findings pursuant to the act's provisions regarding whether to redirect child support orders and how much to redirect when a child support order covers more than one child;

2. Any other standards, forms, or procedures needed to ensure uniform implementation of the act's provisions regarding redirection of child support orders.

### **Establishing parentage and bringing a child support action**

The act makes several modifications regarding the establishment of parentage and bringing an action for child support to clarify that caretakers hold these rights. Below is a summary of these modifications.

R.C. Section	Description
<b>R.C. 2151.231</b>	Allows a caretaker to bring an action in a juvenile court or other court with jurisdiction in the county where the child, parent, or caretaker of the child resides for an order requiring a parent of a child to pay child support without regard to the marital status of the child's parents.
<b>R.C. 3111.04</b>	Grants a caretaker standing to bring a parentage action.
<b>R.C. 3111.041</b>	Allows a caretaker to authorize genetic testing of a child pursuant to any action or proceeding to establish parentage.
<b>R.C. 3111.07</b>	Requires that a caretaker be made a party to a court action to establish parentage or, if not subject to the court's jurisdiction, be given notice and opportunity to be heard.  Allows a caretaker to intervene in an action if the caretaker was or is providing support to the child to whom the action pertains.

R.C. Section	Description
<b>R.C. 3111.111</b>	Provides that if a court action is brought under parentage laws to object to a parentage determination, the court must issue a temporary child support order to require the alleged father to pay support to the caretaker.
<b>R.C. 3111.15</b>	Provides that, upon the establishment of parentage, the father's obligations may be enforced in proceedings by a caretaker. Allows the court to order support payments to a caretaker.
<b>R.C. 3111.29</b>	Allows a caretaker to do the following once an acknowledgment of paternity becomes final: <ul style="list-style-type: none"> <li>▪ File a complaint for support without regard to marital status in the county in which the child or caretaker resides, requesting that the court order the mother, father, or both to pay child support;</li> <li>▪ Contact the CSEA for assistance in obtaining child support.</li> </ul>
<b>R.C. 3111.38</b>	Requires that the CSEA of the county where the child or caretaker resides determine the existence or nonexistence of a parent and child relationship between an alleged father and child if requested by a caretaker.
<b>R.C. 3111.381 and 3111.06</b>	Allows a caretaker to bring an action to determine whether a parent and child relationship exists in the appropriate division of the common pleas court of the county where the child resides without requesting an administrative determination, if the caretaker brings an action to request child support.
<b>R.C. 3111.48 and 3111.49</b>	Requires that an administrative order regarding a finding of parentage must include a notice informing the caretaker of the right to bring a court parentage action and the effect of the failure to bring timely action. Allows a caretaker to object to an administrative order determining the existence or nonexistence of a parent and child relationship by bringing a parentage action within 14 days after the issuance of the order.
<b>R.C. 3111.78</b>	Provides that a caretaker or CSEA in the county where the caretaker resides may do either of the following to require a man to pay child support and provide health care if presumed to be the father under a presumption of paternity: <ul style="list-style-type: none"> <li>▪ If the presumption is not based on an acknowledgment of paternity, file a complaint for child support without regard to marital status;</li> <li>▪ Contact the CSEA to request assistance in obtaining a support order and provision of health care for a child.</li> </ul>

## **Duty of support**

The act amends the law regarding married persons' and parents' obligations of support to add what appears to be a clarifying statement that a parent's duty to support the parent's minor child may be enforced by a child support order.

## **Custody and child support**

The act expands the law regarding the effect of child custody on child support to clarify that if neither parent of the child who is the subject of a support order is the child's residential parent and legal custodian and the child resides with a caretaker, each parent must pay that parent's child support obligation pursuant to the support order. Under continuing law, this provision applies when the child resides with a third party who is the legal custodian of the child.

The act also removes references to a court issuing a child support order regarding the determination of who pays the child support in a split custody or caretaker custody situation.

## **Grandparent authorizations**

The act modifies the power of attorney form and the caretaker authorization affidavit form for a grandparent caring for a grandchild by repealing language providing an acknowledgment that the document does not authorize a CSEA to redirect child support payments to the grandparent, and that to have an existing child support order modified or a new child support order issued, administrative or judicial proceedings must be initiated.

## **Notice included with a support order or modification**

Under continuing law, each support order or modification of an order must contain a notice to each party subject to the order, with specifications provided in the law. One specification is that if an obligor or obligee fails to give certain required notices to the CSEA, that person may not receive notice of the changes and requests to change a child support amount, health care provisions, or termination of the child support order. The act adds *redirection* to this list of notices of the changes and requests to change.

## **Repeal of law addressing child support payment to third parties**

The act repeals law which generally provided that when a support order is issued or modified, the court or CSEA may issue an order requiring payment to a third person that is agreed upon by the parties and approved or appointed by the court or CSEA (depending on whether it is an administrative or court child support order). A third person may include a trustee, custodian, guardian of the estate, county department of job and family services, PCSA, or any appropriate social agency.

## **Effective date**

The act's provisions regarding the redirection and issuance of child support to nonparent caretakers apply beginning April 3, 2024. Between October 3, 2023, and that date, ODJFS must perform system changes, create rules and forms, and make any other changes as necessary to implement its provisions.

## **Fatherhood programs**

(R.C. 5101.342, 5101.80, 5101.801, and 5101.805, with conforming changes in R.C. 3125.18, 5101.35, and 5153.16)

The act specifies that the Ohio Commission on Fatherhood may make recommendations to the ODJFS Director regarding funding, approval, and implementation of fatherhood programs in Ohio that meet one of the four purposes of the Temporary Assistance for Needy Families (TANF) block grant. It includes such programs as Title IV-A programs that are funded in part by the TANF block grant. The act permits ODJFS to (1) enter into an agreement with a private, not-for-profit entity for the entity to receive funds as recommended by the Commission and (2) to adopt rules relating to these provisions.

## **PUBLIC ASSISTANCE**

### **TANF spending plan**

(R.C. 5101.806)

The act extends, from July 30 to August 29 of even-numbered calendar years, the deadline for ODJFS to prepare and submit a TANF spending plan. It must submit the plan to the chairperson of a standing committee of the House designated by the Speaker, the chairperson of a standing committee of the Senate designated by the President, and the Minority Leaders of both the House and Senate.

### **Ohio Works First**

#### **Eligibility**

(R.C. 5107.02 and 5107.10)

The act expands eligibility for cash assistance under the Ohio Works First program to include any pregnant woman who meets other eligibility requirements for the program. Under prior law, a pregnant woman was required to be at least six months pregnant. Continuing law unchanged by the act requires a pregnant woman to have a gross income less than 50% of the federal poverty level to be eligible for cash assistance under Ohio Works First.

#### **Fugitive felons**

(R.C. 5107.36)

The act corrects a cross-reference to the definition of “fugitive felon” for purposes of the Ohio Works First program.

#### **Work Experience Program (WEP)**

(R.C. 5107.54)

Continuing law requires when a WEP participant is placed with a private or government entity, that entity pays premiums to the Bureau of Workers’ Compensation on the participant’s behalf if the CDJFS does not. The act specifies that the participant must not only be placed with the entity but also participate in WEP for the entity to be required to pay workers’ compensation premiums.

## Food assistance

### **Supplemental Nutrition Assistance Program (SNAP) employment and training program**

(R.C. 5101.547)

The act requires ODJFS to redesign its employment and training program in a manner that ensures the program meets the needs of employers in the state. Under federal law, states are required to implement an employment and training program that assists members of households participating in SNAP with gaining skills, training, work, or experience that will (1) increase the ability of household members to obtain regular employment and (2) meet state and local workforce needs.<sup>96</sup> The act requires ODJFS, not later than July 1, 2024, to appear before both the House Finance and Senate Finance committees and report on the redesigned program.

### **SNAP vendor pre-screening**

(R.C. 5101.04)

Regarding the use of third-party vendors by ODJFS to assist with SNAP benefit eligibility determinations, the act prohibits third-party vendors from conducting pre-screening activities regarding SNAP applicants unless the vendor has entered into a pre-screening agreement with ODJFS.

### **Self-employment income and SNAP eligibility**

(R.C. 5101.54)

When reevaluating an individual's gross nonexempt self-employment income to determine continuing SNAP eligibility, the act requires ODJFS to use the same criteria as were used during initial SNAP certification. This includes during quarterly eligibility reviews conducted by ODJFS and during the recertification process.

### **SNAP and WIC benefit trafficking**

(R.C. 2913.46)

The act expands the conduct that constitutes the illegal use of SNAP or WIC benefits, which is a felony under continuing law, with the degree dependent on the value of the benefits involved. Specifically, the act prohibits:

- Soliciting SNAP and WIC benefits by an individual;
- Trafficking SNAP benefits by an individual, with trafficking defined under federal regulations; and
- An organization from allowing an employee to violate the above prohibitions.

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<sup>96</sup> 7 U.S.C. 2015(d)(4).

## **Lost, stolen, or damaged benefits cards**

(R.C. 5101.542)

With respect to the electronic benefit transfer (EBT) card issued to households participating in SNAP, the act requires ODJFS to replace a lost, stolen, or damaged card within two business days of receiving notice of the card's condition, in accordance with federal law. It requires ODJFS to implement an option permitted in federal law, under which a state agency administering the SNAP program may withhold a replacement EBT card from a household if the household requests four or more replacement EBT cards in a 12-month period.<sup>97</sup> The act specifies that ODJFS is prohibited from withholding a replacement EBT card if the individual requesting a replacement card has a disability that is directly related to the loss of the card.

## **Agreement with Ohio Association of Foodbanks**

(Section 307.43)

The act requires ODJFS to enter a subgrant agreement with the Ohio Association of Foodbanks to enable the Association to: (1) provide food distribution to low-income families and individuals through the statewide charitable emergency food provider network, (2) support the transportation of meals for the Governor's Office of Faith-Based and Community Initiatives' Innovative Summer Meals programs for children, and (3) provide capacity building equipment for food pantries and soup kitchens.

Under the agreement, the Association must:

- Purchase food for the Agriculture Clearance and Ohio Food Programs. Information regarding the food purchase must be reflected in a plan for statewide distribution of food products to local food distribution agencies.
- Support the Capacity Building Grant program and purchase equipment for partner agencies needed to increase their capacity to serve more families eligible under the TANF program with perishable foods, fruits, and vegetables. Equipment purchases must include shelving, pallet jacks, commercial refrigerators, and commercial freezers.
- Submit a quarterly report to ODJFS not later than 60 days after the close of the quarter that includes a summary of the allocation and expenditure of grant funds; product type and pounds distributed by foodbank service region and county; and the number of households and households with children, a breakdown of individuals served by age ranges, and the number of meals served.
- Submit an annual report to the ODJFS Agreement Manager not later than 120 days after the end of the fiscal year, including a summary of the allocation and expenditure of grant funds; the number of households and households with children; a breakdown of individuals served by age ranges, and the number of meals served; the quantity and type of food distributed and the total per pound cost of the food purchased; information on

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<sup>97</sup> See 7 C.F.R. 274.6(b).

the cost of storage, transportation, and processing; and an evaluation of the success in achieving expected performance outcomes.

## **ODJFS disclosure definitions**

(R.C. 5101.26 and 5101.28)

In continuing law governing the disclosure of information about public assistance recipients, the act broadens the definition of “law enforcement agency” to mean the office of a sheriff, the State Highway Patrol, a county prosecuting attorney, or a governmental body that enforces criminal laws and has employees with the power of arrest, as opposed to listing specific entities.

## **Auditor of State report**

(R.C. 5101.28(F))

The act eliminates the requirement that the Auditor of State prepare an annual report on the outcome of information sharing agreements between law enforcement and ODJFS/CDJFSs. This report included the number of fugitive felons, probation and parole violators, and violators of community control sanctions and post-release control sanctions apprehended as a result of the agreements.

## **Public assistance quarterly report**

(R.C. 5101.98)

On a quarterly basis, the act requires ODJFS to compile a report of public assistance programs and submit it to the Senate President and Speaker of the House, who are required to distribute the report to the chairpersons of the legislative committees with jurisdiction over public assistance programs. The report must include all of the following:

- Regarding the SNAP program:
  - The number of SNAP accounts with high balances, as determined by the Department;
  - The number of SNAP out-of-state transactions;
  - The number of SNAP transactions when the final amount processed was a whole dollar amount.
- Regarding all public assistance programs, including Medicaid, SNAP, services provided under the TANF block grant, and cash assistance provided under Ohio Works First:
  - The payment error rate of each program, including the dollar amount of the payment errors;
  - The number of work requirement exemptions issued in each program;
  - The number of confirmed cases of intentional program violation and fraud in each program.

## UNEMPLOYMENT

### Identity verification

(R.C. 4141.28)

The act requires an individual filing an application for determination of benefit rights for unemployment compensation (the initial unemployment benefit application) to furnish proof of identity at the time of filing in the manner prescribed by the ODJFS Director.

### Benefit reductions based on receiving certain pay

(R.C. 4141.31)

Under the act, a claimant's unemployment benefits for any week of unemployment are reduced by the full amount of holiday pay or allowance paid to the claimant for that week. Continuing law applies the same weekly reduction to vacation pay or allowance.

The act also requires a claimant's benefits for any week of unemployment be reduced by the amount of any bonus payable under the law, the terms of a collective bargaining agreement, or other employment contract. The reduction equals the claimant's weekly benefit amount in the first and each succeeding week following the claimant's separation from the employer making the bonus payment until the total bonus amount is exhausted.

Under continuing law, no benefits are paid to a claimant for any week in which the claimant receives remuneration equal to or exceeding the claimant's weekly benefit amount. If the remuneration is less than the claimant's weekly benefit amount, continuing law requires the amount of remuneration exceeding 20% of the claimant's weekly benefit to be deducted for that week. Formerly, holiday pay and bonuses were considered remuneration and the amount of those forms of remuneration that exceeded 20% of the claimant's weekly benefit were deducted for that week.<sup>98</sup>

### Disclosure of information

(R.C. 4141.21, 4141.211, 4141.22, and 4141.43)

The act specifies that information maintained by the ODJFS Director or the Unemployment Compensation Review Commission (UCRC), or furnished to the ODJFS Director or UCRC by employers and employees under the Unemployment Compensation Law, is not a public record under the Ohio Public Records Act.<sup>99</sup> This is consistent with continuing law that the information is for the exclusive use and information of ODJFS and the UCRC and may not be disclosed unless an exception applies.

The act allows for the disclosure of unemployment compensation information if the disclosure is permitted by federal law under the following circumstances:

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<sup>98</sup> R.C. 4141.30(C), not in the act.

<sup>99</sup> R.C. 149.43.

- The information is, or regards, appeal records and decisions or precedential determinations on coverage of employers, employment, and wages, provided that any Social Security numbers and personal health information have been removed.
- The information is about an individual or employer and is disclosed to that individual or employer.
- The information is about an individual or employer and is disclosed to the individual's or employer's agent, if the agent presents a written release from the individual or employer or another form of permissible consent if the agent demonstrates that a written release is impossible or impracticable to obtain.
- The information is disclosed to an elected official performing constituent services who presents reasonable evidence that an individual or employer has authorized a disclosure about that individual or employer.
- The information is about an individual or employer and is disclosed to an attorney who is retained for purposes related to unemployment compensation law and asserts that the attorney represents the individual or employer.
- The information is about an individual or employer and is disclosed to a third party who is not an agent, but is providing a service or benefit to the individual or employer or is carrying out administration or evaluation of a public program, if the third party obtains a written release from the individual or employer that is signed and does all of the following:
  - Specifically identifies the information to be disclosed;
  - States which files will be accessed to obtain the information;
  - Specifies the purpose for which the information is sought and that the information will only be used for that purpose;
  - Indicates all of the parties who may receive the information.
- The information is disclosed to a public official, or an agent or contractor of such an official, for use in the performance of official duties, including research related to the administration of those duties (the information may not be used for the purpose of solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or to a political party).
- The information is disclosed to the federal Bureau of Labor Statistics pursuant to a cooperative agreement with the Bureau.
- The information is disclosed in response to a subpoena or court order, provided the subpoena or order is properly served on the ODJFS Director or the UCRC, and a court has previously issued a binding precedential decision that requires disclosures of this type or an established pattern of prior court decisions requiring the type of disclosure exists.
- The information is disclosed to a local, state, or federal government official, other than a clerk of court on behalf of a litigant.

- The information is disclosed to a federal or state official for purposes of unemployment compensation program oversight and audits or to a federal agency that the U.S. Department of Labor (which administers federal unemployment law) has determined to have adequate safeguards to satisfy confidentiality and safeguard requirements under federal law.
- The disclosure of information is required by law.

The allowed disclosures discussed above replace former law that simply allowed the ODJFS Director to cooperate with departments and agencies in the exchange or disclosure of information as to wages, employment, payrolls, unemployment, and other information. The act also eliminates the following:

- The prohibition against information maintained by the ODJFS Director or the UCRC being used in any court or as evidence in any action, other than one arising under the Unemployment Compensation Law;
- The requirement that all information and records necessary or useful in a claim determination or necessary in verifying a charge to an employer's account must be available for examination and use by the employer and the employee involved or their authorized representatives in the hearing of those cases;
- Authorization for the ODJFS Director to employ, jointly with one or more agencies or departments, auditors, examiners, inspectors, and other employees necessary for the administration of the Unemployment Compensation Law and employment and training services.

The act eliminates the ODJFS Director's authority to adopt rules defining the requirements for the release of individual income verification information to a consumer reporting agency, and instead, defines what constitutes "wage information" that may be disclosed to a consumer reporting agency under continuing law. The act defines "wage information" to mean the name, Social Security number, quarterly wages paid to, and weeks worked by an employee, and the name, address, and state and federal tax identification number of an employer reporting wages under the Unemployment Compensation Law.

The act allows the following information to be disclosed to accredited colleges and universities, accredited educational institutions, nonprofit research organizations, and other organizations conducting research, if the disclosure is for the purpose of assisting in research or for use in providing or improving the provision of government services:

- Wage information as defined above;
- Whether an individual is receiving, has received, or has applied for unemployment benefits;
- The amount of unemployment benefits an individual is receiving or entitled to receive;
- An individual's current or most recent home address;

- Whether an individual has refused an offer of work and, if so, a description of the job offered including the terms, conditions, and rate of pay;
- Any other information contained in the records of the ODJFS Director which is needed by the requesting agency to verify eligibility for, and the amount of, benefits;
- Employment and training information;
- Employer information.

The ODJFS Director may require recipients of unemployment compensation information to enter into a written agreement to receive the information. A recipient of that information, other than an individual or employer receiving information about that individual or employer, cannot re-disclose the information without approval to do so from the ODJFS Director and must safeguard the information against unauthorized access or re-disclosure. Failure to comply with the act's disclosure provisions may result civil or criminal penalties, including penalties for unauthorized disclosure of unemployment information under continuing law. Under continuing law, an unauthorized disclosure of unemployment information may result in a fine of \$100 to \$1,000, imprisonment of up to one year, or both.<sup>100</sup>

For purposes of the act's disclosure of information provisions, "unemployment compensation information" means information maintained by the ODJFS Director or the UCRC, or furnished to the Director or the UCRC by employers or employees pursuant to the Unemployment Compensation Law, that pertains to the administration of the Unemployment Compensation Law. It includes a wage report collected under the Income and Eligibility Verification System established under continuing law only if it is obtained by ODJFS for determining unemployment compensation monetary eligibility or is downloaded to ODJFS's files as a result of a cross match.<sup>101</sup> "Unemployment compensation information" does not include any of the following:

- Information in the New Hires Directory maintained by ODJFS<sup>102</sup> or in the National Directory of New Hires, if the information has not been used in the administration of the unemployment compensation program;
- ODJFS personnel or fiscal information;
- Information that is in the public domain.

## **Participation in certain federal programs**

(R.C. 4141.43)

The act specifies that the law requiring the ODJFS Director to take action as necessary to secure all advantages available under certain federal laws does not require the Director to

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<sup>100</sup> R.C. 4141.99, not in the act.

<sup>101</sup> R.C. 4141.162, not in the act.

<sup>102</sup> R.C. 3121.894, not in the act.

participate in, nor preclude the Director from ceasing to participate in, any voluntary, optional, special, or emergency program offered by the federal government under federal laws or any other federal program enacted to address exceptional unemployment conditions.

### **Acceptable collateral from certain reimbursing employers**

(R.C. 4141.241)

Continuing law requires a nonprofit employer wishing to be a reimbursing employer under the Unemployment Compensation Law to submit collateral to the ODJFS Director. The act makes surety bonds the only acceptable form of that collateral. Thus, it eliminates the ability to submit other forms of collateral, such as bonds and securities, that were acceptable under former law if the Director approved them.

Ohio's unemployment system has two types of employers: contributory employers and reimbursing employers. Employers who are assigned a contribution rate and make contributions to the Unemployment Compensation Fund are contributory employers. Most private sector employers are contributory employers. Certain employers are allowed to reimburse the fund after benefits are paid; they are known as "reimbursing employers."<sup>103</sup>

### **Notification to exempt nonprofit employees**

(R.C. 4141.02)

The act requires a nonprofit organization with fewer than four employees that is exempt from Ohio's Unemployment Compensation Law to notify its employees upon hiring that the organization and the employee's employment with the organization are exempt from the Law. Under continuing law, such a nonprofit organization is exempt from the Law but may elect to be covered.<sup>104</sup>

## **OTHER PROVISIONS**

### **Workforce report for horizontal well production**

(Repealed R.C. 6301.12)

The act eliminates the requirement that the ODJFS Office of Workforce Development prepare an annual workforce report for horizontal well production. Under that requirement, the Office had to comprehensively review the direct and indirect economic impact of businesses engaged in the production of horizontal wells in Ohio and prepare the report annually by July 30.

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<sup>103</sup> R.C. 4141.01(L), not in the act.

<sup>104</sup> R.C. 4141.01(A)(1)(a) and (4), not in the act.

## Migrant Agricultural Ombudsperson

(R.C. 3733.471; repealed R.C. 3733.49 and 4141.031; conforming changes in R.C. 3733.41, 3733.43, 3733.431, 3733.45, 3733.46, 3733.47, and 5321.01)

The act eliminates the Office of the Migrant Agricultural Ombudsperson established under the ODJFS Director’s authority. The Ombudsperson was responsible for overseeing agricultural labor camps in Ohio, including receiving and referring complaints or questions. The prior law allowed a person to report a violation regarding agricultural labor camps – including a violation of the Minor Labor Law<sup>105</sup> or Minimum Fair Wage Standards Law<sup>106</sup> – to the Ombudsperson. The act requires the person to make the report to the State Monitor Advocate, who must forward the reports to the Attorney General for investigation and possible action, similar to continuing law.

Under federal law, the workforce development agency of each state (in Ohio, ODJFS) must appoint a State Monitor Advocate. The State Monitor Advocate’s duties include similar duties to the Migrant Agricultural Ombudsperson under former law, such as collecting and reviewing data regarding the living and working conditions of migrant and seasonal farmworkers and receiving complaints and referring alleged violations to enforcement agencies. The State Monitor Advocate also is responsible for oversight activities for migrant and seasonal farmworkers, including conducting on-site reviews and field visits, monitoring the provision of employment services, and promoting the Agricultural Recruitment System to connect job seekers to employers.<sup>107</sup>

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<sup>105</sup> R.C. Chapter 4109.

<sup>106</sup> R.C. Chapter 4111.

<sup>107</sup> 20 C.F.R. 653.108 and [Monitor Advocate System](#), which may be accessed by conducting a keyword “Monitor advocate” search on the U.S. Department of Labor website: [dol.gov](http://dol.gov).

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## JOINT COMMITTEE ON AGENCY RULE REVIEW

### Rule adoption and review

- Tolls the time during which a concurrent resolution invalidating a proposed rule may be adopted when the agency that filed the rule informs the Joint Committee on Agency Rule Review (JCARR) that it intends to file a revised version.
- Eliminates prohibitions against JCARR reviewing an administrative rule when JCARR becomes aware that the rule has an adverse impact on business but has not been analyzed by the Common Sense Initiative Office.

### Administration

- Makes the JCARR chairperson and vice-chairperson co-chairs and requires the House-appointed co-chair to conduct meetings during the first regular session of a General Assembly and the Senate-appointed co-chair to do so during the second.
- Allows the JCARR chairperson in charge of calling and conducting meetings to schedule JCARR's public hearing on a proposed rule earlier than 41 days after the rule was filed.

### Principles of law or policy

- Increases, from three months to six months the time an agency has after the expiration of a governor's term to transmit to JCARR the agency's report concerning principles of law or policies relied on by the agency that have not been stated in an administrative rule.
- Exempts legislative agencies from this requirement.

### Rule adoption and review

(R.C. 106.02 and 106.031; R.C. 121.83, repealed, with conforming changes in R.C. 107.51, 121.81, 121.811, 308.21, and 1710.02)

#### Concurrent resolution invalidating a proposed rule

The act allows an agency that has filed a proposed administrative rule for review by the Joint Committee on Agency Rule Review (JCARR) to inform JCARR that it intends to file a revised version of the rule. When the agency so informs JCARR, the time during which the General Assembly may adopt an invalidating concurrent resolution is tolled. If the agency revises and refiles the proposed rule 35 or fewer days after filing the original, JCARR must review the revised version, and an invalidating concurrent resolution may be adopted, no later than 65 days after the original rule was filed. If, however, the agency files the revised rule more than 35 days after it filed the original, the General Assembly may adopt an invalidating resolution no later than 30 days after the agency filed the revised rule with JCARR.

Subject to limited exceptions, continuing law requires an agency that intends to adopt an administrative rule to file the proposed rule and related documents with JCARR at least 65 days

before the rule's intended effective date.<sup>108</sup> JCARR reviews the proposed rule and, if it makes specific findings, JCARR may recommend the General Assembly adopt a concurrent resolution invalidating the proposed rule.<sup>109</sup> In most cases, the General Assembly must adopt the resolution no later than the 65<sup>th</sup> day after the day on which the agency filed the proposed rule.

## **Jurisdiction**

The act eliminates a prohibition against JCARR reviewing an administrative rule having an adverse impact on business before the rule has been analyzed by the Common Sense Initiative Office (CSIO). Under continuing law, an agency proposing a new rule (or performing a mandatory five-year review of an existing rule) must evaluate the rule using a business impact analysis instrument developed by CSIO to determine whether the rule has an adverse impact on business. If it has such an impact, the agency must transmit a copy of the rule and the agency's analysis to CSIO. CSIO analyzes the rule and makes recommendations on how to eliminate or reduce the adverse impact on business.<sup>110</sup>

Formerly, JCARR did not have jurisdiction to review and had to reject a rule if JCARR discovered the rule had an adverse impact on business and the agency did not put it through the CSIO process.

## **Administration**

(R.C. 101.35 and 106.02, with conforming changes in 101.352, 101.353, 103.0521, 106.032, 106.04, and 106.041)

### **Chairperson**

The act makes the JCARR chairperson and vice-chairperson co-chairs. Formerly, the Speaker of the House appointed the chairperson in the first regular session of the General Assembly, and the Senate President appointed the vice-chairperson. In the second regular session, the President appointed the chair and the Speaker appointed the vice-chair.

Under the act, the Speaker and Senate President each appoint one co-chair. The House-appointed co-chair calls and conducts meetings during the first regular session of a General Assembly, and the Senate-appointed co-chair does so during the second. If the co-chair responsible for calling and conducting meetings is absent or temporarily unable to perform the chairperson's duties, the other co-chair acts as a substitute. As with the chair and vice-chair under former law, the co-chairs serve until their respective successors are appointed or until they are no longer members of the General Assembly.

### **Public hearings on proposed rules**

The act allows the JCARR chairperson responsible for calling and conducting meetings to schedule JCARR's public hearing on a proposed rule earlier than 41 days after the rule was filed.

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<sup>108</sup> R.C. 111.15 and R.C. 119.03, not in the act.

<sup>109</sup> R.C. 106.021, not in the act.

<sup>110</sup> R.C. 121.81 to 121.811 and R.C. 107.52 to 107.54 and 121.82, not in the act.

However, the act also requires the JCARR chairperson to try to not hold the hearing before the 41<sup>st</sup> day. Formerly, JCARR could not hold a public hearing on a proposed rule earlier than the 41<sup>st</sup> day after the agency filed it.

## **Policy and principal of law reporting**

(R.C. 121.93)

The act increases the time an agency has to transmit to JCARR its report concerning principles of law or policies relied on by the agency that have not been stated in an administrative rule. Continuing law requires most state agencies periodically to review their operations and identify principles of law or policy that have not been stated in a rule and that the agencies are relying on for either:

- Conducting adjudications or other determinations of rights and liabilities; or
- Issuing writings and other materials.

Under continuing law, an agency must perform at least one review during a governor's term and transmit a report to JCARR stating that the agency has completed one or more of the required reviews and certain steps the agency is taking regarding those reviews. The act extends the deadline to submit the report to six months after the end of the Governor's term.

The act also exempts an agency, commission, or committee created in the legislative branch or to serve the General Assembly (a "legislative agency") from the reporting requirement. Legislative agencies include, but are not limited to, all of the following:

- The Joint Legislative Ethics Committee;
- The Joint Medicaid Oversight Committee;
- The Correctional Institution Inspection Committee;
- The Legislative Service Commission;
- The Legislative Information Services;
- The Capitol Square Review and Advisory Board.

The Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, state institutions of higher education, and the state retirement systems are exempt from the reporting requirement.<sup>111</sup>

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<sup>111</sup> R.C. 121.933, not in the act.

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## JUDICIARY-SUPREME COURT

### Appeals of administrative orders

- Modifies the Administrative Procedure Act regarding appeals by a party adversely affected by an order of an agency by doing all of the following:
  - Allowing an adversely affected party to appeal to the common pleas court in the county where a licensee's place of business is located or where the licensee is a resident, in lieu of appealing to the Franklin County Court of Common Pleas;
  - Requiring, instead of permitting, appeals from orders of the State Fire Marshal be to the common pleas court of the county in which the aggrieved person's building is located;
  - Requiring, instead of permitting, that appeals from specified administrative orders by any party who is not a resident of and has no place of business in Ohio be to the Franklin County Court of Common Pleas;
  - Allowing a party adversely affected by an agency's order to appeal to the common pleas court in the county in which the business of the party is located or in which the party is a resident in lieu of appealing to the Franklin County Court of Common Pleas.
- Modifies statutes governing adjudication orders of specified agencies to replace prior law regarding appeals of the orders to the Franklin County Court of Common Pleas, the Environmental Division of the Franklin County Municipal Court, or the court of the county in which an appointing authority resides, with the act's venue provision described above.

### Special court procedures

- Provides special court procedures regarding the consideration and determination of:
  - Cases that, prior to October 3, 2023, would have been solely within the jurisdiction on appeal of the 10<sup>th</sup> District Court of Appeals, and that on that date are pending in a common pleas court and are not pending in the 10<sup>th</sup> District.
  - Matters that, on or after October 3, 2023, are being considered by a court of appeals other than the 10<sup>th</sup> District or a common pleas court within the territory of a court of appeals other than the 10<sup>th</sup> District and that, prior to October 3, 2023, would have been solely within the jurisdiction on appeal of the 10<sup>th</sup> District.

### No claim preclusion in zoning appeals

- Provides that a final judgment on the merits by a court pursuant to its power of review of administrative orders on claims brought under the law regarding county rural zoning or the renewal of slums and blighted areas in a county, the Township Zoning Law, or the law regarding municipal zoning, regional and county planning commissions, or interstate regional planning commissions does not preclude later claims for damages.

- States that the General Assembly intends that the above provisions in the respective laws be construed to override the federal Sixth Circuit Court of Appeals decision in the case of *Lavon Moore v. Hiram Twp.*, 988 F.3d 353 (6<sup>th</sup> Cir. 2021).

### **Residence qualifications of fiduciaries**

- Expands certain types of persons that qualify for appointment as executor or trustee of a will.
- Gives the court authorization to require private trust companies to appoint a resident agent.

### **Local court fees**

- Requires that a petition for a certificate of qualification for employment or an application for sealing or expungement of conviction records be accompanied by a \$50 fee, and may be accompanied by a local court fee up to \$50.

### **Liquefied gas (VETOED)**

- Would have exempted a liquefied petroleum gas supplier for damages based on a product liability claim in listed circumstances, unless the claim was caused in whole or in part by intentional misconduct by the supplier (VETOED).
- Would have presumed a user of liquefied petroleum gas is aware of the inherent dangerous characteristics of liquefied petroleum gas (VETOED).
- Would have found, as a matter of public policy, that liquefied petroleum gas, without modification, is not a defective product (VETOED).

### **Changes related to S.B. 288 of the 134<sup>th</sup> General Assembly**

- Makes a series of changes to the Criminal Code to correct inconsistencies, ambiguities, oversights, and technical issues created by the passage of S.B. 288 of the 134<sup>th</sup> General Assembly, including changes related to the following:
  - Sealing and expungement;
  - Criminal and traffic offense penalties;
  - Crime victims – notice and opportunity to be heard;
  - Adult Parole Authority warrantless search authority;
  - Removal of warrants from the National Crime Information Center;
  - Emergency judicial release;
  - Other technical changes.

## **Hamilton County Drug Court jurisdiction**

- Allows the Hamilton County Municipal Court to refer a case to the Drug Court of the Hamilton County Court of Common Pleas if the case is eligible for admission to the Drug Court under a local rule adopted by the Hamilton County Common Pleas Court.
- Provides that a local rule may not permit referral of a case to the Drug Court if the case involves a first or second degree felony, a sex offense that is a third degree felony, or aggravated murder or murder.

## **Jurisdiction of Tiffin-Fostoria Municipal Court**

- Transfers Perry Township in Wood County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Bowling Green Municipal Court, effective January 2, 2024.
- Transfers Washington Township in Hancock County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Findlay Municipal Court, effective January 2, 2024.

## **Sandusky County County Court judgeship**

- Effective January 2, 2025, replaces the two part-time judges in the Sandusky County County Court with one full-time judge, to be elected in 2024, term to commence on January 2, 2025.
- Requires that, effective January 2, 2025, the compensation of the full-time judge of the Sandusky County County Court be the same as the compensation of a full-time municipal court judge.
- Removes all references in relevant statutes to “Sandusky County Municipal Court.”

## **Appeal of administrative agency order**

(R.C. 119.12, 124.34, 956.11, 956.15, 3794.09, 3901.321, 3913.13, 3913.23, 5101.35, and 5164.38; Section 701.130)

The act provides that a party adversely affected by an order of an agency issued pursuant to an adjudication may appeal from the order to the court of common pleas of the county designated as follows:

1. Except as otherwise described below in (2), an appeal from an order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, denying the issuance or renewal of a license or registration of a licensee, revoking or suspending a license, or allowing the payment of a forfeiture rather than suspending operations of a liquor permit holder by order of the Liquor Control Commission must be filed in the county in which the place of business of the licensee is located or the county in which the licensee is a resident (prior law states that such an appeal may be filed in the court of common pleas in either of the specified counties).

2. An appeal from an order issued by any of the following agencies must be made to the Franklin County CCP or the court of common pleas in the county in which the place of business of the licensee is located or the county in which the licensee is a resident: (a) Liquor Control Commission, (b) Ohio Casino Control Commission, (c) State Medical Board, (d) State Chiropractic Board, (e) Board of Nursing, and (f) Bureau of Workers' Compensation regarding participation in the health partnership program administered by the Bureau (under prior law, such an appeal must be made to the Franklin County CCP).

3. Appeals from orders of the State Fire Marshal issued under R.C. Chapter 3737 must be to the court of common pleas of the county in which the building of the aggrieved person is located (under prior law, those appeals may be to that court of common pleas or to the Franklin County CCP).

4. As under continuing law, appeals under R.C. 124.34(B) from a decision of the State Personnel Board of Review or a municipal or civil service township civil service commission must be taken to the court of common pleas of the county in which the appointing authority is located or, in the case of an appeal by DRC, to the Franklin County CCP.

5. If a party appealing from an order described above in (1) or (2) or described below in (6) is not an Ohio resident and has no place of business in Ohio, the party must appeal to the Franklin County CCP (prior law states that such an appeal may be to the Franklin County CCP).

6. A party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the Franklin County CCP or the court of common pleas of the county in which the business of the party is located or in which the party is a resident (under prior law, the party may appeal to the Franklin County CCP).

### **Appeal from order of specific agencies**

The act's provision above that a party adversely affected by an order of an agency may appeal from the order to the court of common pleas of the county in which the place of business of the party is located or the county in which the party is a resident is expressly made applicable to any of the following appeals:

- In cases of removal or reduction in pay for disciplinary reasons, the appointing authority or the officer or employee in the classified service may appeal from the decision of the State Personnel Board of Review or the municipal civil service commission of the city or city school district. The act replaces prior law that provides for the appeal to be made to the court of common pleas of the county in which the appointing authority is located, or to the Franklin County CCP.
- In cases in which the Director of Agriculture or a designated representative impounds and seizes a dog from a high volume breeder or dog broker for violation of applicable law or rule, the high volume breeder's owner or operator or the person acting as a dog broker may appeal from such determination at an adjudication hearing. The act replaces the prior provision that specifies that the appeal may be made only to the environmental division of the Franklin County Municipal Court.

- In cases in which an application for a license as a high volume breeder or dog broker is denied or such license is suspended or revoked upon a determination of the Director of Agriculture at an adjudication hearing, the applicant or licensee may appeal from such determination. The act replaces the prior provision that specifies that the appeal may be made only to the environmental division of the Franklin County Municipal Court.
- In cases in which a proprietor of a public place or place of employment or an individual against whom a finding of a violation of any prohibition under the Smoking Ban Law is made by the Director of the Department of Health or designee, the proprietor or individual may appeal the finding. The act replaces prior law that provides that the proprietor or individual may appeal the finding to the Franklin County CCP.
- In cases in which, after a public hearing, the Superintendent of Insurance issues an order of disapproval of any merger or other acquisition of control of a domestic insurer, the order may be appealed by filing a notice of appeal with the Superintendent and a copy of the notice of appeal with the court that will hear the appeal, within 15 calendar days after the transmittal of the copy of the order. The act replaces prior law that specifies that the order of disapproval may be appealed to the Franklin County CCP.
- In cases in which the Superintendent of Insurance issues an order regarding the conversion of a domestic mutual life insurance company to a stock life insurance company, an adversely affected policyholder may appeal the order. The act replaces prior law that provides that a policyholder adversely affected by such order may appeal to the Franklin County CCP.
- In cases in which the Superintendent of Insurance issues an order regarding the conversion of a domestic mutual insurance company other than life to a stock insurance corporation other than life, an adversely affected policyholder may appeal the order. The act replaces prior law that provides that a policyholder adversely affected by such order may appeal to the Franklin County CCP.
- In cases in which an appellant who appeals an order of an agency administering a family services program, who is granted a state hearing, and who disagrees with the state hearing decision and generally makes an administrative appeal to the Department of Job and Family Services (JFS), the appellant may appeal from the JFS administrative appeal decision. The act replaces prior law that provides that the person may appeal to the court of common pleas of the county in which the person resides, or to the Franklin County CCP if the person does not reside in Ohio. The act's new venue provision described above and continuing law on an appeal by a nonresident to the Franklin County CCP would apply, and the eliminated provision regarding a nonresident would be duplicative.
- In cases in which an adversely affected party may appeal from the Medicaid Department's adjudication order regarding: (1) refusal to enter into a provider agreement with a Medicaid provider, (2) refusal to revalidate a Medicaid provider's provider agreement, (3) suspension or termination of a Medicaid provider's provider agreement, or (4) taking any action based upon a final fiscal audit of a Medicaid provider. The act replaces prior

law that provides that any party who is adversely affected by the issuance of any such adjudication order may appeal to the Franklin County CCP.

## **Special court procedures**

Related to the provisions described above, the act specifies that:

1. All cases pending in the 10<sup>th</sup> District Court of Appeals on October 3, 2023, that were appropriately filed in that court are to be adjudicated by the 10<sup>th</sup> District;

2. All cases that, prior to October 3, 2023, would have been solely within the jurisdiction on appeal of the 10<sup>th</sup> District Court of Appeals, and on that date are pending in a common pleas court that is an appropriate venue and are not pending in the 10<sup>th</sup> District, are to be adjudicated by that common pleas court and remain solely within the jurisdiction on appeal of the 10<sup>th</sup> District, on and after October 3, 2023;

3. If, on or after October 3, 2023, a court of appeals other than the 10<sup>th</sup> District Court of Appeals or a common pleas court within the territory of a court of appeals other than the 10<sup>th</sup> District is considering a matter that, prior to October 3, 2023, would have been solely within the jurisdiction on appeal of the 10<sup>th</sup> District, the following apply:

a. The court of appeals or common pleas court considering the matter may consider judicial decisions of the Franklin County Common Pleas Court and the 10<sup>th</sup> District that were decided prior to October 3, 2023, in deciding the matter;

b. The judicial decisions of the Franklin County Common Pleas Court and the 10<sup>th</sup> District that were decided prior to October 3, 2023, are not binding on the court of appeals or common pleas court considering the matter; and

c. The court of appeals or common pleas court considering the matter is not required to issue any findings of fact explaining why the court, in deciding the matter, did not consider or follow any precedent on the matter set forth in any judicial decision of the Franklin County Common Pleas Court or the 10<sup>th</sup> District.

## **No claim preclusion in zoning appeals**

(R.C. 303.65, 519.26, and 713.16)

The act provides that a final judgment on the merits issued by a court of competent jurisdiction does not preclude later claims for damages, including civil actions for deprivation of rights under federal law, if the claim is brought under any of the following:

1. Laws governing county rural zoning or the renewal of slums and blighted areas in a county;

2. The Township Zoning Law; or

3. Laws governing municipal zoning, regional and county planning commissions, or interstate regional planning commissions.

This provision applies even if the common law doctrine of *res judicata* (where a matter has been adjudicated by a competent court and may not be pursued further by the same parties) would otherwise bar the claim.

The act states that the General Assembly intends that the above provisions in the respective laws be construed to override the federal Sixth Circuit Court of Appeals' decision in the case of *Lavon Moore v. Hiram Twp.*, 988 F.3d 353 (6<sup>th</sup> Cir. 2021).

## **Residence qualifications of fiduciaries**

(R.C. 2109.21)

The act expands the types of persons that qualify for appointment as an executor or trustee of a will to include a private trust company or family trust company organized under the laws of any state. The act also authorizes courts to require an appointed nonresident private trust company or family trust company, to appoint a resident agent to accept service of process, notices, and other documents.

## **Local court fees**

### **Certificate of qualification for employment**

(R.C. 2953.25)

The act stipulates that the fee for a petition for a certificate of qualification for employment is \$50, and may be accompanied by a local court fee up to \$50. Under former law, the \$50 fee included local court fees. Under continuing law, part or all of the fee may be waived for an applicant who presents a poverty affidavit showing the applicant is indigent.

### **Application for sealing or expungement of conviction records**

(R.C. 2953.32)

The act stipulates that the fee for an application to seal or expunge conviction records is \$50, and may be accompanied by a local court fee up to \$50. Under former law, the \$50 fee included local court fees. Under continuing law, the fee may be waived for an applicant who presents a poverty affidavit showing the applicant is indigent.

## **Liquefied gas (VETOED)**

(R.C. 2307.781)

The Governor vetoed a provision that would have exempted a liquefied petroleum gas supplier from liability for damages based on a product liability claim arising from:

- The installation, modification, repair, or servicing of liquefied petroleum gas equipment by a person other than the liquefied petroleum gas supplier, unless the liquefied petroleum gas supplier had received written notification or other actual knowledge of the installation, modification, repair, or servicing at least 30 days before the installation, modification, repair, or servicing occurred.
- The use or operation of liquefied petroleum gas equipment in a manner or for a purpose other than that for which it was intended.

- The installation, modification, repair, or servicing of liquefied petroleum gas equipment by a person, other than the liquefied petroleum gas supplier, who is not certified or licensed to install, modify, repair, or service that equipment.
- The installation, modification, repair, or servicing of liquefied petroleum gas equipment by a person, other than the liquefied petroleum gas supplier, that did not conform to the warning or instruction of the manufacturer of the liquefied petroleum gas equipment.
- Use that complied with listed legal requirements.

The exemptions would not have applied in situations where the product liability claim was caused in whole or in part by intentional misconduct by the liquefied petroleum gas supplier.

The act would have included the presumption that a user was aware of the inherent dangerous characteristics of liquefied petroleum gas, and would not have required a supplier to provide a warning regarding liquefied petroleum gas excepted as specified in the Revised Code or Administrative Code.

The act would have stated that, as a matter of public policy, the General Assembly found that liquefied petroleum gas, without modification, is not a defective product.

## **Changes related to S.B. 288 of the 134<sup>th</sup> General Assembly**

### **Sealing and expungement**

(R.C. 2953.31, 2953.32, 2953.33, and 2953.34)

The act allows a defendant who is found not guilty of an offense, who is named in a dismissed complaint, indictment, or information, or against whom a no bill is entered by a grand jury, to apply to the court for an order to expunge the person's official records in the case. The process for expungement, as added by the act, mirrors the process for sealing records in cases of dismissal, not guilty, or no bill. Additionally, expungement of records related to a dismissed or no bill case is not available if the case involves any of the following offenses:

1. A violation of Ohio's Commercial Driver's License Law, Driver's License Law, Driver's License Suspension Law, Traffic Law, or Motor Vehicle Criminal Law, or a violation of a municipal ordinance that is substantially similar to any of those laws.
2. A felony offense of violence that is not a sexually oriented offense.
3. A sexually oriented offense when the offender is subject to the requirements of R.C. Chapter 2950 (SORN Law).
4. An offense involving a victim younger than 13, except for the offenses of nonsupport of dependents or contributing to nonsupport of dependents.
5. A first or second degree felony.
6. A "domestic violence" offense, a "violating a protection order" offense, or a similar municipal ordinance offense.

7. A third degree felony if the person has more than one prior conviction of any felony or, if the person has exactly one prior conviction of a third degree felony and the person has more prior convictions in total than a third degree felony conviction and two misdemeanor convictions.

S.B. 288 of the 134<sup>th</sup> General Assembly similarly enacted new provisions under which a person may apply for expungement of a *conviction* record in the same manner that a person may apply for sealing of a conviction record, and specified that the procedures applicable to determining a sealing application also generally apply to such an expungement application. The act clarifies that expungement of criminal records under these provisions requires the destruction, deletion, or erasure of those records so that those records are permanently irretrievable, except to the extent they are kept by the Bureau of Criminal Identification and Investigation for the limited purpose of determining an individual's qualification or disqualification for law enforcement employment.

Additionally, the act prohibits the sealing or expungement of convictions of a third degree felony if the offender has more than one other conviction of any felony or, if the person has exactly two convictions of a third degree felony, has more convictions in total than those two third degree felony convictions and two misdemeanor convictions. It also allows for the sealing of a conviction of fourth degree misdemeanor domestic violence, but prohibits expungement of the record. Finally, the act allows a person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture for the offense to apply for the expungement of a record of a misdemeanor offense after one year, or after six months for a minor misdemeanor, rather than three years as under prior law.

Regarding sealed records specifically, the act permits a legal representative of a person who is the subject of sealed records to apply to allow the subject to inspect them, exempts officers or employees of the state or a political subdivision from liability for disclosing sealed or expunged records to the subject or the subject's legal representative, and corrects erroneous cross references.

## **Criminal and traffic offense penalties**

(R.C. 2907.231 and 4511.204)

### **Engaging in prostitution**

The act eliminates an ambiguity in prescribed penalties for the criminal offense of engaging in prostitution. Continuing law prohibits, as "engaging in prostitution," a person from recklessly inducing, enticing, or procuring another to engage in sexual activity for hire in exchange for the person giving anything of value to the other person. A violation is a first degree misdemeanor. If the other person is a person with a developmental disability and the offender knows or has reason to believe that is the case, the offense is engaging in prostitution with a person with a developmental disability, a third degree felony. Continuing law also requires the sentencing court to require the offender to attend an education or treatment program aimed at preventing behavior that constitutes "engaging in prostitution" and allows the court to impose a fine on the offender of up to \$1,500, despite the financial penalties that ordinarily apply to a first degree misdemeanor.

The act makes clear that the requirement for education or treatment aimed at behavior that constitutes “engaging in prostitution” applies to all offenders convicted of “engaging in prostitution” or “engaging in prostitution with a person with a developmental disability” and clarifies that the \$1,500 maximum fine that applies to a violation does not apply to “engaging in prostitution with a person with a developmental disability,” a third degree felony.

### **Distracted driving**

(R.C. 4511.204)

S.B. 288 amended Ohio’s distracted driving law to create the new unclassified misdemeanor offense of “operating a motor vehicle while using an electronic wireless communication device.” Penalties prescribed for the offense may be escalated if the offender has previously been convicted of the offense. Continuing law allows for offenders subject to a \$150 penalty and points assessment for this offense to avoid the penalty and points by attending a distracted driving safety course. The act clarifies that this penalty waiver applies only to offenses that do not involve a prior conviction within two years of the violation.

### **Crime victims – notice and opportunity to be heard**

(R.C. 2930.171, 2953.39, and 2967.26)

The act applies the notice and victim consideration requirements to the Revised Code sections enacted in S.B. 288 to conform them to the crime victim’s rights provisions of H.B. 343 of the 134<sup>th</sup> General Assembly.

### **Victims reimbursing for law enforcement services**

(R.C. 2930.20)

The act modifies the prohibition against charging a victim of rape, attempted rape, domestic violence, dating violence, abuse, or a sexually oriented offense, or the property owner where the victim resides for the cost of law enforcement assistance related to the offense so that it applies to victims of rape, attempted rape, domestic violence, dating violence, or a sexually oriented offense, and not to victims of “abuse” generally. Additionally, the act defines “dating violence” and “sexually oriented offense” for purposes of the prohibition.

### **Adult Parole Authority warrantless searches**

(R.C. 2967.131)

The act expands the search authority of the Adult Parole Authority to allow authorized field officers to search the person, residence, motor vehicle, and other personal property of a felon released from prison on post-release control when the Authority requires the felon’s consent to searches as part of terms and conditions of post-release control.

### **Removal of warrants from NCIC**

(R.C. 2935.10)

The act narrows to “tier one offenses” a requirement that a law enforcement agency remove a warrant from the Law Enforcement Automated Data System (LEADS) and the appropriate National Crime Information Center (NCIC) database within 48 hours of warrant

service or dismissal or recall by the issuing court. Under continuing law, a “tier one offense” is one of 32 specified serious offenses, and any warrant issued for a tier one offense must be entered, by the law enforcement agency requesting the warrant within 48 hours after receipt of the warrant, into the LEADS and the appropriate NCIC database.

### **Emergency judicial release**

(R.C. 2929.20)

Continuing law allows for a special procedure for the judicial release of certain qualifying offenders during a state of emergency. The act clarifies that the once-every-six-months filing limit for emergency-qualifying offender judicial release applies separately to each declared state of emergency. The act also requires the court ruling on a motion for judicial release of an emergency-qualifying offender to notify the prosecuting attorney of that ruling and clarifies that the prosecuting attorney must notify the victim’s representative, if applicable, if the court grants a motion for judicial release or if a hearing is held on an offender’s judicial release or revocation of judicial release.

### **Other technical changes**

(R.C. 2743.671, 2907.13, 2925.11, 2930.06, and 4731.862)

S.B. 288 addressed the matter of emergency awards for reparations of “funeral expenses” for victims of crime. The act clarifies that “funeral expenses” for that purpose, means the payment of cremation or burial services of the decedent, rather than the potentially competing definition of “funeral expenses” that applies to the Crime Victims Reparations Law generally.

S.B. 288 also enacted a civil action for the recovery of remedies for an assisted reproduction procedure performed without consent “and performed recklessly.” S.B. 288 stated that a person may bring a separate action for each child born to the patient or spouse as a result of an assisted reproduction procedure performed without consent – but in this provision, it did not include as a criterion that the procedure was “performed recklessly.” The act adds this criterion.

The act also corrects an apparently erroneous reference to “health care provider” in the criminal offense of fraudulent assisted reproduction. It replaces the erroneous reference with a reference to a “health care professional,” a defined term in the offense of fraudulent assisted reproduction.

The act eliminates the orphaned definition of “drug treatment program” from the so-called “good Samaritan law” that applies to specified minor drug possession offenses. The phrase “drug treatment program” is not used in that law.

Finally, the act corrects an incomplete cross-reference to Ohio’s Speedy-Trial Law.

### **Hamilton County Drug Court jurisdiction**

(R.C. 1901.041 and 2301.03)

The act modifies the jurisdiction of the Drug Court of the Hamilton County Court of Common Pleas. Under the act, the Hamilton County Municipal Court may refer a case to the Drug

Court if the case is eligible for admission to the Drug Court under a local rule adopted by the Hamilton County Court of Common Pleas. However, a local rule adopted by the Hamilton County Court of Common Pleas may not permit referral of a case to the Drug Court if the case involves a first or second degree felony, a sex offense that is a third degree felony, or aggravated murder or murder. The act repeals statutory provisions that specified the types of cases that may be referred to the Drug Court.

## **Jurisdiction of Tiffin-Fostoria Municipal Court**

(R.C. 1901.02 and 1901.021; Section 701.160)

### **Bowling Green Municipal Court – Perry Township in Wood County**

The act transfers Perry Township in Wood County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Bowling Green Municipal Court, effective January 2, 2024. Under prior law, Perry Township, except for the municipal corporation of West Millgrove in Wood County, was within the territorial jurisdiction of the Tiffin-Fostoria Municipal Court. West Millgrove was within the territorial jurisdiction of the Bowling Green Municipal Court. Cases arising in Perry Township, except for those arising within the municipal corporation of West Millgrove, were filed in the office of the special deputy clerk in Fostoria.

The act specifies that all cases arising in Perry Township in Wood County that are pending in the Fostoria branch of the Tiffin-Fostoria Municipal Court on January 2, 2024, are to be adjudicated by the Fostoria branch of the Tiffin-Fostoria Municipal Court. All cases arising in Perry Township in Wood County on or after January 2, 2024, are to be brought before the Bowling Green Municipal Court.

### **Findlay Municipal Court – Washington Township in Hancock County**

The act transfers Washington Township in Hancock County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Findlay Municipal Court, effective January 2, 2024. Under prior law, Washington Township in Hancock County was within the territorial jurisdiction of the Tiffin-Fostoria Municipal Court. Cases arising in Washington Township were filed in the office of the special deputy clerk located in Fostoria.

The act specifies that all cases arising in Washington Township in Hancock County that are pending in the Fostoria branch of the Tiffin-Fostoria Municipal Court on January 2, 2024, are to be adjudicated by the Fostoria branch of the Tiffin-Fostoria Municipal Court. All cases arising in Washington Township in Hancock County on or after January 2, 2024, are to be brought before the Findlay Municipal Court.

## **Sandusky County County Court judges**

(R.C.1901.01, 1901.02, 1901.07, 1901.08, 1901.31, and 1907.11)

Effective January 2, 2025, the act replaces the two part-time judges in the Sandusky County County Court with one full-time judge, to be elected in 2024, the term to commence on January 2, 2025. Effective January 2, 2025, notwithstanding the continuing law specifying the

base compensation and additional compensation of county court judges, the full-time judge must receive the compensation equal to the compensation of a full-time municipal court judge.

Effective January 2, 2025, the act abolishes one part-time judgeship of that county court elected in 2018 and whose term expires December 31, 2024, and abolishes the other part-time judgeship elected in 2018 and whose term expires January 1, 2025.

The act repeals the creation of the Sandusky County Municipal Court. It removes all references to “Sandusky County Municipal Court” in the relevant statutes pertaining to the Sandusky County Municipal Court.

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## LOTTERY COMMISSION

### Rules and operating procedures

- Allows the State Lottery Commission (LOT) to adopt operating procedures for the conduct of lottery games, instead of adopting administrative rules.
- Requires LOT to publish its operating procedures on its official website by November 2, 2023.
- Requires LOT still to adopt rules under the Administrative Procedure Act concerning specific topics designated in continuing law as matters that must be addressed under the Administrative Procedure Act.
- Provides generally that LOT's existing rules remain in effect unless LOT formally rescinds them.
- Allows LOT to eliminate rules that it replaces with operating procedures on or before November 2, 2023, by notifying LSC to remove them from the Administrative Code, instead of by formally rescinding them.

### Withholding child and spousal support from winnings

- Eliminates references in the law to an obsolete paper-based process for LOT to withhold past due child or spousal support from a person's lottery winnings.
- Requires LOT still to withhold those amounts using a computerized database maintained by the Department of Job and Family Services (ODJFS).

### Rules and operating procedures

(R.C. 3770.03; Section 737.10)

The act allows the State Lottery Commission (LOT) to adopt operating procedures for the conduct of lottery games, instead of adopting administrative rules. The operating procedures must include all of the following:

- The type of lottery to be conducted;
- The prices of tickets in the lottery;
- The number, nature, and value of prize awards;
- The manner and frequency of prize drawings;
- The manner in which prizes must be awarded to winners.

Under the act, LOT must publish all of its operating procedures on its official website and make copies available to the public upon request. LOT must publish all of its operating procedures not later than November 2, 2023.

Prior law required LOT to adopt lottery rules under the Administrative Procedure Act (R.C. Chapter 119), except that instant game rules were adopted under R.C. 111.15. (The Administrative Procedure Act prescribes notice, hearing, and other requirements for administrative rulemaking, while R.C. 111.15 prescribes a separate, less restrictive set of rulemaking procedures that typically applies to internal management matters.) Rules for instant games were not subject to review by the Joint Committee on Agency Rule Review (JCARR).<sup>112</sup>

The act requires LOT to continue following the Administrative Procedure Act in adopting rules about matters that are specifically designated as being subject to that requirement under continuing law. For example, the Administrative Procedure Act continues to apply to LOT rules concerning lottery sports gaming, the location and manner of selling lottery tickets, and the licensing and compensation of lottery sales agents.

All of LOT's existing rules remain in effect unless LOT rescinds them in accordance with the Administrative Procedure Act or R.C. 111.15, as applicable. However, the act allows LOT to eliminate any rule that it replaces with an operating procedure by November 2, 2023, without formally rescinding it. LOT must notify LSC's Director of any eliminated rule, and LSC must remove the rule from the Ohio Administrative Code.

## **Withholding child and spousal support from winnings**

(R.C. 3123.89, 3770.071, and 3770.99)

The act eliminates references in the law to an obsolete paper-based process for LOT to withhold past due child or spousal support from a person's lottery winnings. However, LOT still must withhold those amounts using a computerized database.

Under continuing law, when a person's lottery winnings meet a certain dollar threshold, LOT must check a Department of Job and Family Services (ODJFS) database to determine whether the person owes any past due child or spousal support. If the person does owe past due support, LOT must withhold the past due amount from the person's winnings and send the money to ODJFS. Continuing law also requires LOT to withhold income taxes and any debts owed to the government. The dollar threshold for withholding is based on the federal income tax reporting threshold for gambling winnings, which is generally \$600 for lottery games.<sup>113</sup>

In addition to referencing the ODJFS database, prior law described an older process that required ODJFS and LOT to communicate with each other using paper forms to identify lottery winners who owed past due support and withhold the amount from the winnings. The act removes that process and requires LOT and ODJFS to use the database.

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<sup>112</sup> For more information, see LSC's Members Brief, [Administrative Rulemaking \(PDF\)](#), available at [lsc.ohio.gov/publications](http://lsc.ohio.gov/publications).

<sup>113</sup> See R.C. 3770.072 and 3770.073, not in the act; 26 U.S.C. 6041; and Internal Revenue Service, [Instructions for Forms W-2G and 5754 \(01/2021\)](#), available at [irs.gov](http://irs.gov) under "Forms and Instructions."

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## DEPARTMENT OF MEDICAID

### Medicaid eligibility

#### Medicaid coverage for workers with a disability

- Requires the Medicaid program to cover the optional eligibility group consisting of certain workers with a disability.
- Declares that the General Assembly's intent in requiring the coverage is to provide coverage consistent with Ohio's existing Medicaid Buy-In for Workers with a Disability program for workers with disabilities age 65 or older.

#### Continuous Medicaid enrollment for young children

- Requires the Medicaid Director to establish a Medicaid waiver component to provide continuous enrollment for Medicaid-eligible children from birth through age three.

#### Medicaid presumptive eligibility error rate training (PARTIALLY VETOED)

- Requires each entity or provider qualified to make presumptive eligibility determinations to submit a corrective action plan to ODM and provide training when the entity or provider's error rate exceeds 7.5% in a calendar month.
- Would have disqualified presumptive eligibility determinations for 60 months for any qualified entity or provider that exceeded a presumptive eligibility error rate of 7.5% in six or more months in a 24-month period (VETOED).

#### Post-COVID Medicaid unwinding

- Requires the Department of Medicaid (ODM) to use third-party data to conduct an eligibility redetermination of all Ohio Medicaid recipients at the conclusion of the COVID-19 emergency period.
- Requires ODM to conduct an eligibility review of all recipients, based on the recipient's eligibility review date, and to disenroll those recipients who are no longer eligible.
- Requires ODM to complete a report containing its findings from the verification and submit it to the Joint Medicaid Oversight Committee (JMOC).
- Repeals requirements ODM must follow if it receives federal Medicaid funding contingent on a temporary maintenance of effort restriction or otherwise limiting its ability to disenroll ineligible recipients.

### Nursing facilities

#### Special Focus Facility Program

- Aligns statutory language regarding the Special Focus Facility (SFF) Program with federal changes to the program and prohibits a nursing facility provider from appealing an order

issued by ODM terminating a nursing facility's participation in Medicaid based on the facility's participation in the SFF program.

### **Nursing facility case-mix scores**

- Updates the terminology used to calculate nursing facility case-mix scores to correspond to the new federal Patient Driven Payment Model.

### **Debt summary reports; debts related to exiting operators**

- Regarding determining the actual amount of debt an exiting operator of a nursing facility owes ODM, requires ODM to issue a final debt summary report instead of having an initial or revised debt summary report become the final debt summary report.
- Eliminates various provisions related to debts an exiting operator owes to the federal Centers for Medicare and Medicaid Services (CMS).

### **Nursing facility field audit manual and program**

- Eliminates the requirement that ODM establish a program and manual for field audits of nursing facilities.
- Eliminates certain required procedures for auditors that must be included in the manual.
- Requires audits conducted by ODM to be conducted by an audit plan developed before audit begins, and audits conducted by auditors contracted with ODM be conducted by procedures agreed upon by the auditor and ODM, subject to certain continuing requirements.

### **Alternative purchasing model – ventilator services**

- Beginning on July 1, 2023, prohibits the Director from approving an application for an alternative purchasing model for ventilator services in a discrete unit of a nursing facility if the facility is listed on Table A or Table D of the SFF list or has a one-star overall rating in CMS's Care Compare database.
- Requires ODM to pay pursuant to the alternative purchasing model for services provided on or after the date the facility's is removed from the SFF list or no longer has a one-star overall rating.
- Permits the Director to waive the above requirements if the Director determines that the waiver is necessary to ensure access to ventilator services in the geographic area of the unit.

### **Nursing facility per Medicaid day payment rate**

- Modifies the nursing facility per Medicaid day payment rate calculation by removing a \$1.79 deduction, including a deduction for low occupancy nursing facilities, and increasing the add-on to the initial rate for new nursing facilities.

### **Ancillary and support costs and direct care costs**

- Determines a nursing facility's direct care costs rates by using the rate at the 70<sup>th</sup> percentile of the facility's peer group.
- Beginning on January 1, 2024, during the remainder of FY 2024 and all of FY 2025, requires ODM to determine each nursing facility's direct care costs by multiplying the per case-mix unit determined for the peer group by the case-mix score selected by the nursing facility.
- Removes inflationary adjustments to the calculation for a facility's ancillary and support and direct care costs.

### **Low occupancy deduction**

- To the per Medicaid day payment rate formula, adds a low occupancy deduction for a nursing facility that has an occupancy rate below 65%.

### **Private room incentive payment**

- Beginning six months after CMS approval or the effective date of applicable ODM rules, but not later than April 1, 2024, adds a private room incentive payment rate to the per Medicaid day payment rate formula for nursing facilities with private rooms.
- Sets the private room incentive payment at \$30 for a Category One private room and \$20 for a Category Two private room during FY 2024 and permits ODM to increase the rate in subsequent fiscal years.
- Requires nursing facility providers to apply for approval of their private rooms in the form and manner prescribed by ODM and permits ODM to specify evidence that an applicant must supply to demonstrate that a room is a private room.
- Limits ODM to considering only those private room applications that meet specified criteria.
- Permits ODM to deny an application under certain circumstances.

### **Quality incentive payments**

- Extends nursing facility quality incentive payments indefinitely.
- Adds an occupancy metric to the quality incentive payment rate calculation, beginning in FY 2024, for facilities with specified occupancy thresholds, and adds four new quality incentive metrics beginning in FY 2025.
- Eliminates an exclusion from the quality incentive payment for facilities that have an occupancy percentage of less than 80%, unless certain exceptions are met.
- Requires a facility's number of quality points to be recalculated in the second half of each fiscal year using updated information, and specifies that a facility receives zero quality points if its number of points is in the bottom 25<sup>th</sup> percentile of all facilities.

- Adds to the calculation of the total amount to be spent on quality incentive payments an additional component based on 60% of the amount the facility's ancillary and support costs and direct care costs changed as a result of the FY 2024 rebasing.
- Caps the add-on to the total amount to be spent on quality incentive payments at \$125 million in each fiscal year.
- Grants an operator of a new nursing facility or, under certain circumstances, a facility that undergoes a change in operator, a quality incentive payment.

## **Rebasing**

- Beginning in FY 2024, limits rebasing to only the direct care and tax cost centers.
- Specifies that the costs are measured from the calendar year immediately before the start of the fiscal year in which a rebasing is conducted, instead of two calendar years before.
- In calculating a facility's FY 2024 and FY 2025 base rates, limits any increases in the direct care cost and ancillary and support cost centers from the most recent rebasing to only 40% of the increase.

## **Medicaid provider payment rates**

### **Payment rates for community behavioral health services**

- Permits ODM to establish Medicaid payment rates for community behavioral health services provided during FY 2024 and FY 2025 that exceed the Medicare rates for those services.

### **Competitive wages for direct care workforce**

- Requires certain funds contained in the act for provider rate increases to be used to increase wages and needed workforce supports to ensure workforce stability and greater access to care for Medicaid recipients.

### **Assisted Living program payment rates (PARTIALLY VETOED)**

- Requires ODM, in consultation with the Department of Aging (ODA), to establish both (1) an assisted living services base payment rate, and (2) an assisted living memory care service payment rate for assisted living facilities participating in the Medicaid-funded component of the Assisted Living program.
- Would have required the rules to be adopted by November 1, 2023, and established the payment rates at certain levels (VETOED).
- Would have required the departments to also establish a critical access payment rate for such facilities and adopt associated rules (VETOED).

### **Direct care provider payment rates (PARTIALLY VETOED)**

- Increases direct care wages for certain direct care services provided under the Medicaid home and community-based services waivers administered by ODM or ODA.

- Would have increased the base payment rate to \$17 an hour in FY 2024 beginning January 1, 2024, and to \$18 an hour for all of FY 2025 (VETOED).

### **Federally qualified health center payment rates (VETOED)**

- Would have appropriated funds to increase payment rates to federally qualified health centers (FQHCs) and FQHC look-alikes (VETOED).

### **Vision and eye care services provider payment rate (VETOED)**

- Would have earmarked funds to increase Medicaid provider payment rates for vision services and medically billed eye care provided to Medicaid recipients during FY 2024 (VETOED).

### **Dental provider payment rates (VETOED)**

- Would have appropriated \$122 million in FY 2024 and \$244 million in FY 2025 to increase the payment rate to dental providers treating Medicaid enrollees (VETOED).

### **Medicaid MCO credentialing**

- Repeals a requirement that ODM permit Medicaid managed care organizations (MCOs) to create a credentialing process for providers.

### **Payment of claims by third parties**

- Decreases to 60 days (from 90 days) the time period in which specified third parties must respond to a request by ODM for payment of a claim.

### **Payment rate for neonatal and newborn services**

- Specifies that the Medicaid payment rate for certain neonatal and newborn services must be *at least* 75% of the Medicare payment rate for the services, rather than equaling 75% of the rate.

## **Medicaid providers**

### **Interest on payments to providers**

- Limits the time frame when interest is assessed against a Medicaid provider on an overpayment to the time period determined by ODM, instead of from the payment date until the repayment date.

### **Provider penalties**

- Clarifies that when a Medicaid provider agreement is terminated due to a provider engaging in prohibited activities, the provider may not provide Medicaid services on behalf of any other Medicaid provider.

### **Suspension of provider agreements and payments**

- Revises the law governing the suspension of Medicaid provider agreements and payments in cases of credible allegations of fraud or disqualifying indictments against

Medicaid providers or their officers, agents, or owners, including by prohibiting a suspension if the provider or owner can demonstrate good cause.

### **Criminal records checks**

- Revises the law governing the availability of criminal records check reports for Medicaid providers, independent providers, and waiver agencies and their employees, including by authorizing reports to be introduced as evidence at certain administrative hearings and requiring them to be admitted only under seal.

### **HHA and PCA training**

- Prohibits ODM from requiring more hours of pre-service training and annual in-service training than required by federal law for home health aides (HHAs) providing services under the Integrated Care Delivery System (MyCare Ohio).
- Prohibits ODM from requiring more than 30 hours of pre-service training and six hours of annual in-service training for personal care aides (PCAs) providing services under MyCare Ohio.
- Permits a licensed practical nurse to supervise an HHA or PCA providing services under MyCare Ohio.

### **ICF/IID bed conversion to OhioRISE program**

- Prohibits an ICF/IID from reserving or converting a portion of its beds from beds that provide ICF/IID services to beds that provide services to individuals enrolled in the OhioRISE program, if reserving or converting a bed would require the ICF/IID operator to discharge or terminate services to a resident occupying that bed.

## **Special programs**

### **Care Innovation and Community Improvement Program**

- Requires the Director to continue the Care Innovation and Community Improvement Program for the FY 2024-FY 2025 biennium.

### **Ohio Invests in Improvements for Priority Populations**

- Continues the Ohio Invests in Improvements for Priority Populations Program as a directed payment program for inpatient and outpatient hospital services provided to Medicaid managed care recipients.
- Provides that, under the program, state university-owned hospitals with fewer than 300 beds can directly receive payment for program services.
- Requires participating hospitals to remit to ODM, through intergovernmental transfer, the nonfederal share of payment for those services.

### **Physician directed payment program**

- Permits the Medicaid Director to seek federal approval to establish a physician directed payment program for nonpublic hospitals and related health systems under which

participating hospitals receive payments directly for physician services provided to enrollees.

- Caps directed payments under the programs at the average commercial level paid to participating health systems for physician and other covered professional services that are provided to Medicaid MCO enrollees.
- Requires eligible public entities to transfer, through intergovernmental transfer, the nonfederal share of those services.

### **Ground emergency medical transportation supplemental payment program**

- Requires the Director to submit a state plan amendment seeking to establish and administer a supplemental payment program for specified ground emergency medical transportation service providers.

### **Hamilton County hospital directed payment program**

- Permits ODM to establish a hospital directed payment program for directed payments to hospitals in Hamilton County that meet enumerated criteria.
- Permits eligible public entities to transfer funds, through intergovernmental transfer, to ODM for the directed payments, and limits payment amounts to not more than the average commercial level paid for inpatient and outpatient services under the Care Management System.

### **Hospital Care Assurance Program; franchise permit fee**

- Continues, until October 2025, the Hospital Care Assurance Program and the franchise permit fee imposed on hospitals under Medicaid.

### **ODM doula program (PARTIALLY VETOED)**

- Establishes a program to cover doula services provided by a certified doula with a Medicaid provider agreement.
- Would have required the Medicaid Director to complete an annual report regarding program outcomes (VETOED).
- Repeals this program after five years (PARTIALLY VETOED).

## **General**

### **Coverage of services at outpatient health facilities**

- Repeals law that required Medicaid to cover comprehensive primary health services provided by outpatient health facilities that are operated by a city or general health district, another public agency, or certain types of nonprofit private agencies or organizations that receive at least 75% of their operating funds from public sources.

## **Medicaid program reforms**

- When calculating the per member per month growth rate in the Medicaid program for purposes of required Medicaid program reforms, requires the Director to include all Medicaid costs, with the exception of one-time expenses or expenses unrelated to enrollees.
- Requires ODM, not later than October 1 of each year, to submit a report to JMOC detailing Medicaid reforms during the two previous fiscal years.
- In even-numbered years, requires the report to include ODM's historical and projected Medicaid program expenditure and utilization trend rates for each year of the next biennium.

## **Medicaid program cost savings report**

- Requires ODM to conduct an annual cost savings study of the Medicaid program and submit a report to the Governor recommending measures to reduce Medicaid program costs.

## **HCBS direct care worker wages**

- During the fiscal biennium, requires ODM, ODA, and the Department of Developmental Disabilities to jointly submit an annual report outlining the wages paid to direct care staff providing services to enrollees under the Medicaid home and community-based services (HCBS) waivers.

## **Medicaid work requirements**

- Between February 1, 2025, and March 1, 2025, requires the ODM Director to apply to CMS for a new waiver establishing Medicaid work requirements.

## **Meaningful employment for Medicaid recipients**

- Requires ODM, in collaboration with ODJFS, to establish a program to assist individuals enrolled in Medicaid secure meaningful employment.
- Requires each Medicaid MCO to develop a specialized component of their MCO plan to provide referral and support services to identified enrollees to assist in obtaining and maintaining employment.
- Requires ODM and ODJFS to convene a workgroup to assist in the implementation of the program.
- Requires ODM and ODJFS to provide a periodic report to the Governor, Senate Medicaid Committee, and other relevant legislative committees regarding the implementation and operation of the program.

## **MyCare Ohio expansion**

- Requires the Medicaid Director to seek CMS approval to expand MyCare Ohio, or its successor program, to all Ohio counties.

- Requires the Director to select the entities for the expanded program.
- Requires ODM to establish requirements for care management and coordination of waiver services, subject to enumerated requirements.

### **Coverage of remote ultrasounds and fetal nonstress tests**

- Requires Medicaid coverage of remote ultrasound procedures and remote fetal nonstress tests under certain circumstances.

### **Coverage for donor breast milk and human milk fortifiers**

- Requires the Medicaid program to cover medically necessary pasteurized donor human milk and human milk fortifiers for inpatient and home use.

### **Lockable and tamper-evident containers (PARTIALLY VETOED)**

- Requires ODM to reimburse pharmacists for expenses related to dispensing drugs in lockable or tamper-evident containers.
- Would have required that coverage only (1) during FY 2024 and FY 2025 and (2) for drugs used in medication assisted treatment (VETOED).
- Would have required ODM, during FY 2024 and FY 2025, to reimburse prescribers for expenses related to personally furnishing drugs used in medication-assisted treatment in lockable containers or tamper-evident containers (VETOED).

### **Nursing Home Franchise Permit Fee Fund uses**

- Expands the permitted uses of the Nursing Home Franchise Permit Fee Fund.

### **Obsolete waiver repeal**

- Repeals the Unified Long-Term Services and Support Medicaid Waiver component that was never implemented.

## **Medicaid eligibility**

### **Medicaid coverage for workers with a disability**

(R.C. 5163.06 and 5163.063; Sections 333.310 and 812.40)

The act requires the Medicaid program to provide coverage to employed individuals with disabilities whose family income is less than 250% of the federal poverty level. Under federal law, states have the option of extending Medicaid coverage to this group of individuals.<sup>114</sup> The act requires the Director to adopt any rules necessary to provide the coverage.

The act delays implementation of Medicaid coverage for this new group for one year after its October 3, 2023, effective date. Upon approval of a state plan amendment by the federal

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<sup>114</sup> 42 U.S.C. 1396a(a)(10)(A)(ii)(XIII).

Centers for Medicare and Medicaid Services (CMS) that authorizes the Medicaid coverage, the Medicaid Director may certify to the OBM Director the amount needed to pay for coverage of the optional eligibility group in FY 2025. Upon this certification, the act appropriates that amount to the Department of Medicaid (ODM).

In requiring the Medicaid program to cover this group of individuals, the act declares that it is the intent of the General Assembly to establish Medicaid coverage for employed individuals with disabilities who are 65 years of age or older in a manner that is consistent with the coverage that is provided to individuals who participate in the Medicaid Buy-In for Workers with Disabilities program.

### **Continuous Medicaid enrollment for young children**

(R.C. 5166.45)

The act requires the Director to establish a Medicaid waiver component to provide continuous Medicaid enrollment for Medicaid-eligible children from birth through age three. A child who is eligible for Medicaid will remain eligible until the earlier of (1) the end of a continuous 48-month period, or (2) the date the child exceeds age four. The waiver does not apply to a child who is deemed presumptively eligible for Medicaid, is eligible for alien emergency medical assistance, or is eligible for the refugee medical assistance program.

### **Medicaid presumptive eligibility error rate training (PARTIALLY VETOED)**

(R.C. 5163.103)

The act imposes requirements related to presumptive eligibility, which is a federal option by which states may elect to grant temporary Medicaid benefits to certain eligible individuals as a result of an initial, simplified eligibility determination while the individual applies for full Medicaid coverage. Related to presumptive eligibility determinations, the act defines the presumptive eligibility error rate as the rate at which entities or providers that are qualified to conduct presumptive eligibility determinations deem an individual presumptively eligible for Medicaid but the individual is ineligible. Under the act, ODM must require qualified entities and providers to take the following steps when they have a presumptive eligibility error rate greater than 7.5% in a calendar month:

1. Submit for ODM's approval a corrective action plan specifying the steps the entity or provider will take to reduce its error rate, including required trainings; and
2. Provide training for all presumptive eligibility determination staff to ensure thorough knowledge of prescreening procedures.

The Governor vetoed provisions that would have imposed penalties when a qualified entity or provider exceeded the 7.5% error rate limit. The penalties would have required ODM to notify a qualified entity or provider that they could no longer make eligibility determinations when the error rate exceeded 7.5% in six or more cumulative months in a 24-month period.

The qualified entity or provider would have remained unable to make presumptive eligibility determinations for 60 months.

## Post-COVID Medicaid unwinding

(Section 333.210; repealed R.C. 5163.52)

The act requires ODM or its designee to use third-party data sources and systems to conduct eligibility redeterminations of all Ohio Medicaid recipients given the end of the federal COVID-19 emergency period.<sup>115</sup> The federal COVID-19 emergency period expired May 11, 2023.<sup>116</sup> ODM or its designee must, to the full extent permitted by state and federal law, verify Medicaid recipients' enrollment records against third-party data sources and systems, including any other records ODM considers appropriate to strengthen program integrity, reduce costs, and reduce fraud, waste, and abuse in the Medicaid program.

ODM or its designee must conduct an eligibility review of Medicaid recipients based on the recipient's next eligibility review date. Based on that review, ODM must disenroll those Medicaid recipients who are determined to no longer be eligible based on this expedited review, and must oversee the county determinations and administration to ensure timely and accurate compliance with these requirements.

Additionally, the act requires ODM to complete a report containing its findings from the redetermination, including any findings of fraud, waste, or abuse in the Medicaid program through June, 2024 – 13 months after the expiration of the federal emergency period.

In imposing these requirements, the act repeals law enacted in the last main operating budget that establish requirements ODM must follow if it received federal Medicaid funding contingent on a temporary maintenance of effort restriction or otherwise limited ODM's ability to disenroll ineligible recipients, such as the maintenance of effort requirements under the Families First Coronavirus Response Act.<sup>117</sup>

## Nursing facilities

### Special Focus Facility Program

(R.C. 5165.771)

The act revises the law regarding the federal Special Focus Facility (SFF) Program to align with federal changes to the program. First, it references standard health surveys, which, under the federal changes, are comprehensive on-site inspections conducted every six months by the state nursing facility licensing agency on behalf of CMS. The act replaces references to the old SFF tables and instead requires ODM to terminate a nursing facility's participation in the Medicaid program if it has not graduated from the SFF program after two standard health surveys, instead of based on the time the facility is listed in SFF tables.

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<sup>115</sup> 42 U.S.C. 1320b-5(g)(1)(B).

<sup>116</sup> See the White House [Statement of Administration Policy, January 30, 2023](#) (PDF), which is available on the [Statements of Administration Policy](#) page via keyword "terminate the public health emergency" search on [whitehouse.gov](https://www.whitehouse.gov).

<sup>117</sup> Section 6008, Pub. L. No. 116-127.

Second, the act prohibits a nursing facility from appealing to ODM an ODM order terminating the facility's participation in the Medicaid program if the appeal challenges (1) standard health findings under the SFF program or (2) a CMS determination to terminate the nursing facility's participation in the Medicare or Medicaid program. Instead, the appeals must be brought to (1) the Department of Health or (2) CMS, respectively.

### **Nursing facility case-mix scores**

(R.C. 5165.01, 5165.152, and 5165.192)

The act updates the terminology used to calculate nursing facility case-mix scores to correspond to a new federal model. Effective October 1, 2019, CMS implemented a new Patient Driven Payment Model. The act updates terminology relating to nursing facility case-mix scores from "low resource utilization resident" to "low case-mix resident" to accord with the new model.

### **Debt summary reports; debts related to exiting operators**

(R.C. 5165.52, 5165.521, 5165.525, 5165.526, and 5165.528)

The act makes several changes related to exiting operators of nursing facilities and various related duties of ODM. Regarding a requirement that ODM determine the actual amount of debt an exiting operator owes ODM, the act requires ODM to issue a final debt summary report. Under prior law, an initial or revised debt summary report could have automatically become the final debt summary report.

Also regarding exiting operators, the act eliminates the following provisions related to debts an operator owes to CMS:

- A requirement that ODM determine other actual and potential debts the exiting operator owes or may owe to CMS;
- Authorization for ODM to withhold from a payment due to an exiting operator the total amount the exiting operator owes or may owe to CMS;
- A requirement that ODM determine the actual amount of debt an exiting operator owes to CMS by completing all final fiscal audits not already completed and performing other appropriate actions;
- Regarding releasing amounts withheld from an exiting operator, authorization for ODM to deduct any amount an exiting operator owes CMS; and
- Authorization for moneys in the Medicaid Payment Withholding Fund to be used to pay CMS amounts an exiting operator owes CMS under Medicaid.

All of the above-described provisions are retained as they relate to debt owed to ODM, and eliminated only with regard to debt owed to CMS. The act, however, eliminates law expressly requiring ODM's debt estimate methodology to address any final civil monetary and other penalties.

## **Nursing facility field audit manual and program**

(R.C. 5165.109)

Under continuing law, ODM may conduct audits for any cost reports filed as either an annual cost report by a nursing home or by an exiting operator of a nursing home. The act removes the requirement that ODM establish a program and publish a manual for those audits conducted in the field. Instead, the act specifies general parameters for field audit procedures. Specifically, ODM must develop an audit plan before the audit begins for any audits it conducts, but the scope of the audit may change during its course based on the observations and findings. Field audits conducted by an auditor under contract with ODM must be conducted by procedures agreed upon between ODM and the auditor.

The act, as a result of eliminating the field manual, eliminates the requirements that all auditors conducting field audits:

- Comply with federal Medicare and Medicaid law;
- Consider standards prescribed by the American Institute of Certified Public Accountants;
- Include a written summary with each audit about whether cost report that is the subject of the audit complied with state and federal laws and the reported allowable costs were documented, reported, and related to patient care;
- Completed each audit within a time period specified by ODM; and
- Provide to the nursing home provider written information about the audit's scope and ODM's policies, including examples of allowable cost calculation.

## **Alternative purchasing model – ventilator services**

(R.C. 5165.157)

The act clarifies the application of ventilator services to ODM's current authority to establish an alternative purchasing model for nursing facility services provided in discrete units of nursing facilities. Beginning in FY 2024, the Director may not approve an application for an alternative purchasing model for ventilator services provided in such a unit if, at the time of application, the facility is listed on Table A or Table D of the SFF list or is designated as having a one-star overall rating in CMS's Care Compare database. For services beginning on January 1, 2024, in such a unit, the facility must be paid for those services pursuant to the facility's regular per Medicaid day payment rate formula, instead of pursuant to the alternative purchasing model. If the facility is removed from the SFF list or no longer has a one-star overall rating, ODM must pay for ventilator services on or after the removal from the SFF list or increase in rating pursuant to the alternative purchasing model. The Director may waive the above requirements if the Director determines that the waiver is necessary to ensure access to ventilator services in the geographic area of the unit.

## **Nursing facility per Medicaid day payment rate**

(R.C. 5165.15 and 5165.151)

The act modifies the formula used to calculate the Medicaid payment amount ODM makes to nursing facilities for Medicaid residents (referred to as the per Medicaid day payment rate in the Revised Code) as follows:

- Removes the \$1.79 deduction that is part of calculating a facility's base rate;
- Includes a deduction for low occupancy nursing facilities; and
- For the initial rate paid to new nursing facilities, increases the add-on to \$16.44 from \$14.65.

## **Ancillary and support costs and direct care costs**

(R.C. 5165.16 and 5165.19)

The act makes changes to two of the cost center calculations that are used as part of the per Medicaid day payment rate formula. First, it removes inflationary adjustments for the ancillary and support and direct care costs. Additionally, under the act, a nursing facility's direct care costs rates are determined based on the 70<sup>th</sup> percentile for the peer group, instead of the rate at the 25<sup>th</sup> percentile.

During FY 2024 and FY 2025, the act adds another modification to the direct care costs calculation. Beginning January 1, 2024, through the end of the biennium, ODM must determine each nursing facility's direct care costs rate by multiplying the per case-mix unit determined for the peer group under the calculation by the case-mix score selected by the nursing facility. A facility may select either of the following for its case-mix score:

1. The semi-annual case-mix score determined under the regular calculation; or
2. The facility's quarterly case-mix score from March 31, 2023, which will apply during the period from January 1, 2024, through June 30, 2025.

If a facility does not select its case-mix score mechanism by October 1, 2023, the case-mix score determined under the regular calculation applies.

## **Low occupancy deduction**

(R.C. 5165.23 and 5165.15)

The act grants to a nursing facility that has an occupancy rate lower than 65% a low occupancy deduction as part of its per Medicaid day payment rate. Each state fiscal year, ODM must determine the low occupancy deduction for each low occupancy nursing facility, equal to 5% of the facility's total per Medicaid day payment rate for that fiscal year.

For purposes of this deduction, ODM must calculate the facility's occupancy rate based on the occupancy rate of the licensed beds listed on its cost report for the calendar year before the fiscal year for which the rate is determined, or if the facility is not licensed, the occupancy rate for its certified beds. If the facility surrenders licensed or certified beds before July 1 of the calendar year in which the fiscal year begins, ODM must calculate the facility's occupancy rate by

dividing the number of inpatient days reported on the facility's cost report for the calendar year preceding the fiscal year for which the rate is determined by the product of (1) the number of days in the calendar year and (2) the facility's number of licensed or certified beds on July 1. The following facilities are ineligible for the low occupancy deduction:

- A facility where the beds are owned by the county and the facility is operated by a person other than the county;
- A facility that opened during the calendar year before the fiscal year for which the rate is determined; and
- A facility that underwent a renovation during the calendar year before the fiscal year for which the rate is determined, if the renovation (1) involved a capital expenditure of at least \$150,000 and (2) included one or more beds that are part of the facility's licensed capacity and that were taken out of service for at least 30 days.

### **Private room incentive payment**

(R.C. 5165.158 and 5165.01)

Beginning six months from CMS approval or the effective date of applicable ODM rules, but not sooner than April 1, 2024, the act adds a private room incentive payment rate to the per Medicaid day payment rate formula. The private room incentive payment is \$30 for a Category One private room and \$20 for a Category Two private room, beginning in FY 2024. ODM may increase the rate in subsequent fiscal years. Nursing facilities with private rooms are eligible for the incentive payment. A private room is a bedroom that:

1. Has four permanent, floor-to-ceiling walls and a full door;
2. Contains one licensed or certified bed occupied by only one individual;
3. Has access to a hallway without traversing another bedroom;
4. Has access to a toilet and sink shared by not more than one other resident without traversing another bedroom; and
5. Meets all applicable licensure or other standards pertaining to furniture fixtures, and temperature control.

ODM must approve rooms in nursing facilities for the private room incentive payment beginning on January 1, 2024, for Category One private rooms and on March 1, 2024, for Category Two private rooms. Under the act, a Category One private room is a private room that has unshared access to a toilet and sink and a Category Two private room is a private room that has shared access to a toilet and sink. A nursing facility provider must apply for approval of its private rooms in the form and manner prescribed by ODM. ODM may specify evidence that an applicant must supply and may conduct an inspection to demonstrate that a room meets the definition of a private room. ODM may consider only applications that meet the following criteria, and may specify evidence an applicant must supply and may conduct an inspection of the room to demonstrate it meets those criteria:

1. Rooms that are in existence on July 1, 2023, in facilities where all licensed beds are in service on the application date;
2. Rooms created by surrendering licensed or certified beds from the facility's licensed or certified bed capacity;
3. Rooms created by adding space to the facility or renovating nonbedroom space, without increasing the facility's licensed bed capacity; or
4. Rooms in a nursing facility licensed after July 1, 2023, in which all licensed beds are in service or in which private rooms were created by surrendering licensed beds.

ODM must approve an application for rooms that meet the definition of a private room described above, but may deny an application if it determines any of the following:

- The rooms included in the application do not meet the definition of a private room or the criteria listed above;
- The applicant created private rooms by reducing the number of available beds without reducing the facility's licensed capacity;
- Approval of the room would cause projected expenditures for private room incentive payments to exceed \$40 million in FY 2024 or \$160 million in subsequent fiscal years, using a utilization percentage of 50%. In such a case, ODM must prioritize Category One private rooms.
- On the application date, the facility is listed on Table A or Table D of the SFF list or has a one-star overall rating in CMS's Care Compare database.

An applicant can request a reconsideration of a denial.

Beginning July 1, 2025, to retain eligibility for private rooms, a nursing facility must have a policy in place to prioritize placement in a private room based on a resident's needs and participate in the resident or family satisfaction survey performed pursuant to continuing law.

ODM must hold all private room applications in pending status until CMS approves private room incentive payments and ODM determines that a facility is qualified for the payment.

## **Quality incentive payments**

(R.C. 5165.26 and 5165.15; Section 333.290)

Under Ohio law, a nursing facility's per Medicaid day payment rate includes a quality incentive payment, which is determined through a statutorily specified calculation. The act modifies the quality incentive payment rate calculation as follows.

First, it extends the duration of the quality incentive payments in perpetuity (former law ended them after FY 2023).

Second, it includes provisions in the event CMS develops new nursing facility metrics. A nursing facility's quality points are based on the number of points that CMS assigned to the facility using its five-star quality rating system, known as the Nursing Home Care Compare, for

specified quality metrics. The act specifies that in the event CMS develops new quality metrics, the calculation is to be based on the successor metrics on the same topics.

Third, the act adds an occupancy adjustment to the calculation. If a nursing facility's occupancy rate exceeds 75%, the facility receives an additional 7.5 points in FY 2024 and three points in subsequent fiscal years.

ODM must calculate a nursing facility's occupancy rate using the facility's occupancy rate for licensed beds on its cost report for the calendar year preceding the fiscal year for which the rate is determined, or if the facility is not licensed, its occupancy rate for certified beds. If the facility surrenders licensed or certified beds before July 1 of the calendar year in which the fiscal year begins, ODM must calculate the facility's occupancy rate by dividing the number of inpatient days reported on the facility's cost report for the calendar year preceding the fiscal year for which the rate is determined by the product of (1) the number of days in the calendar year and (2) the facility's number of licensed or certified beds on July 1 of the calendar year in which the fiscal year begins.

Fourth, the act adds three new quality metrics to the calculation beginning in FY 2025. Beginning on July 1, 2024, ODM must add the number of points the facility receives in ODM's Nursing Home Care Compare, or successor metrics, for the following metrics:

1. The percentage of the facility's long-stay residents whose need for help with daily activities has increased;
2. The percentage of the facility's long-stay residents experiencing one or more falls with major injury;
3. The percentage of the facility's long-stay residents who were administered antipsychotic medication; and
4. The adjusted total nurse staffing hours per resident per day, using quintiles instead of deciles for the points assigned to the higher of the two deciles that constitute the quintile.

In its notice to nursing facilities with their FY 2024 rates, ODM must notify each facility of how many quality points the facility would have received, based on calendar year 2022 data, for the new quality metrics.

Fifth, the act eliminates and modifies exemptions to the quality incentive payments under former law. It eliminates a requirement that a facility's occupancy percentage was less than 80% in the applicable fiscal year, *unless* certain conditions were met. The act adds a new requirement that a facility's quality score be recalculated for the second half of each fiscal year based on the most recent four quarter average data. If a facility's points for all of the quality metrics is less than the bottom 25<sup>th</sup> percentile of all nursing facilities, ODM must reduce the facility's quality points to zero, as under former law, until the next point recalculation.

Sixth, the act adds a component to be included in the calculation for the total amount to be spent on quality incentive payments based on the facility's cost centers. As part of the calculation, ODM must include 60% of the sum of the per diem amount by which the nursing facility's rate for direct care costs changed as a result of the rebasing conducted for FY 2024.

Seventh, the act caps the amount that is to be added to the amount to be spent on quality incentive payments in a fiscal year at \$125 million in each fiscal year.

Eighth, the act grants quality incentive payments to new nursing facilities and, under certain circumstances, nursing facilities that undergo a change of operator. Under the act, beginning July 1, 2023, a new nursing facility receives a quality incentive payment for the fiscal year of its initial provider agreement and the immediately following fiscal year equal to the median quality incentive payment amount determined for nursing facilities for the fiscal year. After those years, the facility receives a payment based on the normal calculation.

A nursing facility that undergoes a change of operator effective July 1, 2023, or after will not receive a quality payment until the earlier of the January 1 or July 1 that is six months after the effective date of the change. Thereafter, the payment rate will be determined by the normal calculation.

### **Rebasing**

(R.C. 5165.36; Section 333.300)

At least once every five years, ODM must recalculate each nursing facility's cost centers to account for increasing costs over time and use those figures when determining a nursing facility's per Medicaid day payment rate. Beginning in FY 2024, the act restricts the rebasing to only the direct care and tax cost centers. The act also eliminates the requirement that nursing facility providers spend additional money received as a result of the FY 2022 rebasing on direct care costs, ancillary and support costs, and tax cost centers only. The act further provides that for FY 2024 and FY 2025, ODM must include in each nursing facility's per Medicaid day payment base rate only 40% of the sum of the increase in the facility's rate for direct care costs and its rate for ancillary and support costs that result from the FY 2024 rebasing.

## **Medicaid provider payment rates**

### **Payment rates for community behavioral health services**

(Section 333.140)

The act permits ODM to establish Medicaid payment rates for community behavioral health services provided during FY 2024 and FY 2025 that exceed the Medicare rates for those services. This authorization does not apply to those services provided by hospitals on an inpatient basis, nursing facilities, or ICFs/IID.

### **Competitive wages for direct care workforce**

(Section 333.230)

The act includes funding from ODM, in collaboration with the Department of Developmental Disabilities and the Department of Aging (ODA), to be used for provider rate increases, in response to the adverse impact experienced by direct care providers as a result of the COVID-19 pandemic and inflationary pressures. The act requires the provider rate increases be used to increase wages and workforce supports to ensure workforce stability and greater access to care for Medicaid recipients.

## **Assisted Living program payment rates (PARTIALLY VETOED)**

(Section 333.240)

The act requires ODM, in consultation with ODA, to adopt rules to both:

1. Establish an assisted living services base payment rate for residential care facilities (commonly known as “assisted living” facilities) participating in the Medicaid-funded component of the Assisted Living program;

2. Establish an assisted living memory care service payment rate for such facilities that is at least \$25 more per day than the base payment rate described above. The memory care service payment rate must be based on additional costs that a provider may incur from serving individuals with dementia. It is only available for patients who were determined by a practitioner to need a memory care unit and who reside in units with a direct care staff to resident ratio that is at least 20% higher for individuals with dementia than for individuals without.

The Governor vetoed provisions that would have required the rules to be effective November 1, 2023, and would have required the assisted living base payment rate to be at least \$130 per day and required the memory care service payment rate to be at least \$25 per day more than the assisted living services base payment rate.

The Governor vetoed provisions that would have required the departments to adopt rules establishing an assisted living critical access payment rate for residential care facilities participating in the Medicaid-funded Assisted Living program that averaged at least 50% of their residents receiving Medicaid-funded services during the last fiscal year. For these facilities, the critical access payment would have had to be at least \$15 more per day than the base payment rate and the memory care service payment at least \$10 higher than the critical access payment rate.

The Governor also vetoed a requirement that the departments, in consultation with industry stakeholders, adopt rules by July 1, 2024, establishing a methodology for determining assisted living service rates, including memory care services and critical access services.

## **Direct care provider payment rates (PARTIALLY VETOED)**

(Section 333.29)

The act earmarks Medicaid funds to be used to increase provider base payment rates for the following services provided under Medicaid components of the home and community-based services waivers administered by ODM or ODA:

1. Personal care services;
2. Adult day services;
3. Community behavioral health services; and
4. Other waiver services under the HCBS waivers administered by the departments.

The Governor vetoed a provision that would have increased the base payment rates to \$17 per hour beginning January 1, 2024, and \$18 per hour during FY 2025.

## **Federally qualified health center payment rates (VETOED)**

(Section 333.17)

The Governor vetoed an earmark of \$20.7 million in each fiscal year to increase payment rates to federally qualified health centers (FQHCs) and FQHC look-alikes.

## **Vision and eye care services provider payment rate (VETOED)**

(Section 333.25)

The Governor vetoed provisions that would have earmarked funds to increase Medicaid provider payment rates for vision services and medically billed eye care provided to Medicaid recipients during FY 2024. The increase would have been added to FY 2023 payment rates and maintained during FY 2025.

## **Dental provider payment rates (VETOED)**

(Section 333.27)

The Governor vetoed provisions that would have earmarked \$122 million in FY 2024 and \$244 million in FY 2025 to increase the payment rate to dental providers treating Medicaid enrollees.

## **Medicaid MCO credentialing**

(Repealed R.C. 5167.102; R.C. 5167.12)

The act repeals law that requires ODM to permit Medicaid managed care organizations (MCOs) to create a credentialing process for providers, because ODM is now credentialing Medicaid providers instead of Medicaid MCOs. As a conforming change, the act modifies language that prohibits a Medicaid MCO from imposing a prior authorization requirement on certain antidepressant or antipsychotic drugs that are prescribed by a physician credentialed by the Medicaid MCO to instead refer to a physician who has registered with ODM.

## **Payment of claims by third parties**

(R.C. 5160.40)

The act decreases from 90 days to 60 days the time in which a third party must respond to a claim for payment of a medical item or service submitted to the third party by ODM.

## **Medicaid payment rate for neonatal and newborn services**

(R.C. 5164.78)

The act requires that the Medicaid payment rate for the neonatal and newborn services specified in continuing law must be *at least* 75% of the Medicare payment rate for the services, rather than equaling 75% of the Medicare payment rate as required by former law.

## Medicaid providers

### Interest on payments to providers

(R.C. 5164.35 and 5164.60)

The act limits the time frame when interest is assessed against a Medicaid provider (1) that willingly or by deception received overpayments or unearned payments or (2) that receives an overpayment without intent, to the time period determined by ODM, but not exceeding the time period from the payment date until the repayment date, instead of from the payment date until the repayment date.

### Provider penalties

(R.C. 5164.35)

The act clarifies that when a Medicaid provider agreement is terminated due to the provider engaging in prohibited activities, the provider may not provide Medicaid services *on behalf of* any other Medicaid provider, instead of to any other Medicaid provider.

### Suspension of provider agreements and payments

(R.C. 5164.36)

The act revises in the following ways the law governing the suspension of Medicaid provider agreements when there are credible allegations of fraud or disqualifying indictments against Medicaid providers or their officers, agents, or owners. First, it prohibits ODM from suspending a provider agreement or Medicaid payments if the provider or owner can demonstrate good cause. The act directs ODM to specify by rule what constitutes good cause as well as the information, documents, or other evidence that must be submitted as part of a good cause demonstration.

Second, the act maintains the law prohibiting ODM from suspending a provider agreement or Medicaid payments if the provider or owner can demonstrate, by written evidence, that the provider or owner did not sanction the action of an agent or employee resulting in a credible allegation of fraud or disqualifying indictment. Under the act, ODM must grant the provider or owner – before suspension – an opportunity to submit the written evidence. The act also eliminates law allowing a Medicaid provider or owner, when requesting ODM to reconsider its suspension, to submit documents pertaining to whether the provider or owner can demonstrate that it did not sanction the agent’s or employee’s action resulting in a credible allegation of fraud or disqualifying indictment.

Third, the act adds two new circumstances to continuing law’s two circumstances until which the suspension of a provider agreement may continue – the provider (1) pays in full fines and debts it owes ODM and (2) no longer has certain civil actions pending against it. The suspension must continue until the latest of the four circumstances occurs.

Fourth, when, under continuing law, a provider or owner requests ODM to reconsider a suspension, the act eliminates the requirement that ODM complete not later than 45 days after receiving documents in support of a reconsideration both of the following actions: (1) reviewing the documents and (2) notifying the provider or owner of the results of the review.

## **Criminal records checks**

(R.C. 5164.34, 5164.341, and 5164.342)

The act revises the law governing the availability of criminal records check reports for Medicaid providers, independent providers, and waiver agencies and their employees. Continuing law specifies that the reports are not public records and prohibits making them available to any person, with certain limited exceptions.

In the case of a waiver agency, the act authorizes a report of an employee's criminal records check to be made available to a court, hearing officer, or other necessary individual involved in a case or administrative hearing dealing with a denial, suspension, or termination of a Medicaid provider agreement.

With respect to a Medicaid provider or independent provider, the act authorizes a report of an employee's or provider's criminal records check to be made available to a court, hearing officer, or other necessary individual involved in a case or administrative hearing dealing with a provider agreement suspension. Continuing law authorizes such a report to be made available to the court, hearing officer, or other necessary individual in a case involving a denial or termination of a provider agreement.

The act further authorizes a criminal records check report to be introduced as evidence at an administrative hearing concerning a provider agreement denial, suspension, or termination. If admitted, the report becomes part of the hearing record. The act also requires such a report to be admitted only under seal and specifies that the report maintains its status as not a public record.

## **HHA and PCA training**

(R.C. 5164.913)

The act prohibits ODM from requiring personal care aides (PCAs) providing services under MyCare Ohio (known in the Revised Code as the Integrated Care Delivery System) to receive more than 30 hours of pre-service training and six hours of annual in-service training. ODM determines what training is acceptable. It may not require home health aides (HHAs) providing services under MyCare to receive more pre-service training and annual training than required by federal law. The act also permits a licensed practical nurse to supervise an HHA or PCA, instead of only a registered nurse.

Under federal regulations, HHAs providing services through Medicare or Medicaid must receive 75 hours of pre-service training and 12 hours of annual in-service training. Additionally, federal regulations require that an HHA providing Medicare or Medicaid services be supervised by a registered nurse or other appropriate professional (such as a physical therapist, speech-language pathologist, or occupational therapist).<sup>118</sup>

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<sup>118</sup> 42 C.F.R. 484.80.

## **ICF/IID bed conversion to OhioRISE program**

(R.C. 5124.75)

The act prohibits an operator of an intermediate care facility for individuals with intellectual disabilities (ICF/IID) from reserving or converting any portion of the ICF/IID's beds from beds that provide ICF/IID services to beds that provide services to individuals receiving services through the OhioRISE program, if reserving or converting a bed would require the ICF/IID operator to discharge or terminate services to a resident occupying that bed.

## **Special programs**

### **Care Innovation and Community Improvement Program**

(Section 333.60)

The act requires the Medicaid Director to continue the Care Innovation and Community Improvement Program for the FY 2024-FY 2025 biennium. The Director was originally required to establish it for the FY 2018-FY 2019 biennium.<sup>119</sup> Under the program, each participating hospital agency receives supplemental Medicaid payments for physician and other professional services that are covered by Medicaid and provided to Medicaid recipients. The payments must equal the difference between the Medicaid rate and the average commercial payment rates for the services. The Director may terminate or adjust the payments if funding for the program is inadequate.

Any nonprofit hospital agency affiliated with a state university and any public hospital agency may volunteer to participate in the program if the hospital has a Medicaid provider agreement. The agencies that participate are responsible for the state share of the program's costs and must make or request that appropriate government entity to make intergovernmental transfers to pay for the costs. The Director must establish a schedule for making the transfers.

The act requires each participating hospital agency to jointly participate in quality improvement initiatives that align with and advance the goals of ODM's quality strategy.

The Director must maintain a process to evaluate the work done under the program by nonprofit and public hospital agencies and their progress in meeting the program's goals. The Director may terminate a hospital agency's participation if the Director determines that it is not participating in required quality improvement initiatives or making progress in meeting the program's goals.

All intergovernmental transfers made under the program are deposited into the existing Care Innovation and Community Improvement Program Fund be used to make the supplemental payments under the program.

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<sup>119</sup> Section 333.320 of H.B. 49 of the 132<sup>nd</sup> General Assembly, Section 333.220 of H.B. 166 of the 133<sup>rd</sup> General Assembly, and Section 333.60 of H.B. 110 of the 134<sup>th</sup> General Assembly.

## **Ohio Invests in Improvements for Priority Populations**

(Section 333.170)

The act continues the Ohio Invests in Improvements for Priority Populations Program as a directed payment program for inpatient and outpatient hospital services provided to Medicaid managed care recipients receiving care at state university-owned hospitals with fewer than 300 inpatient beds.

Under the program, participating hospitals receive payments directly (instead of through the contracted Medicaid MCO) for inpatient and outpatient hospital services provided under the program and remit to ODM the nonfederal share of payment for those services. The hospital must pay ODM through intergovernmental transfer. Funds transferred under the program must be deposited into the Hospital Directed Payment Fund.

In general, under federal law, states are prohibited from (1) directing Medicaid MCO expenditures or (2) making payments directly to providers for Medicaid MCO services (“directed payments”) unless permitted under federal law or subject to federal authorization.<sup>120</sup> Therefore, the act requires the Director to seek CMS approval to operate the program.

### **Physician directed payment program**

(Section 333.260)

The act also permits the Medicaid Director to seek CMS approval to establish one or more physician directed payment programs for directed payments for nonpublic hospitals and the related health systems. The programs must advance the maternal and child health goals of ODM’s quality strategy.

Under the program, participating hospitals receive payment directly for physician services provided to enrollees and remit to ODM the nonfederal share of those services through intergovernmental transfer. The directed payments may equal up to the average commercial level for participating health systems for physician and other covered professional services provided to Medicaid MCO enrollees. Eligible public entities may transfer funds to be used for the directed payments through intergovernmental transfer into the Health Care/Medicaid Support and Recoveries Fund.

Under the programs, ODM may only make directed payments to the extent local funds are available for the nonfederal share of the cost for the services. If receipts credited to the program exceed the available amounts in the fund, the Director can adjust the directed payment amounts or terminate the program.

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<sup>120</sup> [CMS directed payments letter \(PDF\)](#), January 8, 2021, available by conducting a keyword search of that date on CMS’s website: [medicaid.gov](https://www.medicare.gov).

## **Ground emergency medical transportation supplemental payment**

(R.C. 5164.96)

The act requires the Director to submit a Medicaid state plan amendment to CMS seeking authorization to establish a program that provides supplemental Medicaid payments to eligible emergency medical services (EMS) organizations operated by a government entity. If the state plan amendment is approved, the Director must establish the program and adopt rules to implement it.

An EMS organization is eligible to receive supplemental Medicaid payments under the program if it meets all of the following requirements: (1) it is a public organization operated by a governmental entity, (2) it holds a valid Medicaid provider agreement, and (3) it provides emergency medical transportation services to Medicaid recipients.

## **Hamilton County hospital directed payment program**

(Section 333.265)

The act requires the Medicaid Director to create a hospital directed payment program for a hospital that meets the following criteria:

- It is located in Hamilton County;
- It is a nonprofit hospital;
- It has a Level 1 trauma center;
- It is affiliated with an Ohio public medical school; and
- It is not a children's hospital.

The program must advance at least one of the health goals established in ODM's quality strategy, which must be submitted to and approved by CMS. Under the program, participating hospitals will receive payments directly for inpatient and outpatient services provided to Medicaid enrollees and remit to ODM the nonfederal share of those services through intergovernmental transfer. Payments cannot exceed the average commercial level paid for inpatient and outpatient services provided to Medicaid recipients under the care management system. The act requires transfers for the program to be deposited into the Health Care/Medicaid Support and Recoveries Fund and permits the Director to adjust payment amounts or terminate the program if receipts credited to the program exceed available funds in the account.

## **Hospital Care Assurance Program; franchise permit fee**

(Sections 610.80 and 610.81, amending Sections 125.10 and 125.11 of H.B. 59 of the 130<sup>th</sup> G.A.)

The act continues the Hospital Care Assurance Program (HCAP) for two additional years. The program had been scheduled to end October 16, 2023. The act extends it to October 16, 2025. Under HCAP, hospitals are annually assessed an amount based on their total facility costs, and government hospitals make annual intergovernmental transfers. A hospital compensated under the program must provide (without charge) basic, medically necessary, hospital-level

services to Ohio residents who are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty line.

The act also continues for two additional years another assessment imposed on hospitals; that assessment is to end on October 1, 2025. The assessment is in addition to HCAP, but like that program, it raises money to help pay for the Medicaid program. To distinguish the assessment from HCAP, the assessment is sometimes called a hospital franchise permit fee.

### **ODM doula program (PARTIALLY VETOED)**

(R.C. 5164.071 and Section 105.40)

The act requires ODM to operate a program to cover doula services. The services must be provided by a doula who has a valid Medicaid provider agreement and is certified by the Ohio Board of Nursing (see “**Doula certification**” in the Board of Nursing chapter).

The program is to begin on October 3, 2024, and may conclude on October 3, 2028. It appears the Governor attempted to remove the time limit on the doula provisions by vetoing language referencing the five-year time limit. However, the Governor did not mark Section 105.40 of the act, which repeals this section of the Revised Code in five years, as being vetoed. As a result, the effect of this provision after five years is unclear.

### **Medicaid payments (VETOED)**

The Governor vetoed a provision establishing that Medicaid payments for doula services would have been determined on the basis of each pregnancy, regardless of whether multiple births occur as a result of that pregnancy.

### **Annual reports (VETOED)**

The Governor vetoed a provision that would have established several reporting requirements related to the Medicaid Program, including the following:

- Outcome measurements and incentives for the program would have needed to be consistent with the state’s Medicare-Medicaid Plan Quality Withhold methodology and benchmarks.
- The Director would have had to complete an annual report regarding program outcomes, including those related to maternal health and morbidity and estimated fiscal impacts.
- The final annual report would have been required to include recommendations related to whether the program should be continued.
- The Medicaid Director would have been required to provide a copy of the annual report to the Joint Medicaid Oversight Committee.

### **Rulemaking**

The Director must adopt rules to implement the doula program. The act exempts the rules from the law that limits regulatory restrictions adopted by certain agencies.

## **General**

### **Medicaid coverage of services at outpatient health facilities**

(Repealed R.C. 5164.05)

The act repeals law that required Medicaid to cover comprehensive primary health services provided by “outpatient health facilities.” Under the repealed law, an outpatient health facility was a facility that (1) provided comprehensive primary health services by or under the direction of a physician at least five days per week on a 40-hour per week basis to outpatients, (2) was operated by the board of health of a city or general health district or another public agency or by a nonprofit private agency or organization under the direction and control of a governing board that has no health-related responsibilities other than the direction and control of outpatient health facilities, and (3) received at least 75% of its operating funds from public sources.

### **Medicaid program reforms**

(R.C. 5162.70)

Under continuing law, the Director must limit the growth in the Medicaid program for a fiscal biennium to not more than the lesser of (1) the average increase in inflation for the most recent three-year period for which there is data on the first day of the biennium, or (2) the medical inflation rate for the fiscal biennium projected by the Joint Medicaid Oversight Committee (JMOC). The act prohibits the Director from excluding any Medicaid eligibility group, provider wages, or Medicaid service when calculating the growth of the per member per month cost of the Medicaid program. The Director may, however, exclude one-time expenses or expenses that are not directly related to enrollees. Not later than October 1 of each year, the act requires the Medicaid Director to submit a report to JMOC detailing the reforms that ODM implemented in the preceding two fiscal years. In even-numbered years, the report must include ODM’s historical and projected Medicaid program expenditure and utilization trend rates, by Medicaid program and service category, for each year of the upcoming biennium and an explanation of how the trend rates were calculated.

### **Medicaid program cost savings report**

(R.C. 5162.137)

The act requires ODM to annually (1) conduct a cost-savings study of the Medicaid program and (2) prepare a report based on the study, recommending measures to reduce Medicaid program costs, and submit the report to the Governor.

### **HCBS direct care worker wages**

(Sections 751.20 and 751.21)

The act requires ODM, ODA, and the Department of Developmental Disabilities to work jointly to submit a report regarding wages paid to direct care workers providing home and community-based services (HCBS) to enrollees in Medicaid waiver components administered by them. The report, submitted to the General Assembly not later than July 1 each year, must be

divided by service type and detail the wages paid by each agency to direct care workers in the previous fiscal year.

### **Medicaid work requirements**

(R.C. 5166.37)

The act requires the ODM Director, not earlier than February 1, 2025, and not later than March 1, 2025, to apply to CMS to implement a new waiver establishing Medicaid work requirements.

H.B. 49 of the 132<sup>nd</sup> General Assembly required the ODM Director to establish a Medicaid waiver component under which individuals eligible for Medicaid on the basis of being included in the Medicaid expansion eligibility group were required to meet work requirements. ODM applied for this waiver in April 2018, and the request was approved by CMS in March 2019. However, before it could be implemented, the work requirement waiver was placed on hold as a result of the COVID-19 pandemic, and CMS subsequently withdrew approval of the waiver in August 2021.

### **Meaningful employment for Medicaid recipients**

(R.C. 5167.35)

#### **Meaningful employment program**

To address Medicaid population health and social determinants of health and to encourage optimal health and self-sufficiency of Medicaid enrollees, the act requires ODM, in collaboration with ODJFS, to develop a program to assist Medicaid enrollees with securing meaningful employment.

As part of this program, each Medicaid MCO must develop a specialized component of its MCO plan to provide referral and support services to Medicaid enrollees to assist in obtaining and maintaining meaningful employment. Medicaid MCOs must give priority for participation in the program to identified enrollees who are of working age and are able-bodied, or who would benefit from assistance to overcome unemployment or underemployment.

In carrying out the program, the act requires Medicaid MCOs to do all of the following:

- Identify any barriers that these enrollees have to achieving greater financial independence, including:
  - Education;
  - Employment;
  - Physical and behavioral health care;
  - Transportation;
  - Childcare;
  - Housing; and
  - Legal history, including prior conviction of a criminal offense.

- Develop state and local relationships that link and refer identified enrollees to assessments, resources, and supports that assist with obtaining and maintaining meaningful employment; and
- Utilize a standard health risk assessment form established by the Medicaid Director to identify enrollees who are eligible to receive assistance under the program.

To assist in establishing the program, the act permits the Medicaid Director to establish additional requirements for Medicaid MCOs in administering the program, adopt rules as necessary to implement the program, and create supplemental assessments to assist Medicaid MCOs identify additional barriers to enrollees achieving financial independence other than those discussed above.

### **Workgroup**

Not later than April 3, 2024, the Medicaid Director and the ODJFS Director must convene a workgroup consisting of the following members selected by the directors:

- Representatives of the Director of Opportunities for Ohioans with Disabilities, the Director of Developmental Disabilities, and the Director of Mental Health and Addiction Services;
- Representatives of the ODJFS Directors' Association and workforce development agencies;
- Representatives of technical, career, and higher education;
- Representatives of each Medicaid MCO; and
- Representatives of other organizations with expertise and resources involved in career and job development, as determined by the directors.

The workgroup must (1) identify state and local resources that provide job skills and career development, including available resources that will support identified enrollees seek employment and develop needed skills, (2) develop models for local agreements or protocols for collaboration between Medicaid MCOs and other community agencies, and (3) identify conflicts among program requirements that should be addressed by state agencies and the General Assembly to facilitate enrollees to securing and maintaining employment.

### **Periodic report**

During the first year of the program and then annually, the Medicaid Director and the ODJFS Director must submit periodic reports regarding the program's implementation and operation. The report must be submitted to the Governor, the Senate Medicaid Committee, and any other standing legislative committees having jurisdiction over Medicaid.

### **MyCare Ohio expansion**

(Section 333.320)

The act requires the Medicaid Director, by July 1, 2024, to seek approval from CMS to expand the MyCare Ohio program to all Ohio counties. If the Director terminates MyCare Ohio,

the successor program must serve all Ohio counties as well. The Director must select the entities for the expanded program.

ODM must establish requirements for care management and coordination of waiver services in the expanded program, subject to the following:

- The selected entities must employ the applicable area agency on aging to be coordinators of home and community-based services under a Medicaid waiver component available for eligible individuals over age 59;
- The entities may delegate to the area agency on aging full care coordination function for home and community-based services and other health care services received by those eligible individuals;
- Individuals enrolled in an entity's plan may choose the entity or its designee as the care coordinator, as an alternative to the area agency on aging;
- ODM may specify an alternative approach to care management and coordination of waiver services if the area agency on aging's performance does not meet the program requirements or if ODM determines that the needs of a defined group of individuals require an alternative approach.

### **Medicaid coverage of remote ultrasounds and fetal nonstress tests**

(R.C. 5164.092)

The act requires the Medicaid program to cover remote ultrasound procedures and remote fetal nonstress tests when the patient is in a different location from the patient's Medicaid provider. ODM must adopt rules to implement the coverage requirement. The coverage applies only if the Medicaid provider uses digital technology that:

- Is used only to collect medical and other data from a patient and electronically transmit that data securely to a health care provider in a different location for the provider's examination of the data; and
- Has been approved by the U.S. Food and Drug Administration for remote data acquisition, if required.

Medicaid reimbursement for remote fetal nonstress tests is applicable only if the current procedural terminology (CPT) code that was used includes a place of service modifier for at home monitoring using remote monitoring solutions that are cleared by the FDA for monitoring fetal heart rate, maternal heart rate, and uterine activity.

### **Coverage for donor breast milk and human milk fortifiers**

(R.C. 5164.072)

The act requires Medicaid coverage for pasteurized donor human milk and human milk fortifiers in both hospital and home settings in specified circumstances. The milk or fortifier must be determined medically necessary by a licensed health professional for an infant whose gestationally corrected age is less than 12 months. The milk or fortifier is medically necessary when any of the following apply:

- The infant has a body weight below healthy weight levels;
- The infant was less than 1,800 grams at birth;
- The infant was born at or before 34 weeks gestation; and
- The infant has any congenital or acquired condition that a licensed health professional indicates would be supported by human milk or fortifier.

Additionally, the act requires Medicaid coverage for donor human milk and fortifier only when the infant is unable to receive maternal breast milk because either the infant is unable to participate in breast feeding or the mother cannot produce enough calorically sufficient milk. The mother and infant must participate in lactation support before donor human milk or fortifier may be covered by Medicaid.

The act permits ODM to adopt any rules necessary to implement these provisions.

### **Lockable and tamper-evident containers (PARTIALLY VETOED)**

(Sections 333.270 and 333.10)

The act requires ODM to reimburse pharmacists for expenses related to dispensing drugs in lockable containers or tamper-evident containers. The Governor vetoed a provision that would have defined “lockable container” and “tamper-evident container” for purposes of this reimbursement. The Governor also vetoed the following related provisions:

- A provision that would have limited the pharmacist reimbursement to FY 2024 and FY 2025, and only for drugs used in medication-assisted treatment;
- A provision that would have required ODM, during FY 2025 and FY 2025, to reimburse prescribers for expenses related to personally furnishing drugs used in medication-assisted treatment in lockable containers or tamper-evident containers.

### **Nursing Home Franchise Permit Fee Fund uses**

(R.C. 5168.54)

The act expands the permitted uses of the Nursing Home Franchise Permit Fee Fund to also include expansion of the State Ombudsman Long-Term Care Program (sic.) and resident and family surveys at ODA, the addition of ODH surveyors, and to fund quality and consumer information resources.

### **Obsolete waiver repeal**

(Repealed R.C. 5166.14, with conforming changes in various other R.C. sections)

The act repeals the requirement that ODM create a Long-Term Services and Support Medicaid waiver component and removes all references to the waiver component, as it was never implemented.

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## STATE MEDICAL BOARD

### **Practitioner impairment monitoring**

- Revises the law governing the State Medical Board's confidential program for treating and monitoring impaired practitioners, including by extending the program to practitioners unable to practice because of mental or physical illness, rather than only those impaired by drugs, alcohol, or other substances as under prior law.

### **Medical Board license holders – retired status**

- Establishes a process by which practitioners licensed by the Medical Board who meet certain eligibility conditions may have their licenses placed on retired status.
- Prohibits the holder of a license placed on retired status from practicing under the license, but permits the holder to continue to use any title authorized for the license so long as the title also indicates that the practitioner is retired.
- Establishes a process by which a license placed on retired status may be reactivated by the Board.
- Authorizes the Board to take the same disciplinary action against retired status license holders and applicants as it may take against any other license holders or applicants.

### **Criminal records checks under Interstate Medical Licensure Compact**

- Clarifies that applicants under the Interstate Medical Licensure Compact are required to comply with Ohio's procedure for criminal records checks for physicians.

### **Sonographer use of intravenous ultrasound enhancing agents**

- Authorizes a sonographer to administer intravenously ultrasound enhancing agents under physician delegation if certain conditions are met.

### **Physician assistant prescribing for outpatient behavioral health**

- Authorizes a physician assistant (PA) to prescribe a schedule II controlled substance at an outpatient behavioral health practice, but only if the PA has entered into a supervisory agreement with a physician employed by the same practice.

### **Practice of acupuncture and herbal therapy**

- Authorizes a licensed acupuncturist with a national certification in Chinese herbology or oriental medicine to practice herbal therapy.
- Eliminates supervisory requirements for newly licensed acupuncturists, including duties and reimbursement allowances for supervising physicians and chiropractors.

## **Subpoenas for patient record information**

- Eliminates requirements that the supervising member of the Medical Board approve the issuance of subpoenas for patient record information and be involved in probable cause determinations related to such subpoenas.

## **Time limit to issue adjudicative order**

- Increases the time the Medical Board has to issue a final adjudicative order related to the summary suspension of a physician assistant's license to 75 days (from 60).

## **Public address information for licensees**

- Eliminates a requirement that the Medical Board's public directory of licensees include a licensee's contact information, and instead requires it to include the licensee's business address.

## **Legacy Pain Management Study Committee**

- Establishes the Legacy Pain Management Study Committee to study and evaluate the care and treatment of patients experiencing chronic or debilitating pain, in particular those who have been prescribed opioids for lengthy periods of time, often referred to as legacy patients.
- Requires the committee, by December 1, 2024, to prepare and submit to the General Assembly a report of its recommendations for legislation addressing the care and treatment of legacy patients.

## **Practitioner impairment monitoring**

(R.C. 3701.89, 4730.25, 4730.32, 4731.22, 4731.224, repealed and new 4731.25, repealed and new 4731.251, 4731.252, 4731.253, 4731.254, 4731.255, 4759.07, 4759.13, 4760.13, 4760.16, 4761.09, 4761.19, 4762.13, 4762.16, 4774.13, 4774.16, 4778.14, and 4778.17)

The act revises the law governing the State Medical Board's confidential program for evaluating, treating, and monitoring practitioner and applicant impairment because of drugs, alcohol, and other substances.

Under continuing law, the Medical Board is responsible for licensing and regulating the following practitioners: physicians, physician assistants, limited branch of medicine practitioners, dietitians, respiratory care professionals, anesthesiologist assistants, acupuncturists, radiologist assistants, and genetic counselors. The Board's regulation may include imposing disciplinary sanctions, including for drug, alcohol, and substance use impairment and for the inability to practice due to mental or physical illness.

### **Program name**

The act names the program the Confidential Monitoring Program, replacing the name One-Bite. The act also describes the program as nondisciplinary.

## **Mental or physical illness**

While the former One-Bite Program applied only to practitioners and applicants whose ability to practice was impaired because of habitual or excessive use or abuse of drugs, alcohol, or other substances, the act expands the meaning of impairment to include the inability to practice by reason of mental or physical illness. The act also eliminates prior law references to habitual use of drugs, alcohol, or other substances.

## **Potential impairment**

The act specifically allows practitioners and applicants who may be impaired to participate in the Confidential Monitoring Program. Under prior law, the practitioner or applicant was required to be impaired in order to be eligible to participate.

## **Monitoring organization**

The act maintains the requirement that the Medical Board contract with a monitoring organization to conduct the program and perform monitoring services. But, it requires the monitoring organization, as a condition of eligibility to conduct the program, to be a “professionals health program” sponsored by a professional association or society of practitioners.

The act also requires the monitoring organization to employ any licensed health care practitioners necessary for the program’s operation, in place of the prior law requirement to employ chemical dependency counselors, social workers, clinical counselors, and psychologists.

## **Practitioner eligibility**

The act modifies a condition of practitioner eligibility related to prior professional discipline, by instead prohibiting a practitioner from participating if still under the terms of a consent agreement or Board order.

## **Practice suspension**

The act eliminates the requirement that a practitioner suspend practice while participating in the program. It instead requires suspension only if the monitoring organization, evaluator, or treatment provider recommends it.

## **Practitioner relapse**

Continuing law prohibits the monitoring organization from disclosing to the Medical Board the name of a participating practitioner or applicant, except in certain circumstances. The act eliminates the circumstance in which a practitioner or applicant relapses.

## **Approval of evaluators and treatment providers**

The act transfers from the Medical Board to the monitoring organization the responsibility for approving treatment providers. The act also requires the organization to approve program evaluators. However, the Board and organization together must develop criteria and procedures for evaluator and treatment provider approval. The Board also must adopt rules establishing standards for approval.

## **Note on treatment providers**

The monitoring organization's approval of treatment providers under the act is not limited to those serving the Confidential Monitoring Program. The act also extends the organization's approval to those providing services as part of the Medical Board's formal disciplinary processes.

## **Assistance with formal disciplinary action**

Separate from the Confidential Monitoring Program, the Medical Board may contract with the monitoring organization to assist in the monitoring of impaired practitioners who are subject to formal disciplinary action by the Board.

## **Medical Board license holders – retired status**

(R.C. 4730.14, 4730.141, 4730.25, 4730.28, 4731.22, 4731.222, 4731.282, 4731.283, 4759.06, 4759.063, 4759.064, 4759.07, 4760.061, 4760.062, 4760.13, 4761.06, 4761.061, 4761.062, 4761.09, 4762.061, 4762.062, 4762.13, 4774.061, 4774.062, 4774.13, 4778.06, 4778.071, 4778.072, and 4778.14)

The act establishes a process by which the following practitioners licensed by the Medical Board may have their licenses placed on retired status: physicians, massage therapists, physician assistants, dietitians, anesthesiologist assistants, respiratory therapists, acupuncturists, radiologist assistants, and genetic counselors.

An individual seeking retired status must file an application with the Board in the form and manner the Board prescribes. The application must be submitted before the end of a license renewal period.

## **Eligibility conditions**

The act requires the Medical Board to place a license on retired status if the applicant meets the following eligibility conditions and pays the application fee:<sup>121</sup>

- The applicant holds a current, valid license to practice;
- The applicant has retired voluntarily from practice;
- In the case of a physician or physician assistant applicant, the applicant does not hold an active registration with the federal Drug Enforcement Administration;
- The applicant does not have any criminal charges pending;
- The applicant is not the subject of discipline by, or an investigation pending with, a regulatory agency of Ohio, another state, or the U.S.;
- The applicant does not have any complaints pending with the Medical Board;

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<sup>121</sup> Fee amounts differ depending on the type of practitioner. For example, a physician must pay \$500, while an acupuncturist pays \$150.

- At the time of application, the applicant is not subject to the Board's hearing, disciplinary, or compliance processes under the terms of a citation, notice of opportunity for hearing, Board order, or consent agreement.

### **Retired status duration**

Once a license is placed on retired status, it remains on retired status for the life of the holder, unless suspended, revoked, or reactivated. While on retired status, the license does not require renewal.

### **Limitations while on retired status**

While a license is on retired status, all of the following apply to the license holder:

- The holder is prohibited from practicing under any circumstance;
- The holder is not required to complete continuing education to maintain the license;
- The holder is prohibited from using the license to obtain a license to practice the profession in another state;
- The holder may use any title authorized for the license so long as the title also indicates that the practitioner is retired;
- In the case of a physician assistant, the holder's prescriber number, issued as part of the holder's physician-delegated prescriptive authority, also is placed on retired status;
- In the case of a physician who holds a certificate to recommend medical marijuana, the certificate also is placed on retired status;
- In the case of any physician, the physician is prohibited from holding or practicing under a volunteer's certificate.

### **Reactivation**

The act establishes a process by which the holder of a license placed on retired status may seek to reactivate the license. To do so, the holder must apply to the Medical Board in the form and manner it prescribes and must pay a reactivation fee. The fee is the same amount as the fee for placing a license on retired status.

The act authorizes the Board to reactivate the license if the applicant certifies completion of continuing education and undergoes a criminal records check. The Board also may impose other terms and conditions, which may include requiring the applicant to obtain additional training, pass an examination, and undergo a physical examination and skills assessment.

If the applicant satisfies the foregoing conditions, the Board must reactivate the license, but only if, in its discretion, it determines that the results of the criminal records check do not make the applicant ineligible for active status.

### **Disciplinary actions**

The act authorizes the Medical Board to take disciplinary action against an applicant seeking retired status or reactivation who commits fraud, misrepresentation, or deception in

applying for, or securing, the status or reactivation. The Board also may impose discipline if the holder practices while on retired status, uses the license to obtain licensure in another state, or uses a title that does not reflect the holder's retired status. In disciplining the holder, the Board may impose any sanction that it may impose under continuing law on any other license holder or applicant.

The act also specifies that the placement of a practitioner's license on retired status does not remove or limit the Board's jurisdiction to take any disciplinary action against the practitioner with regard to the license as it existed before being placed on retired status.

### **Criminal records checks under interstate compact**

(R.C. 4731.08; repealed R.C. 4731.112)

The act adds applicants under the Interstate Medical Licensure Compact to a preexisting Revised Code section that specifies criminal records check requirements for physicians. The act repeals a separate, but substantively identical, section that applied only to Compact applicants.

### **Sonographer use of intravenous ultrasound enhancing agents**

(R.C. 4731.37)

#### **Conditions on delegation and administration**

The act authorizes a sonographer to administer, under a physician's delegation, an ultrasound enhancing agent intravenously if several conditions are met. These include the following:

- The delegating physician's normal course of practice and expertise must include the intravenous administration of ultrasound enhancing agents.
- The sonographer must have successfully completed an education and training program in sonography, be certified by a nationally recognized accrediting organization, and have successfully completed training in the intravenous administration of ultrasound enhancing agents. Under the act, training in intravenous administration may be obtained as part of a sonography education and training program, training provided by the delegating physician, or a training program developed and offered by the facility where the physician practices.
- The sonographer must administer the agent in accordance with a written practice protocol developed by the facility. The protocol's standards for intravenous administration must align with clinical standards and industry guidelines.
- The delegating physician must be physically present at the facility where the sonographer administers the agent, though the act specifies that the physician is not required to be in the same room as the sonographer.

## **Intravenous mechanism**

Under the act, the delegated authority to administer an ultrasound enhancing agent intravenously also includes the authority to insert, maintain, and remove an intravenous mechanism.

## **Exemptions**

The act specifies that it does not prohibit any of the following individuals from administering intravenously an ultrasound enhancing agent:

- An individual who is otherwise authorized by statutory law to administer intravenously ultrasound enhancing agents, including a physician assistant, registered nurse, or licensed practical nurse;
- An individual who is awaiting certification or registration as a sonographer and administers the agent under the general supervision of a physician and the direct supervision of either a sonographer with delegated authority to administer agents intravenously or an individual otherwise authorized to administer agents intravenously;
- A student who is enrolled in a sonography education and training program and, as part of the program, administers intravenously ultrasound enhancing agents.

## **Physician assistant prescribing for outpatient behavioral health**

(R.C. 4730.411)

The act authorizes a physician assistant (PA) to prescribe a schedule II controlled substance if the prescription is issued at the site of a behavioral health practice that does not otherwise qualify as a site where a PA may prescribe such a drug. The following limitations apply: (1) the behavioral health practice must be organized to provide outpatient services for treating mental health conditions, substance use disorders, or both, and (2) the PA must have entered into a supervisory agreement with a physician who is employed by the same practice.

## **Practice of acupuncture and herbal therapy**

(Repealed R.C. 4762.11 and 4762.12; R.C. 2919.171, 2919.202, 4731.22, 4734.31, 4762.02, 4762.10, and 4762.19)

The act permits a licensed acupuncturist to practice herbal therapy if the acupuncturist has received a certification from the National Certification Commission for Acupuncture and Oriental Medicine in Chinese herbology or oriental medicine. The act does not, however, prohibit unlicensed individuals from practicing herbal therapy, so long as such individuals do not represent themselves as licensed to practice herbal therapy.

The act eliminates a prior one-year supervisory period for newly licensed acupuncturists. To practice during the supervisory period, a referral or prescription from a physician or chiropractor was required and the practice must have been under the general supervision of the referring or prescribing physician or chiropractor. The act eliminates those requirements and makes conforming changes related to a supervising physician or chiropractor's duties and reimbursement allowances.

Finally, the act removes outstanding references to “oriental medicine” or “oriental medicine practitioner” in the sections that are amended as described above. The change is related to a previous elimination of Medical Board licensure for oriental medicine practitioners from H.B. 442 of the 133<sup>rd</sup> General Assembly. Due to that previous elimination, most references to “oriental medicine” or “oriental medicine practitioners” in the Revised Code are obsolete.<sup>122</sup>

### **Subpoenas for patient record information**

(R.C. 4730.26, 4731.22, 4759.05, 4760.14, 4761.03, 4762.14, 4774.14, and 4778.18)

The act eliminates requirements that the supervising member of the Medical Board approve the issuance of subpoenas for patient record information and be involved in probable cause determinations related to such subpoenas. Prior to the act, both the supervising member and the secretary of the Board were involved in such approvals and determinations. Under the act, the secretary of the Board is solely responsible.

### **Time limit to issue adjudicative order**

(R.C. 4730.25)

The act increases the time the Medical Board has to issue a final adjudicative order related to the summary suspension of a physician assistant’s license to 75 days, up from 60.

### **Public address information for licensees**

(R.C. 4731.071; conforming change in R.C. 2305.113)

The act eliminates a requirement that the Medical Board’s public directory of licensees include a licensee’s contact information, and instead requires it to include the licensee’s business address.

### **Legacy Pain Management Study Committee**

(Section 335.20)

The act establishes the Legacy Pain Management Study Committee to study and evaluate the care and treatment of patients suffering from chronic or debilitating pain, in particular those who have been prescribed opioids for lengthy periods of time, often referred to as legacy patients.

By December 1, 2024, the Committee must prepare and submit to the General Assembly a report of its recommendations for legislation addressing the care and treatment of legacy patients. The Committee ceases to exist on the submission of its report.

### **Membership**

The Committee consists of the following nine members, who must be appointed by November 2, 2023:

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<sup>122</sup> See R.C. 4762.011, not in the act.

- Four members of the 135<sup>th</sup> General Assembly, two appointed by the Speaker of the House and two by the Senate President;
- The Director of the Ohio Department of Mental Health and Addiction Services or Director's designee;
- The President of the Medical Board or President's designee;
- The Executive Director of the Pharmacy Board or Executive Director's designee;
- Two public members, one representing patients appointed by the Speaker and the other representing prescribers appointed by the Senate President.

### **Chairperson and meetings**

Members are to select a chairperson from among the Committee's membership. The Committee must meet as necessary to satisfy the act's requirements. The Medical Board is to provide to the Committee the administrative support necessary to execute its duties.

### **Topics for study and evaluation**

In conducting the required study and evaluation, the Committee is to consider all of the following topics relating to legacy patients:

- The needs of patients experiencing chronic or debilitating pain;
- The challenges associated with tapering opioid doses for pain patients and the need for flexibility and tapering pauses when treating such patients;
- The ways in which communications between patients and prescribers can be improved;
- The availability of and patient access to pain management specialists;
- Any other topic the Committee considers relevant.

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## **DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES**

### **Certification of addiction and mental health services (PARTIALLY VETOED)**

- Authorizes the Ohio Department of Mental Health and Addiction Services (OhioMHAS) to specify by rule the mental health services and alcohol and drug addiction services that must be certified and eliminates a statutory list of specific types of alcohol and drug addiction services that must be certified by OhioMHAS.
- Would have added an exemption from certification for federally qualified health centers and federally qualified health center look-alikes (VETOED).
- Requires providers to hold national accreditation as part of qualifying for certification by OhioMHAS, in place of the prior law option to have a provider's certifiable services and supports accredited by a national organization in lieu of OhioMHAS determining whether its certification standards have been satisfied.
- Creates an exemption from the accreditation requirement for providers of prevention services.
- Establishes, in addition to the accreditation requirement, both of the following as conditions for certification: (1) an applicant must be adequately staffed and equipped to operate and (2) an applicant must not have been subject to adverse action during the three-year period immediately preceding the application date.

### **Statistics supplied by providers**

- Eliminates a criminal penalty for failure of a community addiction services provider or community mental health services provider to supply statistics and other information to OhioMHAS; instead, authorizes imposition of fines.

### **Boards of alcohol, drug addiction, and mental health services (ADAMHS boards)**

#### **Board notification regarding community service providers**

- Permits a board of alcohol, drug addiction, and mental health services (ADAMHS board) to provide input and recommendations to OhioMHAS when an application for initial or renewed certification has been submitted or when a provider is being investigated, if the board is aware of information that would be beneficial to the matter.
- Requires OhioMHAS to notify the applicable ADAMHS board within 14 days of receipt of an initial or renewal application for certification and, upon the board's request, to provide a copy of the application.
- Requires OhioMHAS to notify the ADAMHS board within 30 days if it refuses certification, refuses renewal, or revokes a certification.

- Requires OhioMHAS to notify the ADAMHS board within ten business days after initiating an investigation of a provider if the board requests that OhioMHAS investigate the provider.
- Requires OhioMHAS to notify the ADAMHS board within three business days if OhioMHAS begins an investigation for any other reason.
- In either event of an investigation, requires OhioMHAS to inform the ADAMHS board of the status and final disposition of the investigation, upon the board's request.

### **Contracts for services and supports**

- Authorizes an ADAMHS board, when contracting with community addiction and mental health services providers, to contract with providers that are government entities, for-profit entities, or nonprofit entities.
- Authorizes entities that are contracted with to be faith-based.

### **Publishing of opioid treatment programs**

- Requires each ADAMHS board to annually update and publish on the board's website a list of all licensed opioid treatment programs operating within the board's district.

### **Withdrawal from a joint-county ADAMHS district**

- Requires a board of county commissioners' comprehensive plan for withdrawal from a joint-county alcohol, drug addiction, and mental health service district to include additional information about the new district and its continuation of services.
- Requires the OhioMHAS Director to approve the comprehensive plan within one year from the date the board adopts the resolution to withdraw.

### **Composition and appointment of ADAMHS boards**

- Modifies the composition and appointment of ADAMHS boards as follows:
  - Permits ADAMHS boards to have 18, 15, 14, 12, or 9 members, instead of only 18 or 14.
  - Expands the appointment authority of boards of county commissioners to two-thirds of ADAMHS board seats and reduces the appointment authority of the OhioMHAS Director to one-third of the seats.
- Permits the appointing authority to remove an ADAMHS board member at will, instead of for enumerated causes, and specifies that the pre-removal hearing be public.

### **Executive director**

- Clarifies that the authority of an ADAMHS board to remove its executive director for cause applies at any time, contingent upon any written contract between the board and the executive director.

## **Reports**

- Eliminates the requirement that ADAMHS boards take certain actions based on data in monthly reports from community addiction services providers, made available to the boards by OhioMHAS, and removes obsolete provisions regarding past reports.

## **Exchange of Medicaid recipient information (VETOED)**

- Would have required OhioMHAS and the Department of Medicaid (ODM) to adopt rules establishing requirements and procedures for exchanging Medicaid recipient data between ADAMHS boards and ODM (VETOED).
- Would have required OhioMHAS and ODM to each submit a report with specified information regarding the data exchange requirements and procedures (VETOED).

## **Conditions of licensure – hospitals and residential facilities**

- Requires a hospital or residential facility applicant, when applying for initial licensure or renewal, to notify OhioMHAS of any adverse action taken against the applicant during the three-year period immediately preceding the application date.
- Establishes, as a condition of hospital and residential facility licensure, that an applicant be adequately staffed and equipped to operate.

## **Monitoring of recovery housing residences**

- Requires OhioMHAS to monitor the operation of recovery housing residences by either establishing a certification process through OhioMHAS or accepting accreditation, or its equivalent, from specified outside organizations.
- Beginning January 1, 2025, prohibits the operation of a recovery housing residence unless the residence is certified or accredited, as applicable, or is actively in the process of obtaining certification or accreditation.
- Requires OhioMHAS to establish and maintain a registry of recovery housing residences.

## **Terminology regarding alcohol use disorder**

- Replaces Revised Code references to “alcoholism” with “alcohol use disorder” and eliminates references to “alcoholic.”
- Repeals an obsolete statute referring to alcohol treatment and control regions, which were abolished in 1990.

## **Behavioral health drug reimbursement program**

- Combines two drug reimbursement programs administered by OhioMHAS into one behavioral health drug reimbursement program.
- Expands the new combined program to provide reimbursement for certain drugs that are administered or dispensed to individuals who are confined in community-based

correctional facilities, in addition to reimbursement for drugs administered or dispensed to inmates of county jails.

### **Substance use disorder treatment in drug courts**

- Continues an OhioMHAS program to provide addiction treatment to persons with substance use disorders through drug courts with programs using medication-assisted treatment.
- Requires community addiction services providers to provide specified treatment to the program participants based on the individual needs of each participant.

### **EEG Combined Transcranial Magnetic Stimulation Program (PARTIALLY VETOED)**

- Requires the OhioMHAS Director to continue the Electroencephalogram (EEG) Combined Transcranial Magnetic Stimulation Program, which previously has been administered jointly as a pilot program with the Director of Veterans Services.
- Would have expanded the program's eligibility criteria (VETOED).
- Specifies that the program's operation is contingent upon an appropriation by the General Assembly designated for that purpose.

### **Mental health crisis stabilization centers**

- Continues the requirement that ADAMHS boards establish and administer, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, six mental health crisis stabilization centers and substance use disorder stabilization centers.

### **Incompetency to stand trial**

- Allows a defendant to complete outpatient competency restoration at a jail that employs or contracts with OhioMHAS, a public or community health facility, or a psychiatrist or another mental health professional to provide treatment or continuing evaluation and treatment.
- Allows a defendant whom the court orders to undergo treatment and evaluation to be committed to a jail that employs or contracts with OhioMHAS, a public or community health facility, or a psychiatrist or another mental health professional to provide treatment or continuing evaluation and treatment.

### **Certification of addiction and mental health services**

(R.C. 5119.35, 5119.36, 5119.367, and 5119.99; repealed R.C. 5119.361)

#### **Services that must be certified (PARTIALLY VETOED)**

The act modifies mandatory certification by the Director of the Ohio Department of Mental Health and Addiction Services (OhioMHAS) related to mental health services, addiction

services, and recovery supports. In the case of mental health services, prior law did not directly require the services to be certified by the state, and in the case of addiction services, only a specific set of services were subject to direct certification requirements with criminal penalties for failing to comply. Instead, prior law based the certification of “certifiable services and supports” on eligibility for government funding.

In place of the prior enforcement system for certification of services, the act requires a person or government entity, as a condition of providing a mental health service or alcohol and drug addiction service, to have the service certified by OhioMHAS if the Director has adopted rules specifying it as a service that must be certified. Adoption of the rules is permissive. Any rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

As part of authorizing the Director to adopt rules specifying services that are subject to certification, the act eliminates a statutory list of alcohol and drug addiction services that required certification. The eliminated list consisted of:

- Withdrawal management addiction services provided in a setting other than an acute care hospital;
- Addiction services provided in a residential treatment setting;
- Addiction services provided on an outpatient basis.

The act maintains two exemptions from certification of the services identified above and applies those exemptions to the services that may be specified in rules as requiring certification. The Governor vetoed a provision that would have added an exemption for federally qualified health centers and federally qualified health center look-alikes.

## **Enforcement**

The act eliminates a criminal penalty (fifth degree felony) for violating prior law’s certification requirement described above, and does not impose a criminal penalty for violating the act’s modified certification requirement. Instead, if the OhioMHAS Director determines that a person or government entity is violating the act’s certification requirement, the Director may request, in writing, that the Attorney General petition an appropriate court of common pleas to enjoin the person or government entity from continuing to violate the certification requirement.

The act maintains, with modifications, law establishing certification as a condition of eligibility for federal or state funds or funds administered by a board of alcohol, drug addiction, and mental health services (ADAMHS board).

## **Standards for certification**

### **Accreditation required**

The act eliminates an option to have a provider’s certifiable services and supports accredited by a national accrediting organization in lieu of having OhioMHAS determine whether its standards for certification have been satisfied. Instead, the act requires providers to hold national accreditation as part of qualifying for certification by OhioMHAS. The act specifies that OhioMHAS’s certification standards apply to both initial certification and certification renewal.

The act creates an exemption from accreditation for providers of prevention services, which are planned strategies designed to reduce the likelihood of or delay the onset of mental, emotional, and behavioral disorders.<sup>123</sup> Accreditation is optional for prevention services providers, but the requirements for certification by OhioMHAS otherwise apply.

Under the act, instead of requiring the OhioMHAS Director to evaluate applicants to determine whether the applicant's certifiable services and supports satisfy the standards established by rules, the Director must determine whether the applicant meets the following:

- For an initial applicant, the applicant must be accredited by one of the following: the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation, or any other national accrediting organization the Director considers appropriate. Under prior law, accreditation was not required but was an option the Director could accept in lieu of determining if the applicant met OhioMHAS standards for certification.
- For a renewal applicant, beginning October 1, 2025, the applicant must be accredited by one of the organizations identified above. Until that date, the Director must continue to evaluate renewal applicants who are not accredited.
- For an initial applicant and a renewal applicant, in addition to being accredited, the applicant must meet both of the following:
  - The applicant and all owners and principals of the applicant must not have been subject to adverse action during the three-year period immediately preceding the date of application (see "**Adverse action**," below);
  - The applicant must be adequately staffed and equipped to provide services.

If the OhioMHAS Director determines that an applicant has paid any required certification fee (exemptions may apply for reasons specified by rule) and meets the certification requirements established by statute or rules, the Director must certify the services and supports or renew certification, as applicable. Subject to the on-site review authority described below, the Director must issue or renew the certification without further evaluation of the services and supports.

### **Review of accrediting organizations**

The OhioMHAS Director may review the accrediting organizations specified above to evaluate whether the accreditation standards and processes used by them are consistent with service delivery models the Director considers appropriate. The Director may communicate to an accrediting organization any identified concerns, trends, needs, and recommendations.

### **On-site review following certification**

The act authorizes the OhioMHAS Director to conduct an on-site review or otherwise evaluate a community mental health services provider or community addiction services provider

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<sup>123</sup> O.A.C. 5122-29-20.

at any time based on cause, including complaints by or on behalf of persons receiving services and confirmed or alleged deficiencies brought to the Director's attention. An on-site review may be done in cooperation with an ADAMHS board that seeks to contract or has a contract for purposes of its community-based continuum of care. Any other evaluation must be in cooperation with such a board.

### **Information provided to Director**

The OhioMHAS Director must require a community mental health services provider and a community addiction services provider to notify the Director not later than ten days after any change in the provider's accreditation status.

The Director may require a provider to submit cost reports pertaining to the provider.

### **Adverse action**

The act requires applicants for initial certification and renewal to notify OhioMHAS of any adverse action taken against the applicant, or any owner or principal of the applicant, within the three-year period immediately preceding the date of the application. The act defines "adverse action" as an action by a state, provincial, federal, or other licensing or regulatory authority to deny, revoke, suspend, place on probation, or otherwise restrict a license, certification, or other approval to provide certifiable services and supports or an equivalent.

The notification must be provided to OhioMHAS within seven days of its receipt by the applicant, and must include a copy of the notice of adverse action received by the applicant.

As indicated above, to qualify for initial or renewed certification, OhioMHAS cannot have been notified, or otherwise be aware of, an adverse action against the applicant.

### **Certification exemption (VETOED)**

The Governor vetoed a provision that would have exempted a federally qualified health center or federally qualified health center look-alike from the requirement for OhioMHAS certification of services and supports. The Governor vetoed a corresponding provision that would have specified that nothing in the certification law modified by the act should be construed to require those facilities to seek or obtain certification.

### **Rules**

Under continuing law, the OhioMHAS Director is required to adopt various rules relating to certification. In addition to all of the preexisting rules that must be adopted, the act requires rules related to the following:

- Documentation that must be submitted as evidence of holding an appropriate accreditation;
- A process by which the Director may review the accreditation standards and processes used by the national accrediting organizations specified under the act;
- Any reasons for which an applicant may be exempt from certification and renewal fees;

- Establishing a process by which the Director, based on deficiencies identified as a result of conducting an on-site review or otherwise evaluating a service provider, may take any range of correction actions, including revocation of the provider's certification.

### **Statistics supplied by providers**

(R.C. 5119.61 and 5119.99)

Related to a continuing law requirement that community addiction services providers and community mental health services providers supply, upon request of OhioMHAS, statistics and other information related to services provided, the act eliminates a criminal penalty (fourth degree misdemeanor) for failure to supply those statistics. Instead, the act authorizes the OhioMHAS Director to impose a fine on the provider. In determining whether to impose a fine, the Director must consider whether the provider has engaged in a pattern of noncompliance. The fines are \$1,000 for the first violation and \$2,000 for each subsequent violation. The Director must comply with the Administrative Procedure Act (R.C. Chapter 119) in imposing fines.

### **ADAMHS boards**

#### **Notification regarding community service providers**

(R.C. 340.03 and 5119.36)

The act includes provisions requiring OhioMHAS to notify ADAMHS boards regarding action the Department takes relating to its certification of the services and supports of community addiction services providers and community mental health services providers. It also requires notification regarding OhioMHAS's investigations of providers.

#### **Certification**

The act permits an ADAMHS board to provide input and recommendations to OhioMHAS when an application for certification or the renewal of a certification has been submitted by a provider, if the board is aware of information that would be beneficial to OhioMHAS's consideration of the matter.

The act requires the OhioMHAS Director to inform the ADAMHS board serving the alcohol, drug addiction, and mental health service district in which the applicant's certifiable services and supports will be provided within 14 days of receipt of an initial or renewal application. On request, the Director must provide to the board a copy of the application.

The act requires the Director to notify the ADAMHS board if a provider's certifiable services and supports cease to be certified for any reason. The notice must be given within 30 days after the certification ceases to be valid and must inform the board of the reason and date the certification became invalid. This requirement applies to a lapse in certification for any reason, including if the provider fails to renew the certification before it expires, the Director accepts the provider's surrender of the certification, or a final order is issued in a disciplinary action brought against the provider.

The act requires the Director to notify the ADAMHS board and provide the board opportunity to respond if the Director proposes to impose sanctions against a provider regarding certification.

## **Investigation**

The act permits an ADAMHS board to provide input and recommendations to OhioMHAS when a provider is being investigated, if the board is aware of information that would be beneficial to OhioMHAS' consideration of the matter.

If an ADAMHS board requests that OhioMHAS investigate a provider, OhioMHAS must initiate the investigation within ten business days after receiving the request. If OhioMHAS initiates an investigation for any other reason, it must notify the applicable ADAMHS board of the investigation and the reason for the investigation within three business days after initiating the investigation. Upon the request of the ADAMHS board, OhioMHAS must provide the board with information specifying the status of the investigation and the final disposition of the investigation.

## **Contracts for services and supports**

(R.C. 340.036)

Continuing law requires each ADAMHS board to contract with community addiction services providers and community mental health services providers for addiction services, mental health services, and related recovery supports. Related to those contracts, the act specifies that an ADAMHS board may contract with a government entity, for-profit entity, or nonprofit entity. Additionally, any such entity may be faith-based.

## **Publishing of opioid treatment programs**

(R.C. 340.08 and 5119.37)

The act requires each ADAMHS board to annually update and publish on its website a list of all licensed opioid treatment programs operating within its district. The list must be based on information obtained from (1) the federal Substance Abuse and Mental Health Services Administration's opioid treatment program directory, (2) an OhioMHAS-created resource directory, or (3) an OhioMHAS list maintained under continuing law.

## **Withdrawal from a joint-county ADAMHS district**

(R.C. 340.01)

The act establishes additional requirements for the comprehensive plan that a board of county commissioners must submit when requesting withdrawal from a joint-county district for alcohol, drug addiction, and mental health services. Under continuing law, the board of county commissioners of any county in a joint-county district may request withdrawal by submitting to the OhioMHAS Director, the impacted ADAMHS board, and the boards of county commissioners of each county in the district a resolution requesting withdrawal with a comprehensive plan for the withdrawal. The plan must provide for the equitable adjustment and division of all district services, assets, property, debts, and obligations.

The act requires the comprehensive plan for withdrawal to include the following additional information:

- Proposed bylaws for the operation of the new district;

- A list of potential board members;
- A list of the behavioral health services available in the new district, including inpatient, outpatient, prevention, and housing services;
- A plan ensuring no disruption in behavioral health services in the new district;
- Provision for employing an executive director of the new district.

The act requires the OhioMHAS Director to approve the comprehensive plan for withdrawal within one year of the date the resolution to withdraw was adopted by the board of county commissioners.

### **ADAMHS board membership**

(R.C. 340.02(A) and (B) and 340.022)

#### **Number of board members**

The act creates additional options for the size of ADAMHS boards and allows the size of the boards to be later revised. Former law, which established ADAMHS boards with 18 members, had been amended to permit the boards to elect to reduce to 14 members, but only until September 30, 2013.

Under the act a new ADAMHS board may be established with any of the following number of members:

- 18 members;
- 15 members;
- 14 members;
- 12 members; or
- 9 members.

Similarly, an ADAMHS board that exists on October 3, 2023, can continue as an 18-member or 14-member board, or can elect to change to 18, 15, 14, 12, or 9 members.

In a single-county district, the size of the ADAMHS board is determined by the board of county commissioners. In a joint-county district, the size of the board is determined jointly by all of the boards of county commissioners of the counties that constitute the district.

To establish a new ADAMHS board or change the size of an existing board, the boards of county commissioners must adopt a resolution specifying the selected size and notify OhioMHAS of the selection. After the first determination, a resolution regarding an ADAMHS board's size cannot be adopted more than once every four calendar years. Before adopting a resolution to change the size of an ADAMHS board, the board or boards of county commissioners must send a representative to a meeting of the impacted ADAMHS board to solicit feedback about the matter and consider the feedback.

## **Appointment of board members**

(R.C. 340.02(C))

The act expands the appointment authority of boards of county commissioners to two-thirds of ADAMHS board seats and, proportionally, reduces the appointment authority of the OhioMHAS Director to one-third of the seats.

## **Removal of board members**

The act permits the appointing authority to remove an ADAMHS board member at will, and it specifies that the pre-removal hearing must be public. This is in place of the previous reasons for removal, which were limited to neglect of duty, misconduct, or malfeasance in office.

## **Executive director**

(R.C. 340.04)

The act specifies that the preexisting authority of an ADAMHS board to remove its executive director for cause applies *at any time*, contingent upon any written contract between the board and the executive director.

## **Reports**

### **Monthly reports on waiting lists for addiction services**

(Repealed R.C. 340.20, with a conforming change in R.C. 5119.363)

The act eliminates a requirement that ADAMHS boards take certain actions based on data in monthly reports from community addiction services providers, required and made available to the boards by OhioMHAS under continuing law. The required actions involve making a determination from the reports on whether any opioid and co-occurring drug addiction services and recovery supports are not meeting the needs of the ADAMHS board's service district.

### **County hub program reports**

(R.C. 340.30)

The act removes outdated requirements pertaining to past reports on the county hub program to combat opioid addiction, but does not otherwise alter the operation of the program. The removed provisions required that:

1. By January 1, 2020, each ADAMHS board submit a report to OhioMHAS summarizing the board's work on, and progress toward, addressing each of the purposes of the county hub program to combat opioid addiction, as enumerated under continuing law; and

2. OhioMHAS aggregate the reports and submit a report of statewide data to the Governor and the General Assembly.

### **Exchange of Medicaid recipient information (VETOED)**

(R.C. 340.035 and 5160.45)

The Governor vetoed a provision that would have required OhioMHAS and the Department of Medicaid (ODM), by December 31, 2024, to develop and implement standards

and procedures for the exchange of Medicaid recipient information between ADAMHS boards and ODM, to the fullest extent permitted by federal law. The information would have been required to be exchanged in accordance with those standards and procedures.

The vetoed provision also would have required each department to prepare a report by March 31, 2025, to the General Assembly specifying how it has met the information exchange requirements, the extent to which it determined that information could be exchanged pursuant to federal law, and the reasoning supporting those determinations.

## **Conditions of licensure – hospitals and residential facilities**

(R.C. 5119.33, 5119.334, 5119.34, and 5119.343)

The act revises the law governing the licensure of hospitals and residential facilities by OhioMHAS in several ways.

It requires an applicant, when applying for an initial hospital or residential facility license or a renewal, to notify OhioMHAS of any adverse action taken against the applicant during the three-year period preceding the application date. Under the act, an adverse action is an action by a state, provincial, federal, or other licensing or regulatory authority to deny, revoke, suspend, place on probation, or otherwise restrict a license, certificate, or other approval to operate a hospital or residential facility or practice a health care profession.

The act allows an initial hospital or residential facility license to be issued only if OhioMHAS has not been notified or is not otherwise aware of an adverse action taken against the applicant during the three-year period. In the case of a residential facility applicant, the act also includes a provision specifying that the initial license may be issued only if OhioMHAS has not been notified or is not otherwise aware of an adverse action taken against the applicant for resident abuse, neglect, or exploitation.

As part of requiring an applicant to notify OhioMHAS of an adverse action, the act eliminates law that generally prohibited an applicant from seeking OhioMHAS licensure if the applicant had been the owner, operator, or manager of a residential facility for which a license to operate was revoked or for which renewal was refused during the two-year period preceding the date of application.

The act also requires the holder of a hospital or residential facility license to notify OhioMHAS of any adverse action from a licensing or regulatory authority other than OhioMHAS not later than seven days after the holder receives notice of the adverse action.

The act establishes – as a condition of hospital or residential facility licensure – that an applicant be adequately staffed and equipped to operate. In the case of a residential facility, it must be managed and operated by qualified persons, which is already required of a hospital under continuing law.

## **Monitoring of recovery housing residences**

(R.C. 5119.39 to 5119.397 and 340.034; Section 337.70; related changes in other sections)

The act requires OhioMHAS to monitor the operation of recovery housing residences by either (1) certifying them or (2) accepting accreditation, or its equivalent, from the Ohio affiliate

of the National Alliance for Recovery Residences, Oxford House, Inc., or another organization designated by OhioMHAS.

The act defines “recovery housing residence” as a residence for individuals recovering from alcohol use disorder or drug addiction that provides an alcohol-free and drug-free living environment, peer support, assistance with obtaining alcohol and drug addiction services, and other recovery assistance for alcohol use disorder and drug addiction. Prior to the act, recovery housing was generally regulated only to the extent that it must be included in the community-based continuum of care established by ADAMHS boards. The act modifies that law by requiring recovery housing residences in the continuum of care to be certified or accredited, as applicable, under the act.

The act provides that up to \$3 million in each fiscal year may be used to implement the recovery housing provisions discussed below, including providing funds to recovery housing operators to defray costs associated with attaining certification or accreditation.

## **Prohibitions**

Beginning January 1, 2025, the act prohibits, a person or government entity from operating a recovery housing residence unless the residence is (1) certified by OhioMHAS or accredited by one of the organizations identified above, as applicable, or (2) actively engaged in efforts to obtain certification or accreditation and has been in operation for not more than 18 months. The act permits the OhioMHAS Director to request, in writing, that the Attorney General seek a court order enjoining operation of any recovery housing residence in violation of the prohibition.

Also beginning January 1, 2025, the act prohibits:

- A person or government entity from advertising or representing a residence or building to be a recovery housing residence, sober living home, or similar substance free housing for individuals in recovery unless the residence is on the registry described below, or is regulated by the Department of Rehabilitation and Correction as a halfway house or community residential center. There is not a criminal penalty associated with this prohibition, but the OhioMHAS Director may request, in writing, that the Attorney General seek a court order enjoining operation of any recovery housing residence in violation of the prohibition.
- A community addiction services provider or community mental health services provider from referring clients to a recovery housing residence unless it is on the registry described below on the date of the referral. There is not a criminal penalty associated with this prohibition, but the OhioMHAS Director may refuse to renew or revoke its certification of a provider found to be in violation of this prohibition.

## **Required form**

The act requires each person or government entity that will operate a recovery housing residence, including those already operating prior to October 3, 2023, to file with OhioMHAS a form with various information, including name and contact information, the date the residence

was first occupied or will be occupied, and information related to any existing accreditation the residence has or is in the process of obtaining.

For any recovery housing residence that is operating before October 3, 2023, the form must be filed within 30 days of that date. For a recovery housing residence that will begin operating on or after October 3, 2023, the form must be filed within 30 days after the first resident begins occupying the residence.

### **Complaints and investigations**

The act requires OhioMHAS to establish a procedure to receive and investigate complaints from residents, staff, and the public regarding recovery housing residences. OhioMHAS may contract with one or more of the organizations identified above to fulfill some or all of the complaint and investigation procedure. Any such organization under contract must make investigation status reports to OhioMHAS regarding investigations. The reports must be made monthly. In addition, the contractor must report to OhioMHAS if the contractor makes an adverse decision regarding an accreditation accepted by OhioMHAS. The report must be made as soon as practicable, but not later than ten days after the adverse decision is made.

### **Registry of recovery housing residences**

OhioMHAS must establish and maintain a registry of recovery housing residences that are certified or accredited or are making efforts to obtain certification or accreditation within the act's permitted timeframe. The registry must include information from the form described above that OhioMHAS chooses to include on the registry, information regarding any complaints that have been investigated and substantiated, and any other information required by OhioMHAS. The registry must be available on OhioMHAS's website.

### **Rules**

The act authorizes the OhioMHAS Director to adopt rules to implement its monitoring of recovery housing residences. If OhioMHAS certifies recovery housing residences, the rules must establish requirements for initial certification and renewal, as well as grounds and procedures for disciplinary action.

The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

### **Terminology regarding alcohol use disorder**

(R.C. 5119.01 with conforming changes in other sections; repealed R.C. 3720.041)

The act replaces Revised Code references to "alcoholism" with "alcohol use disorder." It also eliminates references to "alcoholic." The act defines alcohol use disorder as a medical condition characterized by an individual's impaired ability to stop or control the individual's alcohol use despite adverse social, occupational, or health consequences. It may be mild, moderate, or severe.

The act repeals an obsolete statute referring to alcohol treatment and control regions, which no longer exist. These regions were abolished in 1990 when the present system of

ADAMHS boards and districts was established and the former Department of Alcohol and Drug Addiction Services was created.

## **Behavioral health drug reimbursement program**

(R.C. 5119.19; repealed R.C. 5119.191)

The act combines two preexisting drug reimbursement programs: (1) a psychotropic drug reimbursement program and (2) a drug reimbursement program for drugs used in medication-assisted treatment (MAT) and in withdrawal management or detoxification. The combined program, still to be administered by OhioMHAS, is referred to as a “behavioral health drug reimbursement program.”

Similar to the law for the separate programs, the combined program reimburses counties for the cost of certain drugs administered or dispensed to inmates of county jails. The reimbursable drugs continue to be psychotropic drugs, drugs used in MAT, and drugs used in withdrawal management or detoxification. The combined program is more expansive, however, in that it also provides reimbursement for drugs administered or dispensed to individuals confined in community-based correctional facilities. Other details of the combined program are the same as when each program was separate.

## **Substance use disorder treatment in drug courts**

(Section 337.60)

The act continues a requirement that OhioMHAS conduct a program to provide substance use disorder (SUD) treatment, including MAT, withdrawal management and detoxification, and recovery supports, to persons who are eligible to participate in a MAT drug court program. OhioMHAS’s program is to be conducted in a manner similar to programs that were established and funded by the previous four main appropriations acts.

In conducting the program, OhioMHAS must collaborate with the Ohio Supreme Court, the Department of Rehabilitation and Correction, and any state agency that may be of assistance in accomplishing the program’s objectives. OhioMHAS also may collaborate with the local ADAMHS boards and local law enforcement agencies serving the county where a participating court is located.

OhioMHAS must conduct its program in collaboration with any counties in Ohio that are conducting MAT drug court programs. It also may conduct its program in collaboration with any other court with a MAT drug court program.

### **Selection of participants**

A MAT drug court program must select the participants for OhioMHAS’s program. The participants are to be selected because of having a SUD. Those who are selected must be either (1) criminal offenders, including offenders under community control sanctions, or (2) involved in a drug or family dependency court. They must meet the legal and clinical eligibility criteria for the MAT drug court program and be active participants in that program or be under a community control sanction with the program’s participating judge. After being enrolled, a participant must comply with all of the MAT drug court program’s requirements.

## Treatment

Under OhioMHAS's program, only a community addiction services provider is eligible to provide SUD treatment, including any recovery supports. The provider must:

- Provide treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the provider;
- Assess potential program participants to determine whether they would benefit from treatment and monitoring;
- Determine, based on the assessment, the treatment needs of the participants;
- Develop individualized goals and objectives for the participants;
- Provide access to the drug therapies that are included in the program's treatment;
- Provide other types of therapies, including psychosocial therapies, for both SUD and any co-occurring disorders;
- Monitor program compliance through the use of regular drug testing, including urinalysis, of the participants; and
- Provide access to time-limited recovery supports that are patient-specific and help eliminate barriers to treatment, such as assistance with housing, transportation, child care, job training, obtaining a driver's license or state identification card, and any other relevant matter.

Regarding the drug therapies included in the program's SUD treatment:

- A drug may be used only if it is (1) a drug that is federally approved for use in MAT, which involves treatment for alcoholism, drug addiction, or both, or (2) a drug that is federally approved for use in, or a drug in standard use for, mitigating alcohol or opioid withdrawal symptoms or assisting with detoxification;
- One or more drugs may be used, but each drug that is used must constitute either or both: (1) long-acting antagonist therapy or partial or full agonist therapy or (2) alpha-2 agonist therapy for withdrawal management or detoxification;
- If a partial or full agonist therapy is used, the program must provide safeguards, such as routine drug testing of participants, to minimize abuse and diversion.

## Planning

To ensure that funds appropriated to support OhioMHAS's program are used in the most efficient manner, with a goal of enrolling the maximum number of participants, the act requires the Medicaid Director to develop plans in collaboration with major Ohio health care plans. However, there can be no prior authorizations or step therapy for program participants to have access to any drug included in the program's SUD treatment. The plans must ensure:

- The development of an efficient and timely process for review of eligibility for health benefits for all program participants;

- A rapid conversion to reimbursement for all health care services by the participant's health care plan following approval for coverage of health care benefits;
- The development of a consistent benefit package that provides ready access to and reimbursement for essential health care services, including primary health care, alcohol and opioid detoxification services, appropriate psychosocial services, drugs used in MAT, and drugs used in withdrawal management or detoxification; and
- The development of guidelines that require the provision of all treatment services, including medication, with minimal administrative barriers and within time frames that meet the requirements of individual patient care plans.

## **EEG Combined Transcranial Magnetic Stimulation Program (PARTIALLY VETOED)**

(R.C. 5119.20; Sections 337.10, 337.160, and 512.10)

The act requires the OhioMHAS Director to continue the Electroencephalogram (EEG) Combined Transcranial Magnetic Stimulation (TMS) Program. Under prior law, this program was administered as a pilot program by the Director jointly with the Director of Veterans Services. Under the act, the Director of Veterans Services is no longer involved with the program.

The Governor vetoed a provision that would have expanded the program's eligibility criteria to include civilian employees of the U.S. Department of Defense and the Central Intelligence Agency and to include the spouse of any eligible individual. Under continuing law, the program is for veterans, first responders, and law enforcement officers, and eligible individuals must have substance use disorders, mental illness, sleep disorders, traumatic brain injuries, sexual trauma, post-traumatic stress disorder and accompanying comorbidities, concussions or other brain trauma, or other issues identified by the individual's qualified medical practitioner as issues that would warrant treatment under the program.

The act specifies that the program's operation is contingent upon an appropriation by the General Assembly designated for that purpose. Therefore, the Director has no authority, or requirement, to operate the program without a current appropriation identified for its purposes.

The act also makes the following changes to the program:

- Retains the requirement that TMS frequency pulses are tuned to the patient's physiology and biometric data, but removes the requirement that this be done at the time of each treatment using a pre and post TMS EEG;
- Authorizes each branch site to operate one or more portable units or EEG combined neuromodulation portable units. Former law stated that each branch site could be a mobile unit or EEG combined neuromodulation portable unit;
- Requires that each individual who receives treatment receive neurophysiological monitoring, monitoring for symptoms of substance use and mental health disorders, and access to counseling and wellness programming. Prior law required that each individual who received treatment receive pre- and post-neurophysiological monitoring with EEG and automatic nervous systems assessments, daily checklists of symptoms of alcohol,

opioid, or other substance use, and weekly medical counseling and wellness programming;

- Requires any individual who receives treatment at the clinical practice to be eligible for an additional EEG for every ten treatments, in addition to the minimum of two EEG required under continuing law.

## **Mental health crisis stabilization centers**

(Sections 337.40 and 337.130)

The act continues a requirement that OhioMHAS allocate among ADAMHS boards, in each of FY 2024 and FY 2025, \$1.5 million for six mental health crisis stabilization centers and up to \$6 million in each fiscal year for substance use stabilization centers. Each board must use its allocation to establish and administer a stabilization center in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region. Alternatively, with the OhioMHAS Director's approval, boards may establish crisis stabilization centers to serve individuals with substance use or mental health needs. At least one center must be located in each of the six state psychiatric hospital regions.

ADAMHS boards must ensure that each mental health crisis stabilization center complies with the following:

- It must admit individuals before and after they receive treatment and care at hospital emergency departments or freestanding emergency departments.
- It must admit individuals before and after they are confined in state correctional institutions, local correctional facilities, or privately operated and managed correctional facilities.
- It must have a Medicaid provider agreement.
- It must admit individuals who have been identified as needing the stabilization services provided by the center.
- It must connect individuals when they are discharged from the center with community-based continuum of care services and supports.

## **Incompetency to stand trial**

(R.C. 2945.37 and 2945.38)

### **Outpatient competency restoration treatment**

Under continuing law, if a defendant has not been charged with a felony offense or a misdemeanor offense of violence, or if the defendant has been charged with a misdemeanor offense of violence and the prosecutor has recommended specified procedures, and if after taking into consideration all relevant information and other evidence, the trial court finds that the defendant is incompetent to stand trial, the trial court must dismiss the charges against the defendant or order the defendant to undergo outpatient competency restoration treatment.

The act adds that the outpatient competency restoration treatment may be completed at a “jail” (meaning a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or combination of political subdivisions) that employs or contracts with (1), (2), (3), or (4) below to provide treatment or continuing evaluation and treatment at a jail. Under continuing law, the outpatient competency restoration treatment may be completed at a facility operated by OhioMHAS as being qualified to treat mental illness, a public or community health mental facility, or in the care of a psychiatrist or other mental health professional.

### **Commitment to institution, facility, jail, or person**

Under continuing law, if the court finds that the defendant is incompetent to stand trial, and the court orders the defendant to undergo treatment or continuing evaluation, the order must specify that the defendant be committed to a specified location.

The act adds that the defendant may be committed to a jail that employs or contracts with (1), (2), (3), or (4) below to provide treatment or continuing evaluation and treatment at a jail. Under continuing law, the defendant may be committed to one of the following: (1) OhioMHAS for treatment or continuing evaluation and treatment at a hospital, facility, or agency as determined to be clinically appropriate, (2) a facility certified by the OhioMHAS as being qualified to treat mental illness, (3) a public or community mental health facility, or (4) a psychiatrist or another mental health professional for treatment or continuing evaluation and treatment.

### **References to program**

The act removes references to the “director of the program” and adds references to the “director of the institution, facility, or jail or the person to which the defendant is committed.” The act removes references to “program” and adds references to “location.”

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## DEPARTMENT OF NATURAL RESOURCES

### Oil and gas

#### Stratigraphic wells

- Establishes the Ohio Department of Natural Resource's (ODNR's) regulatory authority over stratigraphic wells, which are boreholes that are drilled on a tract solely to conduct research or testing of the subsurface geology, including porosity and permeability.
- Specifies that the regulatory authority over stratigraphic wells includes the following:
  - The permitting process;
  - Insurance and bonding requirements;
  - Plugging requirements;
  - Setback requirements; and
  - Notice and enforcement procedures.
- Generally requires a stratigraphic well to be plugged within one year after the well is spudded (i.e., when drilling commences) unless the well owner does one of the following:
  - Applies for a permit to convert the well to another use (extending the plugging requirement to two years after the well is spudded); or
  - Executes and files with the Division of Oil and Gas Resources Management financial assurance that equals or exceeds the estimated cost to plug the well and reclaim the associated well site (extending the plugging requirement to five years after the well is spudded).
- Allows the Chief of the Division of Oil and Gas Resources Management to forfeit by order the total financial assurance executed and filed if the Chief finds that the well owner is not in compliance with the laws governing stratigraphic wells.
- Allows the Chief to use the money to plug the well.
- Allows a stratigraphic well to be assigned or otherwise transferred, provided that notice of the assignment or transfer is given to the Division and signed by both the assignor and assignee or by both the transferor and transferee.
- Allows a stratigraphic well owner to designate certain information as confidential business information not subject to disclosure under any law for five years from the time that stratigraphic well was spudded.
- Allows the Chief to post the surface location of a stratigraphic well on the Division's website.

#### Enforcement of oil and gas law and notice

- Broadens the ability of the Chief of the Division of Oil and Gas Resources Management to enforce the laws governing oil and gas by allowing the Chief to issue violation orders and

take enforcement action against *any person* who violates the oil and gas laws and who is subject to those laws, instead of only well owners.

- Requires a person to have committed a material and substantial violation before the Chief may issue an order requiring that person (who is causing an imminently dangerous condition) to cease oil and gas operations and suspending or revoking an unused permit.
- Clarifies that the Chief may notify a drilling contractor, transporter, service company, or other similar entity of the compliance status of any person subject to the oil and gas laws, rather than only allowing the Chief to provide the notice regarding the status of a well owner as in prior law.
- Requires the Chief to provide notice under the oil and gas laws in accordance with law, rather than as prescribed by rules adopted by the Chief, as in prior law.
- Eliminates a corresponding requirement that the Chief's rules provide for notice by publication.

## **Hunting and fishing**

### **Hunting season rules (VETOED)**

- Would have required ODNR's Division of Wildlife rules regarding hunting seasons to have stated a full date including month, day, and year and would have required the Wildlife Council to approve the dates prior to rule adoption (VETOED).

### **Licenses for college students**

- Allows a full-time student who is enrolled in any accredited Ohio public or private college or university to obtain a resident hunting license, fishing license, deer permit, and wild turkey permit, regardless of residency.

## **Parks and watercraft**

### **Fire extinguishers on watercraft**

- Regarding the requirement to have fire extinguishers on board powercraft:
  - Eliminates the exemption for powercraft propelled by an electric motor; and
  - Adds that powercraft of open construction that are not carrying passengers for hire are exempt from fire extinguisher requirements only if the powercraft are not capable of entrapping explosive or flammable gases or vapors.
- With certain exceptions, generally requires 5-B and 20-B portable fire extinguishers on class A, 1, 2, or 3 powercraft, depending on the class, rather than B-1 or B-2 fire extinguishers, depending on the class, as in prior law.
- With certain exceptions, generally requires class 4 powercraft to have the number and type of 20-B portable fire extinguishers specified by gross tonnage as prescribed by federal regulations.

- Requires all portable and semi-portable fire extinguishers for use on a vessel to comply with specified requirements, including being on board the vessel, being readily accessible, and being maintained in good and serviceable condition.

### **Personal flotation device labeling**

- Eliminates a requirement that the label on an approved personal flotation device have a specified designation concerning flotation device type (e.g., type 1, 2, 3, 4, or 5 personal flotation device).

### **Obtaining a watercraft or outboard motor title**

- Increases the period of time that a purchaser has to obtain a watercraft or outboard motor title from 30 days to 60 days.

### **Parks and Watercraft Federal Grants Fund**

- Creates the Parks and Watercraft Federal Grants Fund consisting of federal funds received by ODNR for parks and watercraft projects approved by the Director and any other money credited to the fund.
- Requires the Chief of the Division of Parks and Watercraft to use money in the fund for parks and watercraft projects approved by the ODNR Director.

### **Rocky Fork Lake permits**

- Requires the Chief to establish a program to issue the following to property owners whose property is adjacent to Rocky Fork State Park in Highland County and abuts Rocky Fork Lake:
  - A permit to construct or acquire and maintain a dock on Rocky Fork State Park property, including permit add-ons (electricity, dock covering, and access path);
  - A permit to mow Rocky Fork State Park land;
  - A permit to remove fallen, hazardous, or dead trees from Rocky Fork State Park land; and
  - A permit to control undergrowth or remove invasive tree or plant species from Rocky Fork State Park property.
- Establishes fees for each type of permit and add-on specified above, except for a permit to remove trees and a permit to remove undergrowth and invasive trees and plants.
- Exempts a property owner who owns a dock prior to October 3, 2023, from the requirements governing dock permits.
- Prohibits an owner of property adjacent to Rocky Fork State Park land from purposely altering, modifying, or destroying land that abuts Rocky Fork Lake, except in accordance with a permit issued under the program.

## Other provisions

### Approval of ODNR property purchase (VETOED)

- Would have required the Controlling Board to approve an ODNR real property purchase if the proposed purchase price exceeded 25% of its highest appraised value and was more than \$1 million (VETOED).

### Performance Bond Refund Fund

- Creates the Performance Bond Refund Fund, which consists of money received by ODNR from other entities as performance security.
- Disposes of money in the fund as follows:
  - If work for which the performance bond was required is completed, the money is refunded to the pledging entity; or
  - If the performance bond is forfeited, the money must be transferred to the appropriate fund within the state treasury.

### ODNR administration of capital projects

- Allows ODNR to administer certain capital facility projects commenced within FY 2024 and FY 2025, regardless of estimated cost, without the assistance of the Ohio Facilities Construction Commission (OFCC).
- Requires ODNR to do both of the following:
  - Comply with the procedures and guidelines established in the law governing public improvement contracts; and
  - Track all project information in the Ohio Administrative Knowledge System (OAKS) capital improvements application pursuant to OFCC guidelines as though ODNR is administering the project pursuant to all generally applicable laws.

## Oil and gas

### Stratigraphic wells

(R.C. 1509.051, 1509.01, and 1509.03)

The act establishes ODNR's regulatory authority over stratigraphic wells. Stratigraphic wells are boreholes that are drilled on a tract solely to conduct research or testing of the subsurface geology, including porosity and permeability. However, a stratigraphic well does not include geotechnical or soil borings or a borehole drilled for seismic shot, or mining of industrial minerals or coal. Under the act, the Chief of the Division of Oil and Gas Resources Management may post the surface location of a stratigraphic well on the Division's website.

## Requirements

Generally, under the act, stratigraphic wells are subject to all continuing laws that govern oil and gas wells, which include (1) the permitting process, (2) insurance and bonding requirements, (3) plugging requirements, (4) setback requirements, and (5) notice and enforcement procedures.

However, the act does establish new requirements specific to stratigraphic wells and exempts stratigraphic wells from certain requirements that apply to oil and gas wells, as follows:

- Allows the Chief to prescribe a different application form for a permit to drill a stratigraphic well;
- Prohibits a person from submitting more than seven applications per year for a permit to drill a stratigraphic well unless otherwise approved by the Chief;
- Prohibits the surface location of a stratigraphic well from being within 150 feet from the property line of the tract on which the well is drilled; and
- Specifies that all of the following do not apply to stratigraphic wells:
  - The ability to receive temporary inactive well status;
  - Filing requirements for statements of production of oil, gas, and brine;
  - Minimum acreage requirements for a drilling unit;
  - Rules governing horizontal well site construction;
  - Rules governing saltwater operations and class II disposal wells;
  - Rules governing oil and gas waste facilities;
  - Rules governing enhanced recovery projects (injecting gas, water, or other fluids to change the pressure in a reservoir to recover oil or other hydrocarbons); and
  - Rules governing solution mining projects (involving a well or group of wells and associated facilities under one owner utilized for the solution mining of minerals).

## Plugging requirements

The act also specifies that stratigraphic wells generally must be plugged within one year after the well is spudded (i.e., when drilling commences) unless one of the following apply:

1. The well owner applies, within that one-year period, for a permit to convert the well to another use subject to regulation under the Oil and Gas Law or the Water Pollution Control Law. If the owner is issued a permit, the well must be converted within two years after the well was first spudded. If the owner fails to convert the well within that two-year period, the owner must immediately plug the well or obtain financial assurance (see below) within 30 days after the two year period expires. The well must be plugged within one year after the Chief or the OEPA Director issues a final nonappealable order denying, or affirming the denial of, an application for a permit to convert the well.

2. The well owner executes and files with the Division financial assurance in an amount approved by the Chief that equals or exceeds the estimated cost to plug the well and reclaim the associated well site. This financial assurance is in addition to any surety bond or other financial assurance required under law. It may be in the form of cash or a surety bond that names the state as obligee and is executed by a surety company authorized to do business in Ohio. If the owner executes and files financial assurance, the well must be converted to another use (in accordance with the act's provisions) or plugged within five years after the well was first spudded.

The act allows the Chief to forfeit by order the total financial assurance executed and filed if the Chief finds that the well owner is not in compliance with the laws governing stratigraphic wells. To do so, the Chief must set forth in the order findings of fact supporting the forfeiture and the violations giving rise to the order. The Chief may use the forfeited money to plug the stratigraphic well in the same manner as the Chief would do so for orphan oil and gas wells. If a well owner filed financial assurance in the form of a surety bond, the Chief also must issue an order to the bank or surety bond company informing the bank or company of the option to plug the well in lieu of forfeiture.

### **Transfer or assignment**

A stratigraphic well may be assigned or otherwise transferred. However, notice of the assignment or transfer must be provided to the Division on a form prescribed by the Division and signed by both the assignor and assignee or by both the transferor and transferee.

### **Confidential business information**

A stratigraphic well owner may elect, at its sole discretion, to designate any of the following to be confidential business information not subject to disclosure under any law for five years from the time that the well was spudded:

1. Data from the research of the subsurface geology obtained from a stratigraphic well; and
2. Any reports, documents, or records that are otherwise required for submission under the Oil and Gas Law, any order of the Chief, or any term or condition of a permit issued by the Chief.

Regardless of whether a stratigraphic well owner designates data, reports, documents, or records as confidential business information, the well owner must disclose (1) data to the Chief as may be necessary to respond to or investigate harm or potential harm to public health or safety or the environment, including potential damage to subsurface formations, and (2) reports, documents, or records that are required for submission under law. However, any designated data, reports, documents, or records remain confidential business information and cannot be disclosed by the Chief during the five-year designation period. In addition, the data, reports, documents, or records are not public records subject to Ohio's laws governing public records during the five-year period.

## **Enforcement of oil and gas law and notice provisions**

(R.C. 1509.03 and 1509.04)

The act broadens the authority of the Chief of the Division of Oil and Gas Resources Management to enforce the laws governing oil and gas. It does so by allowing the Chief to issue violation orders and take enforcement action against *any person* who violates the oil and gas laws and who is subject to those laws. Prior law allowed the Chief to take those actions only against well owners.

Under law partially changed by the act, if there is a material or substantial violation of the oil and gas law, the Chief may issue an order to immediately suspend drilling, operating, or plugging activities that are related to the violation and revoke any unused permit if either of the following apply:

1. A person (well owner under prior law) has failed to comply with a material and substantial violation order; or

2. A person (well owner under prior law) is causing, engaging in, or maintaining a condition or activity that presents an imminent danger to the health or safety of the public or that results in or is likely to result in substantial damage to Ohio's natural resources.

Thus, the act broadens (1) above so that it applies to any person (instead of just a well owner). It also alters (2) above so that it applies only to a person who has committed a material and substantial violation (instead of applying it to well owners).

The act clarifies that the Chief may notify a drilling contractor, transporter, service company, or other similar entity of the compliance status of a person subject to the oil and gas laws. Under prior law, the Chief could only provide that status notification about a well owner.

When the Chief must provide notice under the oil and gas laws, the act requires the Chief to do so in accordance with law. Prior law, instead, required the Chief to provide notice as prescribed by rules adopted by the Chief. The act also eliminates a corresponding requirement that the rules provide for notice by publication.

## **Hunting and fishing**

### **Hunting season rules (VETOED)**

(R.C. 1531.03)

Ohio law, unchanged by the act, stipulates that ODNR's Division of Wildlife must obtain the Wildlife Council's approval prior to adopting rules that establish Ohio's hunting season (e.g., dates for the taking of wild animals).

The Governor vetoed a provision that would have required those rules regarding hunting seasons to have stated a full date including month, day, and year.

## Licenses for college students

(R.C. 1531.01)

The act allows a full-time student who is enrolled in any accredited Ohio public or private college or university to obtain a resident hunting license, fishing license, deer permit, and wild turkey permit, regardless of residency. To obtain a resident license or permit, the student must apply to ODNR and attest to the individual's full-time student status in a manner determined by the Chief of the Division of Wildlife. Generally, the fee for a resident license or permit is cheaper than a nonresident license or permit.

## Parks and watercraft

### Fire extinguishers on watercraft

(R.C. 1547.27)

Ohio law generally requires powercraft (any water vessel propelled by machinery, fuel, rockets, or similar device) to carry fire extinguishers. However, prior to October 3, 2023, this requirement did not apply to powercraft propelled by an electric motor and powercraft that are less than 26 feet in length designed for use with an outboard motor, of open construction, and not carrying passengers for hire.

The act modifies the law by doing both of the following:

1. Eliminating the exemption for powercraft propelled by an electric motor; and
2. Adding that powercraft of open construction that are not carrying passengers for hire are only exempt from fire extinguisher requirements if the powercraft are not capable of entrapping explosive or flammable gases or vapors.

Due to changes in the U.S. Coast Guard's federal regulations according to ODNR, the act changes the types of fire extinguishers that a powercraft must carry. The act generally requires any water vessel not equipped with fixed fire extinguishing systems in machinery to carry the following:

Type of powercraft	Prior law	The act
Class A and class 1	One B-1 fire extinguisher	One 5-B portable extinguisher
Class 2 powercraft	At least two B-1 fire extinguishers or at least one B-2 fire extinguisher	At least two 5-B portable fire extinguishers or at least one 20-B portable fire extinguisher
Class 3 powercraft	At least three B-1 fire extinguishers or at least one B-2 fire extinguisher	At least three 5-B portable fire extinguishers or at least one 20-B portable fire extinguisher

Type of powercraft	Prior law	The act
Class 4 powercraft	No requirements	Have the number and type of 20-B portable fire extinguishers specified by gross tonnage as prescribed by federal regulations

According to ODNR, federal regulations allow different fire extinguishers for recreational vessels with a model year earlier than 2018, provided the extinguishers are maintained in good condition. If the older fire extinguishers need to be replaced, the new fire extinguishers must comply with the act's requirements.

The act requires all portable and semi-portable fire extinguishers for use on a vessel to:

1. Be on board the vessel and be readily accessible;
2. Be of an approved type;
3. Not be expired or appear to have been previously used;

4. Be maintained in good and serviceable working condition, which means all of the following: (a) if the fire extinguisher has a pressure gauge or indicator, the reading or indicator is in the operable range or position, (b) the fire extinguisher's lock pin is firmly in place, (c) the fire extinguisher's discharge nozzle is clean and free of obstruction, and (d) the fire extinguisher does not show visible signs of significant corrosion or damage.

### **Personal flotation device labeling**

(R.C. 1547.25)

The act eliminates a requirement that the label on an approved personal flotation device have one or more of the following designations:

1. Conditional approval;
2. Performance type;
3. Type 1, 2, 3, 4, or 5 personal flotation device;
4. Throwable personal flotation device; or
5. Wearable personal flotation device.

It retains the requirement that the appropriate use for each flotation device must be indicated on the device's label. A personal flotation device is a U.S. Coast Guard approved personal safety device designed to provide buoyancy to support a person in the water.<sup>124</sup>

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<sup>124</sup> R.C. 1546.01, not in the act.

## **Obtaining a watercraft or outboard motor title**

(R.C. 1548.03)

The act increases the time that a purchaser has to obtain a watercraft or outboard motor title from 30 days to 60 days. Under continuing law, a person is prohibited from selling or otherwise disposing of a watercraft or outboard motor without delivering to the purchaser a physical certificate of title. However, a purchaser may take possession of and operate a watercraft or outboard motor without a certificate of title for up to 60 days (30 days under prior law) if both of the following apply:

1. The purchaser has been issued a dealer's dated bill of sale or notarized bill of sale (in the case of a casual sale); and
2. The purchaser has the bill of sale in their possession.

## **Parks and Watercraft Federal Grants Fund**

(R.C. 1546.24)

The act creates the Parks and Watercraft Federal Grants Fund consisting of:

1. Federal funds received by ODNR for parks and watercraft projects approved by the ODNR Director. The Chief of the Division of Parks and Watercraft must use money in the fund for those projects.
2. Any other money credited to the fund.

The Chief must use money in the fund for parks and watercraft projects approved by the Director.

## **Rocky Fork Lake permits**

(R.C. 1546.32)

The act requires ODNR's Chief of the Division of Parks and Watercraft to establish a program to issue permits to property owners whose property is adjacent to Rocky Fork State Park in Highland County and abuts Rocky Fork Lake and who seek to do any of the following:

1. Construct or acquire and maintain a dock on and abutting Rocky Fork Lake (dock permit);
2. Mow portions of Rocky Fork State Park that are located between Rocky Fork Lake and the owner's property (mowing permit);
3. Remove trees from Rocky Fork State Park land that is located between Rocky Fork Lake and the owner's property (tree removal permit); or
4. Control the undergrowth or remove invasive species of plants or trees on Rocky Fork State Park property that is located between Rocky Fork Lake and the owner's property (undergrowth and invasive species removal permit).

## Dock permit

A property owner that seeks to construct or acquire and maintain a dock on Rocky Fork Lake must apply for an annual dock permit. The Chief must issue a dock permit after application is made on forms prescribed by the Chief, unless the dock does not meet standards that the Chief establishes under the program. Each annual dock permit comes with one dock slip; however, a permittee may pay a fee for additional dock slips added to the permit. The dock permit fees are as follows:

1. Dock permit application – \$100
2. Annual dock permit (one dock slip included) – \$120
3. Each additional annual dock slip charge added to a dock permit – \$95

The act requires the Chief to allow adjoining property owners to submit an application to construct one dock with multiple watercraft slips that serves all property owners (commonly referred to as a cluster dock). Each property owner must individually pay the annual dock and slip fees that apply to each property owner as prescribed by the act.

A permittee must maintain the dock in accordance with any maintenance standards established by the Chief.

### ***Dock permit add-ons***

The Chief must allow a dock permittee to install a dock cover, electricity, and access path as an add-on to their dock permit when application is properly made. Each add-on is subject to the following conditions:

Dock permit add-ons		
Add-on	Conditions	Fee
Annual dock covering	Installation and maintenance of the cover is the responsibility of the permittee. The permittee must ensure that the dock cover consists of a metal roof that is painted green or white and is maintained in good repair.	\$25
Annual electricity	Installation and maintenance of the electricity is the responsibility of the permittee. A permittee who intends to install electricity must include with a request for electricity an aerial map from the county auditor's website that shows the path of the electric line to be installed. The Chief must approve the path of the electric line. The permittee must ensure that: (1) electric service is installed by a licensed electrical contractor, (2) electric service to the dock is placed in conduit, (3) a disconnect box is installed at the dock, and (4) a disconnect box is installed at the property meter at the origin of service. Once installed, the dock permittee must return Rocky Fork State Park property to its original condition prior to the installation, ensuring that the trench is filled and level to the surrounding area	\$100 for the request to install the electricity and \$25 for the annual electricity usage

Dock permit add-ons		
Add-on	Conditions	Fee
	and that the disturbed area is seeded and covered with a material to reduce possible erosion.  Also prohibits more than one electric service from being installed per dock location.	
Access path construction by adjoining dock permittees	An access path must be constructed only with natural materials and maintained with natural materials that are not permanent in nature. Adjoining permittees that intend to construct an access path must include with the request an aerial photo from the county auditor's website that indicates where the proposed path will be located and a photo of any motor vehicle that the permittees intend to use to access the dock.	\$0
Annual access path sticker for each motorized vehicle	A permittee must submit a photo of each motor vehicle that the permittee intends to use to access the dock via the path. The motor vehicle cannot weigh more than 2,500 pounds and cannot have a power source of more than 899cc.  If a permittee uses a motor vehicle that is not approved by the Chief, the Chief must revoke any stickers issued to the permittee and may fine the permittee up to \$500 hundred dollars.	\$25

### ***Dock permit legacy clause***

The act's new permitting program for Rocky Fork Lake docks does not apply to any property owner who, before October 3, 2023, has lawfully constructed or acquired a dock.

### **Mowing permit**

The act allows a property owner whose property is adjacent to Rocky Fork State Park land that abuts Rocky Fork Lake to apply for a permit to mow state park land. The Chief must issue a mowing permit after application is made on forms prescribed by the Chief and the applicant pays an annual \$25 fee. The application must include an aerial map from the county auditor's website that indicates the area the property owner seeks to mow. The Chief may deny mowing access in areas that show signs of substantial soil erosion that impacts Rocky Fork Lake. A mowing permit does not grant any authority to remove live trees on state park land. Each mowing permit is valid for one year.

### **Tree removal permit**

The act also allows a property owner whose property is adjacent to Rocky Fork State Park land that abuts Rocky Fork Lake to apply for a tree removal permit to remove trees on state park land that have fallen and are deemed hazardous, or that are dead and pose a hazard to other trees. The Chief must issue the permit after application is made on forms prescribed by the Chief. However, the Chief cannot charge a fee for this permit.

If a property owner applies to remove a standing tree, a park official must inspect and mark any tree that is to be removed before the Chief issues the permit. The permittee must remove only the marked trees and must pay all costs associated with their removal.

### **Undergrowth and invasive species removal permit**

The act allows a property owner whose property is adjacent to Rocky Fork State Park land that abuts Rocky Fork Lake who seeks to assist the state in the control of undergrowth on Rocky Fork State Park land, or engage in the removal of invasive plant or tree species on that land, to apply for an undergrowth and invasive species removal permit. The Chief must issue the permit after application is made on forms prescribed by the Chief. However, the Chief cannot charge a fee for this permit.

If a property owner applies for an undergrowth and invasive species removal permit, a park official must, before the Chief issues the permit, inspect the proposed area to determine which trees or plants are to be removed under the terms of the permit. The permittee must pay all costs associated with removing and disposing of undergrowth or invasive trees or plants. However, this permit does not allow for the removal of any live tree. If a permittee removes a live tree, all of the following apply:

1. The Chief must revoke the permit;
2. The Chief must fine the permittee up to \$500 per tree; and
3. The permittee is liable to the state for the full value of the removed tree and for any other damages that are available under law.

After the permittee exercises the rights granted under an undergrowth and invasive species removal permit, the permittee may apply for a mowing permit to maintain the area to prevent the undergrowth or the invasive tree or plant from growing back.

### **Fines**

The act prohibits a property owner from purposely altering, modifying, or destroying Rocky Fork State Park land that is not done in accordance with an issued permit. It allows the Chief to fine any property owner who does so in an amount equal to the damage caused or all costs incurred in remediating the alteration, modification, or destruction, in addition to a penal sum of up to \$5,000. The amount of any fine beyond that needed to cover damage caused or costs incurred in remediation may equal, but cannot exceed, the amount charged for damage or remediation. In addition, any permit currently held or applied for by the property owner must be revoked or denied for a period of two years for the first offense, three years for the second offense, and five years for the third and any subsequent offense.

Under the act, any fees or fines collected by the Chief related to these permits must be deposited into the existing State Park Fund.

## Other provisions

### Approval of ODNR property purchase (VETOED)

(R.C. 1501.014)

The Governor vetoed a provision that would have required Controlling Board approval for an ODNR real property purchase if the proposed purchase price: (1) exceeded 25% of its highest appraised value (as appraised by a person regularly engaged in the business of conducting property appraisals), and (2) exceeded \$1 million.

That vetoed provision also stated that for the Controlling Board to have approved the purchase:

1. Only legislative members of the Board could participate in the vote;
2. The purchase must have received an approval vote from a majority vote of House members and a majority vote of Senate members; and
3. There must have been a roll call of each member's vote.

### Performance Bond Refund Fund

(R.C. 1501.16)

The act creates the Performance Bond Refund Fund, which consists of money received by ODNR from other entities as performance security. The act disposes of money in the fund as follows:

1. If work for which the performance bond was required is completed, the money is refunded to the pledging entity; or
2. If a performance bond is forfeited, the money must be transferred to the appropriate fund within the state treasury.

### ODNR administration of capital projects

(Section 343.60)

The act allows ODNR, for FY 2024 and FY 2025, to administer certain capital facility projects commenced within those fiscal years, regardless of estimated cost, without the assistance of the Ohio Facilities Construction Commission (OFCC), which generally administers capital facility projects on behalf of state agencies. It specifies that those projects are the following:

1. Dam repairs administered by the ODNR's Division of Engineering;
2. Projects or improvements administered by the Division of Parks and Watercraft and funded via the Waterways Safety Fund;
3. Projects or improvements administered by the Division of Parks and Watercraft; and
4. Activities conducted by ODNR to maintain ODNR's roads.

However, this exemption does not apply to the construction of a new facility, structure, or lodge.

The act requires ODNR to do both of the following:

1. Comply with the procedures and guidelines established in the law governing public improvement contracts; and
2. Track all project information in the Ohio Administrative Knowledge System (OAKS) capital improvements application pursuant to OFCC guidelines as though ODNR is administering the project pursuant to all generally applicable laws.

Finally, it states that nothing in these provisions interferes with ODNR's general powers.

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## **BOARD OF NURSING**

### **APRN prescribing for outpatient behavioral health**

- Authorizes certain advanced practice registered nurses (APRNs) to prescribe schedule II controlled substances at outpatient behavioral health practices where they would otherwise not be permitted to prescribe those drugs under continuing law, but only if the APRN is collaborating with a physician employed by the same practice.

### **Nurse education grant program**

- Extends by ten years (to December 31, 2033) the expiration date for the Nurse Education Grant Program.

### **Doula certification (PARTIALLY VETOED)**

- Requires the Board of Nursing to establish a registry of certified doulas.
- Establishes the Doula Advisory Board within the Nursing Board.
- Repeals these provisions on October 3, 2028 (PARTIALLY VETOED).

### **APRN prescribing for outpatient behavioral health**

(R.C. 4723.481)

The act authorizes advanced practice registered nurses (APRNs) who are clinical nurse specialists, certified nurse-midwives, or certified nurse practitioners to prescribe schedule II controlled substances if the prescriptions are issued at the site of a behavioral health practice that does not otherwise qualify under continuing law as a site where APRNs may prescribe those drugs. The following limitations apply: (1) the behavioral health practice must be organized to provide outpatient services for treating mental health conditions, substance use disorders, or both, and (2) the APRN must be collaborating with a physician who is employed by the same practice.

### **Nurse education grant program**

(R.C. 4723.063; Sections 610.110 and 610.111)

The act extends by ten years, to December 31, 2033, the expiration date for the Nurse Education Grant Program. The program, originally authorized in 2003 and administered by the Board of Nursing, provides grants to nurse education programs that partner with the following entities: other education programs, hospitals and other health care facilities, community health agencies, and patient centered medical homes. This is the second extension of the program's sunset. It was scheduled to sunset at the end of 2013 and then at the end of 2023.

## **Doula certification (PARTIALLY VETOED)**

(R.C. 4723.89 and 4723.90; Section 105.40)

The act establishes a program in the Department of Medicaid (ODM) relating to the provision and coverage of doula services. It requires each doula participating in that program to hold a certificate issued by the Nursing Board.

Beginning on October 3, 2024, the act prohibits a person from using or assuming the title “certified doula,” unless the person holds a certificate issued by the Board. In the case of a violation, the act authorizes the Board to impose a fine after an adjudication held in accordance with the Administrative Procedure Act (R.C. Chapter 119). It also requires the Attorney General, on the Board’s request, to bring and prosecute a civil action to collect any fine imposed that remains unpaid.

### **Certificate issuance**

The act requires the Board to adopt rules, in accordance with the Administrative Procedure Act, establishing standards and procedures for issuing certificates to doulas. The rules must include all of the following:

- Requirements for certification as a doula, including a requirement that a doula either be certified by a doula certification organization or, if not certified, have education and experience that the Board considers appropriate;
- Requirements for renewal of a certificate and continuing education;
- Requirements for training on racial bias, health disparities, and cultural competency as a condition of initial certification and renewal;
- Certificate application and renewal fees, as well as a waiver of fees for applicants with a family income not exceeding 200% of the federal poverty line;
- Requirements and standards of practice for certified doulas;
- The amount of a fine to be imposed for using or assuming the title “certified doula” without holding a Board-issued certificate;
- Any other standards and procedures the Board considers necessary to implement the act’s provisions.

### **Doula registry**

The Board must develop and regularly update a registry of doulas holding Board-issued certificates. The Board must make the registry available to the public on its website.

### **Doula advisory board**

The act creates a Doula Advisory Board within the Nursing Board.

### **Membership (PARTIALLY VETOED)**

The Doula Advisory Board consists of at least 13 but not more than 15 members, all appointed by the Nursing Board. The Governor vetoed a provision that would have required the

Advisory Board to include at least one member representing the organization Birthing Beautiful Communities and another representing the organization Restoring Our Own through Transformation. The overall composition of the Advisory Board must be as follows:

- At least three members representing communities most impacted by negative maternal and fetal health outcomes;
- At least six members who are doulas with current, valid certification from a doula certification organization;
- At least one member who is a public health official, physician, nurse, or social worker;
- At least one member who is a consumer.

When appointing members to the Advisory Board, the Nursing Board must make a good faith effort to select members who represent counties with higher rates of infant and maternal mortality, in particular those counties with the largest disparities. The Nursing Board also must give priority to individuals with direct service experience providing care to infants and pregnant and postpartum women.

### **Terms of membership and vacancies**

Of the initial appointments, half are to be appointed to one-year terms and half appointed to two-year terms. Thereafter, all terms are for two years. The act requires the Nursing Board to fill any vacancy as soon as practicable.

### **Chairperson, meetings, and reimbursements**

By a majority vote of a quorum of its members, the Advisory Board must select, and may replace, a chairperson. It must meet at the call of the chairperson as often as is necessary for timely completion of its duties. If requested, a member must receive per diem compensation for fulfilling his or her duties as well as reimbursement of actual and necessary expenses incurred.

The Nursing Board is responsible for providing meeting space, staff services, and other technical assistance to the Advisory Board.

### **Duties**

The act requires the Advisory Board to do all of the following:

- Provide general advice, guidance, and recommendations to the Nursing Board regarding doula certification and the adoption of rules;
- Provide general advice, guidance, and recommendations to ODM regarding its doula program;
- Make recommendations to the Medicaid Director regarding the adoption of rules governing its program.

## **Definitions (PARTIALLY VETOED)**

**Doula** is defined as a trained, nonmedical professional who provides continuous physical, emotional, and informational support to a pregnant woman during the antepartum, intrapartum, or postpartum periods, regardless of whether the woman’s pregnancy results in a live birth.

**Doula certification organization** would have been defined as an organization that is recognized at an international, national, state, or local level for training and certifying doulas and includes any of the following: Birthing Beautiful Communities, Restoring Our Own through Transformation, The International Childbirth Education Association, DONA International, Birthworks International, Childbirth and Postpartum Professional Association, Childbirth International, Commonsense Childbirth Inc., and any other recognized organization the Nursing Board considers appropriate. The Governor vetoed language identifying specific doula certification organizations, giving the Nursing Board authority to select appropriate doula certification organizations.

## **Future operation of doula program**

Section 105.40 of the act repeals the provisions regarding doula services on October 3, 2028, which is five years after they take effect. It appears the Governor intended to veto this time limit (“sunset”) by marking (“boxing”) language in the Revised Code sections that refers to the five-year time limit. Nevertheless, the Governor did not mark Section 105.40 itself, which actually executes the delayed repeals of the Revised Code sections. As a result, the effect of the doula provisions after five years is unclear. LSC could draft an amendment to resolve this ambiguity in future legislation.

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## **OHIO OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETIC TRAINERS BOARD**

### **Physical therapy educational alternative**

- Permits physical therapist and physical therapist assistant licenses to be issued to applicants who completed their education in a country that does not issue a license or registration to physical therapy practitioners.
- Requires the Physical Therapy Section of the Occupational Therapy, Physical Therapy, and Athletic Trainers (OTPTAT) Board to adopt rules pertaining to this new licensure pathway.

### **Orthotics, Prosthetics, and Pedorthics Advisory Council**

- Reduces the minimum number of annual meetings of the Council from four to three.
- Extends from 60 days to 90 days the maximum time an outgoing member must serve after the member's term expires pending a successor's appointment.

### **Physical therapy educational alternative**

(R.C. 4755.411, 4755.45, and 4755.451)

Continuing law permits the Physical Therapy Section of the OTPTAT Board to issue physical therapist and physical therapist assistant licenses to applicants based on holding a current and valid license or registration in another state or country. The act additionally allows an Ohio license to be issued to an applicant who completed a program for physical therapists or assistants in a country that does not issue a physical therapist or assistant license or registration. The Physical Therapy Section must adopt rules pertaining to this new pathway to qualify for Ohio licensure.

As provided currently for Ohio's endorsement of a license or registration received in another jurisdiction, an applicant seeking an Ohio license through the act's new pathway must have education that is reasonably equivalent to Ohio's educational requirements at the time the education was completed. Further, as with licensure by endorsement, the applicant must still have passed the national examination at some point, passed the jurisprudence examination, and paid application fees.

### **Orthotics, Prosthetics, and Pedorthics Advisory Council**

(R.C. 4779.35)

The act reduces the minimum number of annual meetings held by the Orthotics, Prosthetics, and Pedorthics Advisory Council, which advises the OTPTAT Board, from four to three. It also extends the maximum time an outgoing member must serve after that member's term expires pending a successor's appointment from 60 days to 90 days.

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## OPPORTUNITIES FOR OHIOANS WITH DISABILITIES

- Expands Ohioans with Disabilities Agency's (OOD's) authorized uses for money deposited in the Services Rehabilitation Fund to allow the money to be expended for any of OOD's purposes or programs, rather than only certain purposes that were specified in prior law.

### Services for Rehabilitation Fund

(R.C. 4511.191)

The act authorizes OOD to use the money in the Services for Rehabilitation Fund for any of OOD's purposes or programs. Under prior law, OOD could only use the money to match federal funds, when appropriate, and for purposes and programs that rehabilitate persons with disabilities to become employed and independent. Thus, the act expands OOD's authorized uses for the fund. Money in the fund comes from \$75 out of each \$475 reinstatement fee that a person must pay to reinstate a driver's license after a driver's license suspension for an OVI offense.

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## STATE BOARD OF PHARMACY

### Terminal distributor license exemptions (PARTIALLY VETOED)

- Adds exemptions from terminal distributor licensure related to nitrous oxide, medical oxygen, sterile water, and sterile saline.
- Would have added an exemption from terminal distributor licensure related to dog training in conjunction with law enforcement agencies (VETOED).

### OBOT licensure eliminated

- Eliminates the State Board of Pharmacy's licensure of office-based opioid treatment (OBOT) providers.

### Terminal distributor license exemptions (PARTIALLY VETOED)

(R.C. 4729.541; conforming changes in R.C. 4729.51 and 4729.55)

The act adds the following to the list of exemptions from licensure as a terminal distributor of dangerous drugs:

- A person who possesses nitrous oxide for use as a direct ingredient in food under federal regulations or for testing or maintaining a plumbing or HVAC system;
- A person who possesses medical oxygen, sterile water, or sterile saline for direct patient administration or for installing or maintaining home medical equipment.

The Governor vetoed a provision that would have added an exemption for a person who possesses controlled substances and other dangerous drugs for dog training on behalf of, and under a written contract with, a law enforcement agency.

### OBOT licensure eliminated

(Repealed R.C. 4729.553; Section 747.30; conforming changes in other sections)

The act eliminates State Board of Pharmacy licensure for office-based opioid treatment (OBOT). As defined under the repealed law, "office-based opioid treatment" was the treatment of opioid dependence or addiction using a controlled substance. The repealed law required a facility, clinic, or other location where a prescriber provides OBOT to more than 30 patients to hold a category III terminal distributor of dangerous drugs license with an OBOT classification, although various facilities and locations were exempt.

The act also provides that, in rescinding rules related to the repeal, the Pharmacy Board is not subject to review by the Common Sense Initiative Office, and the Board does not have to transmit a business impact analysis to the Office.

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## OFFICE OF PUBLIC DEFENDER

- Caps county reimbursements for indigent defense at an hourly rate to be established by the General Assembly.
- Eliminates the requirement that funds received by the State Public Defender under a contract with Trumbull County be credited to the Trumbull County: County Share Fund.

### Reimbursement for indigent defense

(R.C. 120.34; Section 371.10)

The act caps county reimbursements for indigent defense at an hourly rate to be established by the General Assembly. For FYs 2024 and 2025, the act caps the hourly rate at \$75 per hour. It states that the intent of the General Assembly is to stabilize costs while allowing the Task Force to Study Indigent Defense, established in H.B. 150 of the 134<sup>th</sup> General Assembly, to issue its report.

### Trumbull County: County Share Fund

(R.C. 120.04)

The act eliminates the requirement that funds received by the State Public Defender as a result of a contract with Trumbull County be credited to the Trumbull County: County Share Fund. The money instead will go to the Multicounty: County Share Fund.

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## DEPARTMENT OF PUBLIC SAFETY

### Driver's licenses and identification cards

#### Limited term licenses and identification cards

- Renames “nonrenewable/nontransferable” driver’s licenses and state identification (ID) cards, which are issued to temporary residents, as the “limited term license” and “limited term” ID card. (Temporary residents generally are persons who are not U.S. citizens or permanent residents, but have legal presence in the country.)
- Excludes a limited term license as a form of photo identification for purposes of voting.
- Requires the words “limited term” to be on any driver’s license or ID card issued to a temporary resident, along with other characteristics prescribed by the Registrar of Motor Vehicles.
- Clarifies the law regarding the expiration dates for a limited term driver’s license or ID card issued to a temporary resident.
- Authorizes a temporary resident to renew a limited term license or limited term ID card, provided the temporary resident can verify his or her lawful status in the U.S.
- Requires the Registrar to adopt rules governing limited term licenses and ID cards issued to temporary residents.
- Specifies that all REAL ID-compliant driver’s licenses and ID cards must be issued in accordance with the federal requirements.

#### Return of ID cards

- Removes the requirement that a person surrender or return an original ID card to the Bureau of Motor Vehicles (BMV) if the person:
  - Applies for a driver’s license or commercial driver’s license (CDL) in Ohio or another state;
  - Finds the original lost card, after obtaining a duplicate or reprint card; or
  - Changes his or her name and obtains a replacement ID card.

#### Color photographs

- Removes the requirement that the Registrar or a deputy registrar photograph an applicant for a driver’s license, CDL, or ID card in color.
- Removes the requirement that a driver’s license, CDL, or ID card display a color photograph of the licensee.

#### ID card reimbursements

- Authorizes the Registrar to establish a payment schedule that is more frequent than the monthly schedule established under prior law for reimbursing deputy registrars for their services in issuing free ID cards.

- Authorizes the Department of Public Safety (DPS) Director to certify to the OBM Director, on a quarterly basis, both of the following:
  - The amounts paid by DPS to deputy registrars to reimburse them for their services in issuing and renewing free ID cards and temporary ID cards; and
  - The fees not collected by the Registrar for any free ID cards and temporary ID cards issued or renewed by the Registrar.
- Authorizes the OBM Director to transfer up to \$4 million per fiscal year to BMV from the GRF to reimburse the BMV for the free ID cards and temporary ID cards.

## **Commercial driver's licenses**

### **Online driver's license, ID card, and CDL renewal**

- Authorizes the online renewal of CDLs in a similar manner as driver's licenses and ID cards under current law.
- Prohibits the renewal or issuance of any of the following via the online process:
  - A CDL temporary instruction permit;
  - An initial CDL; and
  - A nonrenewable CDL.
- Modifies the eligibility requirement for online renewal of a driver's license to require the applicant's current license to have been issued when the applicant was 21 or older and the applicant to be under age 65, rather than requiring the applicant to be between 21 and 65 as in prior law.
- Extends that eligibility requirement to online renewal of CDLs.
- Modifies the eligibility requirement for the online renewal of an ID card to require the applicant's current ID card to have been issued when the applicant was 21 or older and removes the restriction that the applicant be under 65.
- Authorizes U.S. permanent residents to renew driver's licenses, CDLs, and ID cards online.
- Requires an online CDL applicant to meet the following additional eligibility criteria that do not apply to a driver's license or ID card holder:
  - The applicant must be in compliance with all laws governing CDL issuance, including self-certification and medical certificate requirements; and
  - The applicant must not be under any CDL restriction by any federal regulation.

### **CDL temporary instruction permit**

- Extends the maximum validity period for a commercial driver's license temporary instruction permit (CDLTIP) from six to 12 months.
- Clarifies that a CDLTIP is a prerequisite for the initial issuance of a CDL only when a skills test is required for the CDL.

- Repeals law that allows the Registrar to renew a CDLTIP only once in a two-year period.

### **CDL skills test third-party examiners**

- Regarding third parties authorized to administer the CDL skills tests:
  - Specifies that the third-party examiners must meet the qualification and training standards that apply to the class of vehicle and endorsements for which an applicant taking the skills test is applying;
  - Decreases the number of individuals to whom a CDL skills test examiner must administer a skills test each calendar year from 32 to 10;
  - Requires the third party to schedule all skills test appointments through a system or method provided by the DPS Director, or if the Director does not provide a system or method, to submit the schedule weekly; and
  - Requires the third party to keep a copy of the third-party agreement entered into with the Director at its principal place of business.

### **CDL waiver for farm-related service industries**

- Increases the validity period from 180 to 210 days per calendar year for the restricted CDL issued to a person operating commercial motor vehicles for a farm-related service industry.

### **Fraudulent acts related to CDL testing**

- Prohibits knowingly providing false statements or engaging in any fraudulent act related to a CDL test.
- Specifies that a violation of the prohibition is a third degree misdemeanor.
- Allows the Registrar to cancel a CDL or an application for a CDL as a result of a violation of the prohibition.

### **CDL disqualifications: human trafficking**

- Prohibits a CDL holder from using a commercial motor vehicle in the commission of a felony human trafficking offense, and specifies that a violation of the prohibition is a first degree misdemeanor.
- Establishes a lifetime disqualification from operating a commercial motor vehicle for a person who is convicted of violating the prohibition.

### **Strict liability declaration**

- Clarifies that various prohibitions related to operating a commercial motor vehicle are strict liability offenses.

## **OVI violation requiring surrender of CDL**

- Clarifies that a CDL holder or CDLTIP holder must immediately surrender the holder's CDL or permit to an arresting peace officer if the holder was operating a motor vehicle in violation of the state OVI law's statutory limits for alcohol or a controlled substance.

## **Specialty license plates**

- Renames the "Ohio Oil and Gas Energy Education Program" license plate as the "Ohio Natural Energy Institute" license plate, and requires the \$20 contribution for the plate to go to the Ohio Natural Energy Institute.
- Requires representatives of the Ohio State Moose Association to select the logo and words for the "Loyal Order of the Moose" license plate design, instead of the Ohio Chapter of the Loyal Order of the Moose as in prior law.
- Accordingly, requires the proceeds of the \$20 contribution for the plate to go to the Ohio State Moose Association.
- Increases the contribution for a "Recovery is Beautiful" license plate from \$20 to \$21.

## **Other BMV services**

### **Deputy registrars**

- Allows clerks of court of common pleas to serve as a deputy registrar in any county, rather than only in counties below certain population thresholds.
- Relieves the Registrar from the responsibility to appoint a deputy registrar in a county under certain circumstances (e.g., when the county auditor or clerk of court is unwilling to serve and no other entities have applied).
- In the case of a county in which there is no deputy registrar, allows the Registrar to reestablish a deputy registrar office in certain circumstances (e.g., the willingness of the county auditor, a clerk of court, or deputy registrar in another county to serve).
- As a result of these changes, eliminates (1) the requirement that a deputy registrar live within a one-hour commute from the deputy registrar's office and (2) the prohibition against a deputy registrar operating more than one deputy registrar office at any time.

### **Permanent removable windshield placard**

- Creates a permanent removable windshield placard with no expiration date that authorizes use of accessible parking spaces for a person with a permanent disability that limits or impairs the ability to walk.
- Sets the cost for a permanent placard at \$15 (as opposed to \$5 for a standard or temporary placard), but exempts an armed forces veteran whose disability is service-connected.

- Consolidates and makes conforming changes within the language pertaining to the three types of placards: a standard placard (ten-year renewal); a temporary placard (expires within six months); and the new permanent placard (no expiration).

### **Titling a motor vehicle from another state**

- Regarding an application for a certificate of title for a motor vehicle last registered in another state, clarifies that the Registrar must issue the required physical inspection certificate, rather than DPS.
- Requires the physical inspection to include verification of the vehicle's mileage, in addition to verification of the make, body type, model, and vehicle identification number as under continuing law.

### **Reinstatement fees for noncompliance (PARTIALLY VETOED)**

- Lowers from \$100 to \$40 the reinstatement fee associated with a suspension for failing to have proof of financial responsibility (i.e., auto insurance) for first time offenders.
- Would have lowered that same reinstatement fee from \$300 (second time offenders) and \$600 (third time offenders or more) to \$40 (VETOED).
- Lowers the portion of the reinstatement fee distributed to the Indigent Defense Support Fund to \$10 (regardless of the number of prior offenses).

## **Traffic and vehicle equipment laws**

### **Distracted driving safety course**

- Regarding the opportunity to take a distracted driving safety course in lieu of paying a fine and incurring points for the offense of driving while using an electronic wireless communication device (EWCD), does both of the following:
  - Requires evidence of course completion to be submitted to the court within 90 days of the offense; and
  - Clarifies that successful completion of the course does not result in a dismissal of the charges for the violation, and the violation constitutes a prior offense if the offender is subsequently convicted of an EWCD violation within two years of the initial offense.
- Regarding the opportunity to take a distracted driving safety course in lieu of paying a \$100 fine for distracted driving, requires the course to be completed within 90 days of the underlying offense that resulted in the imposition of the distracted driving fine.

### **Emergency vehicles using flashing lights**

- Allows a vehicle being used on a road or highway for emergency preparedness, response, and recovery activities to use flashing amber or flashing red and white lights if the vehicle is being operated by a person from one of the following:
  - The Ohio Emergency Management Agency;
  - A countywide emergency management agency;

- A regional authority for emergency management; or
- A program for emergency management.

## **Peer-to-peer car sharing programs**

- Removes requirements that a peer-to-peer (P2P) car sharing program collect certain information, retain certain records, and exclude certain vehicles from its platform and those that use the platform.
- Modifies the automobile and general insurance requirements related to P2P car sharing programs.

## **Motor vehicle sales, dealers, and manufacturers**

### **Motor vehicle sales**

- For the Motor Vehicle Sales Law:
  - Expands the meaning of “persons” to include a variety of business entities.
  - Expands the meaning of “business” to include activities conducted through the internet or other computer networks.
  - Expands the meaning of “retail sale” to include sales that occur through the internet or other computer networks.
  - Modifies the meaning of “motor vehicle leasing dealer” to include a financial institution acting as a lessor and to exclude a new motor vehicle dealer that is not the lessor.
  - Defines “established place of business” to mean a permanent building or structure that meets certain conditions, potentially barring individuals whose business does not meet those conditions from licensure.

### **Manufacturer, dealer, and distributor vehicle registration**

- Requires the Registrar to issue a license plate, rather than a placard, to vehicle manufacturers, dealers, distributors, and other similar professionals that require a temporary identification for vehicles in their possession.
- Requires the Registrar to issue corresponding and matching additional certificates of registration and license plates, rather than certified copies of the original certificate and placards, for any additional license plates requested.

### **Motor Vehicle Dealers Board**

- Authorizes the Motor Vehicle Dealers Board to conduct meetings or hearings via teleconference or video conference.

### **Corrective changes**

- Corrects references in law to an annual renewal for specified licenses that are currently biennial.

## **State Board of Emergency Medical, Fire, and Transportation Services**

- Eliminates a requirement that each organization nominating persons to the State Board of Emergency Medical, Fire, and Transportation Services put forth three nominees and, instead, allows each organization to nominate any number of persons.
- Does both of the following regarding the Board member who is certified to teach emergency medical services training and who holds a certificate to practice as an EMT, AEMT, or paramedic:
  - Eliminates the requirement that the Governor appoint the member from among three persons nominated by the Ohio Emergency Medical Technician Instructors Association and the Ohio Instructor/Coordinators' Society; and
  - Instead, requires the member to be appointed from among EMTs, AEMTs, and paramedics nominated by the Ohio Association of Professional Firefighters and EMTs, AEMTs, and paramedics nominated by the Northern Ohio Fire Fighters.
- Specifies that if any nominating organization ceases to exist or fails to make a nomination within 60 days of a vacancy, the Governor may appoint any person who meets the designated professional qualifications for that member.
- Extends the potential time a member of the Board may continue in office if a successor does not take office from 60 days to three years.
- Eliminates a requirement that each organization nominating persons to the Trauma Committee of the State Board put forth three nominees and, instead, allows each organization to nominate any number of persons.
- Specifies that if any nominating organization ceases to exist or fails to make a nomination of a member within 60 days of a vacancy, the DPS Director may appoint any person who meets the designated professional qualifications for that member.
- Eliminates a restriction preventing the Director from appointing more than one member to the Committee who is employed by or practices in the same health system.
- Further modifies that restriction to allow the Director to appoint persons who practice at the same hospital or with the same emergency medical service (EMS) organization, provided they do not primarily practice at the same hospital or with the same EMS organization.

### **Emergency vehicle permits and ambulance inspections**

- Requires the Board of Emergency Medical, Fire, and Transportation Services to issue or deny a permit application for an emergency medical vehicle or aircraft within 45 days of receiving the application.
- Specifies that the Board must deny an application in accordance with the Administrative Procedure Act.

- Adds the national standards for ambulance construction approved by the American National Standards Institute and the standards for ambulance construction approved by the Commission on Accreditation of Ambulance Services as standards by which the Board may determine the sufficiency of an ambulance's interior components.

### **Assistant EMS and firefighter instructors**

- Authorizes any person issued an EMS Assistant Instructor Certificate or Assistant Fire Instructor Certificate prior to April 6, 2023, to continue to hold and renew those certifications until the person allows them to expire or lapse.
- Requires the State Board of Emergency Medical, Fire, and Transportation Services to no longer issue new certifications in order to work as an assistant EMS or assistant fire instructor.

### **Ohio Narcotics Intelligence Center**

- Codifies the Ohio Narcotics Intelligence Center in DPS, which was originally created by a Governor's Executive Order.
- Requires the Center to perform specified duties, including coordinating law enforcement response to illegal drug activities for state agencies and acting as a liaison between state agencies and local entities to communicate counter-drug policy initiatives.
- Requires the DPS Director to appoint an executive director of the Center, who serves at the Director's discretion.
- Requires the executive director to advise the Governor and the Director on matters pertaining to illegal drug activities.

### **Security Grants Program**

- Expands the eligible purposes of grants issued under the Security Grants Program managed by the Emergency Management Agency (EMA).
- Authorizes a nonprofit organization that serves a broad community or geographic area to apply for a security grant to provide antiterrorism services throughout its region, including armed security personnel.
- Authorizes multiple nonprofit organizations that are located at the same address to apply for separate security grants, provided the organizations can explain how they will each use the funding to address a different vulnerability.
- Requires the EMA to post information regarding the security grants and applicants on its website.

## Driver's licenses and identification cards

### Limited term licenses and identification cards

(R.C. 3501.01, 4507.01, 4507.061, 4507.09, 4507.13, 4507.50, 4507.501, and 4507.52)

The act makes changes to Ohio law that governs driver's licenses and state identification (ID) cards issued to temporary residents. Temporary residents generally are persons who are not U.S. citizens or permanent residents under U.S. immigration laws, but do have legal presence in the country.<sup>125</sup> The purpose of the changes is to ensure that those licenses and ID cards issued to temporary residents conform to the federal REAL ID Act. Under that Act, driver's licenses and ID cards issued to temporary residents are described as "limited term," with required expiration date standards. A temporary resident may renew a limited term license upon verification of the applicant's continued legal status in the U.S. Regarding their expiration dates, federal law requires a REAL ID-compliant license or ID issued to a temporary resident to expire as follows:

- If the license or ID is issued to a temporary resident who has a definite expiration date for the resident's authorized stay in the U.S., the license or ID must expire on that date or four years from the date of issuance, whichever is earlier.
- If the license or ID is issued to a temporary resident who does not have a definite expiration date for the resident's authorized stay in the U.S., the license or ID must expire one year from the date of issuance.<sup>126</sup>

In order to conform Ohio's law to the federal REAL ID Act, the act does all of the following:

1. Renames the "nonrenewable/nontransferable" driver's license and ID card a "limited term license," "limited term identification card," and "limited term temporary identification card." (As a conforming change, the act excludes the use of a limited term license as a form of photo identification for voting.)

2. Requires the limited term licenses and ID cards to have the words "limited term" printed on them, along with any other characteristics prescribed by the Registrar.

3. Authorizes the limited term licensee or cardholder to renew the license or ID card within 90 days of expiration, provided the licensee or cardholder can verify his or her continued lawful status/legal presence in the U.S.

4. Aligns the required expiration dates more clearly with the required expiration dates in the federal REAL ID Act, and requires the Registrar to adopt rules regarding the issuance of the limited term licenses and ID cards and their expiration dates. (In doing so, the act also adjusts the law concerning expiration dates for licenses and ID cards generally.)

5. Requires, in general, all driver's licenses and ID cards issued in accordance with the federal REAL ID Act to comply with the corresponding federal regulations.

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<sup>125</sup> O.A.C. 4501:1-1-21 and 4501:1-1-35.

<sup>126</sup> "Real ID Act," 49 U.S.C. 30301, *et seq.*, 6 C.F.R. Part 37.

## **Return of ID cards**

(R.C. 4507.52)

The act removes the requirement that an ID cardholder surrender or return his or her original ID card to the BMV if any of the following occur:

1. The cardholder applies for a driver's license or CDL in Ohio or in another state;
2. The cardholder lost the original ID card, but then finds it after obtaining a duplicate or a reprint ID card; or
3. The cardholder changes his or her name and obtains a replacement ID card to reflect the new name.

As a conforming change, the act also removes the requirement that the Registrar cancel any card surrendered to the BMV for any of the above reasons.

## **Color photographs**

(R.C. 4506.11, 4507.01, 4507.06, 4507.18, 4507.51, and 4507.52)

The act removes the requirement that the Registrar or a deputy registrar photograph an applicant for a CDL, driver's license, or ID card in color. Similarly, it removes the requirement that CDLs, driver's licenses, and ID cards display a color photograph of the cardholder. While the REAL ID Act requires those licenses and ID cards to display a photograph of the licensee or cardholder, it does not require that photograph to be in color.

## **ID card reimbursements**

(R.C. 4507.49; Section 373.30)

The act allows the Registrar to establish a payment schedule that is more frequent than the monthly schedule established under prior law for reimbursing deputy registrars for their services in issuing free ID cards. Under continuing law, ID cards are free for anyone 17 and older on initial issuance, renewal, and replacement (for a name change). Before the law was changed to provide for free ID cards, a deputy registrar received from an applicant \$6.50 for each four-year ID card issued or renewed, \$13 for each eight-year ID card issued or renewed, and \$5 for each replacement ID card. Currently, rather than the applicant paying the deputy registrar, the Registrar must reimburse a deputy registrar in those amounts for each applicant.

In order to be reimbursed for the service of issuing free ID cards, each deputy registrar must submit a verification form specifying the number of free cards issued or renewed during the course of the specified period. The act allows the Registrar to retain the monthly reimbursement schedule or establish a more frequent schedule, as determined by the Registrar.

The act also authorizes the DPS Director to certify to the OBM Director, on a quarterly basis, both of the following:

1. The amounts paid by DPS to deputy registrars to reimburse them for their services in issuing and renewing free ID cards or temporary ID cards that past quarter; and

2. The fees not otherwise collected by the Registrar for any free ID cards and temporary ID cards issued or renewed by the Registrar that past quarter.

Furthermore, it authorizes the OBM Director to transfer up to \$4 million per fiscal year to the BMV's primary fund (Public Safety – Highway Purposes Fund) from the GRF. The money reimburses the BMV for its expenses related to the free ID cards. The General Assembly authorized the issuance of free ID cards in H.B. 458 of the 134<sup>th</sup> General Assembly, effective April 7, 2023, in association with requiring photo identification for voting.<sup>127</sup>

## **Commercial driver's licenses**

### **Online driver's license, ID card, and CDL renewal**

(R.C. 4507.061)

The act provides for the online renewal of CDLs in a similar manner as driver's licenses and ID cards. In so doing, it prohibits online renewal or issuance of any of the following:

1. A CDL temporary instruction permit;
2. An initial CDL; and
3. A nonrenewable CDL.

### **Eligibility criteria**

The act modifies two existing eligibility requirements for online renewal. First, when a person is renewing a driver's license or ID card (or, under the act, a CDL) online, the applicant's current license or ID card must have been issued when the applicant was age 21 or older. Further, for a driver's license (or CDL) the applicant must be under age 65 at the time of application. The act removes the upper age restriction for an applicant renewing an ID card online. Under prior law, the applicant had to be between 21 and 65, and the age at which the applicant's current license was issued was not relevant. Second, the act authorizes U.S. permanent residents who reside in Ohio to renew driver's licenses, CDLs, and ID cards online. Previously only U.S. citizens who reside in Ohio were eligible for online renewal.

The act also establishes two new eligibility criteria that apply only to the online renewal of a CDL. Namely, a CDL holder must:

1. Be in compliance with all laws governing CDL issuance, including self-certification and medical certificate requirements; and
2. Not be under any CDL restriction specified by federal regulations.

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<sup>127</sup> For additional information regarding free ID cards, see the [LSC Final Analysis for H.B. 458 of the 134<sup>th</sup> General Assembly \(PDF\)](#), which is available on the General Assembly's website: [legislature.ohio.gov](http://legislature.ohio.gov).

## **CDL temporary instruction permit**

(R.C. 4506.06)

The act specifies that a commercial driver's license temporary instruction permit (CDLTIP) is a prerequisite to obtaining a CDL only when the CDL requires the passage of a skills test in order to receive it. Under prior law, a CDLTIP was a prerequisite to obtaining any CDL. The act also extends the maximum validity period for a CDLTIP from six months to 12 months. Finally, it repeals a law that allowed the Registrar to renew a CDLTIP only once in a two-year period. These changes align Ohio law with the Federal Motor Carrier Safety Administration rules.

## **CDL skills test third-party examiners**

(R.C. 4506.09)

Under continuing law and as authorized by federal law, the DPS Director may contract with third parties to administer the skills test given to applicants for a CDL or a specific endorsement on the CDL. Recent updates to federal regulations pertaining to the CDL skills tests, examining locations, and the examiners necessitate corresponding changes to Ohio's laws.

By law, third party examiners must meet the same qualification and training standards as the DPS examiners and pass a criminal background check. The act clarifies that as part of meeting the DPS standards, third party examiners must meet the standards for the class of vehicle and the endorsements for which an applicant taking the skills test is applying. For example, an examiner giving the skills test to an applicant for the S-endorsement (school bus) must personally meet the standards for that S-endorsement. The act also reduces the number of individuals to whom a CDL skills test examiner must administer a skills test from 32 to ten individuals per calendar year.

The act requires the contracted third party to schedule all skills test appointments through a system or method provided by the DPS Director. If the Director does not provide a system or method, the third party must submit a schedule of the skills test appointments to the Director weekly. The Director may request that any additions to the schedule, made after the weekly submission, be submitted at least two business days prior to the additional appointment. Under prior law, the third parties must submit a schedule of skills test appointments to the Director at least two business days prior to each skills test.

Finally, the act requires the third parties to keep a copy of their third-party agreement with the Director at their principal place of business. Continuing law requires third parties to maintain a variety of records at their business, including their CDL skills testing program certificate, their examiners' certificates of authorization to administer skills tests, completed skills test scoring sheets, a list of test routes, and a complete and accurate copy of their examiners' training records.

## **CDL waiver for farm-related service industries**

(R.C. 4506.24)

The act increases the validity period from 180 to 210 days per calendar year for a restricted CDL issued to a person operating commercial motor vehicles for a farm-related service

industry. This change is in accordance with the federal authorization under 49 C.F.R. 383.3. This restricted CDL is a seasonal license available to authorized drivers working for farm retail outlets and suppliers, agri-chemical businesses, custom harvesters, and livestock feeders. Authorized drivers are able to obtain the restricted CDL without completing the typically required written or skills tests.

### **Fraudulent acts related to CDL testing**

(R.C. 4506.04 and 4506.10)

The act prohibits a person from knowingly providing false statements or engaging in any fraudulent acts related to CDL testing. A violation of the prohibition is a third degree misdemeanor. The Registrar also must cancel the offender's driver's license, CDL, CDLTIP, or any pending application for a license or permit. Continuing law includes a parallel provision that prohibits providing false information in any application for a CDL.

### **CDL disqualifications: human trafficking**

(R.C. 4506.15 and 4506.16)

The act prohibits a CDL holder from using a commercial motor vehicle in the commission of a felony human trafficking offense. A violation is a first degree misdemeanor, which is in addition to any penalties imposed for the underlying conduct. Further, the act establishes a lifetime disqualification from operating a commercial motor vehicle for a person who is convicted of violating the prohibition.

### **Strict liability declaration**

The act also clarifies that various offenses related to CDL holders are strict liability offenses, including the new offense specified above.

### **Motor vehicle OVI violation requiring surrender of CDL**

(R.C. 4506.17)

The act clarifies that a CDL holder or CDLTIP holder must immediately surrender the holder's CDL or permit to an arresting peace officer if the holder was operating a motor vehicle in violation of the state OVI law's (operating a vehicle while intoxicated) statutory limits for alcohol or a controlled substance. While continuing law requires the surrender when a holder exceeds the statutory limits for alcohol or a controlled substance under the CDL law, prior law did not specifically require the surrender when the violation involved the general state OVI law.

### **Specialty license plates**

#### **Ohio Natural Energy Institute license plate**

(R.C. 4501.21 and 4503.584)

The act renames the existing "Ohio Oil and Gas Energy Education Program" license plate as the "Ohio Natural Energy Institute" license plate. Under prior law, the \$20 contribution for that plate was directed to that program and was used to fund scholarships for students pursuing careers in the oil and natural gas industry through the program. The act requires the contribution

to instead go to the Ohio Natural Energy Institute, but retains the requirement that it be used for that same type of scholarship.

### **Loyal Order of the Moose license plate**

(R.C. 4501.21 and 4503.703)

The act requires representatives of the Ohio State Moose Association to select the logo and words for the existing “Loyal Order of the Moose” license plate design instead of the Ohio Chapter of the Loyal Order of the Moose as under prior law. Additionally, it requires the contribution of \$20 to be paid to the Ohio State Moose Association instead of the Ohio Chapter.

### **Recovery is Beautiful license plate**

(R.C. 4503.519)

The act increases the contribution for a “Recovery is Beautiful” license plate from \$20 to \$21. The proceeds of the contributions must be distributed equally (i.e., now \$7/organization), as provided in continuing law, to the following organizations:

- NAMI Ohio (National Alliance on Mental Illness of Ohio);
- Ohio Peer Recovery Organizations; and
- OCAAR (Ohio Citizen Advocates for Addiction Recovery).

## **Other BMV services**

### **Deputy registrars**

(R.C. 4503.03)

The act alters the circumstances in which a county auditor or clerk of a court of common pleas may serve as a deputy registrar in a county. Under prior law, the Registrar could designate a county auditor and, if the county population was 40,000 or less, the Registrar did not have to designate any other person to serve as a deputy registrar. Additionally, the Registrar could designate a clerk of a court of common pleas, but only if the county population was 40,000 or less (if the county population exceeded 40,000, but was less than 50,000, the clerk was eligible to act as a deputy registrar, but had to participate in the competitive selection process).

The act eliminates these population restrictions. Thus, the Registrar may designate a clerk of court to serve as a deputy registrar in any county. Further, in counties of 40,000 or less where a county auditor has been designated to serve as a deputy registrar, there is no limitation on designating an additional deputy registrar in that county. The act also retains the authority of the Registrar to designate an individual or nonprofit corporation as a deputy registrar pursuant to a competitive selection process.

The act then relieves the Registrar from the requirement to appoint a deputy registrar in each county if the following apply:

1. No qualified individual or nonprofit corporation applies to be a deputy registrar via a competitive selection process or otherwise;

2. The clerk of court and county auditor do not agree to be designated as a deputy registrar; and

3. No deputy registrar in another county agrees to be designated for that county.

If the Registrar does not appoint a deputy registrar for a county, the Registrar may subsequently reestablish a deputy registrar for that county under the following circumstances:

1. The county auditor or clerk of court requests to be designated as a deputy registrar;

2. A deputy registrar operating an existing deputy registrar agency in another county requests to be designated as the deputy registrar for the county in question; or

3. A qualified individual or nonprofit corporation requests to be designated as a deputy registrar for that county. If more than one qualified individual or nonprofit corporation makes the request, the Registrar may make the designation via a competitive selection process.

As a result of these changes, the act eliminates the requirement that a deputy registrar live within a one-hour commute from the deputy registrar's office. It also eliminates the prohibition against a deputy registrar operating more than one deputy registrar office at any time, thus allowing a person to operate multiple deputy registrar offices.

### **Permanent removable windshield placard**

(R.C. 4503.038, 4503.44, 4511.69, 4731.481, and 4734.161)

The act creates a permanent removable windshield placard with no expiration date that authorizes the use of accessible parking spaces for a person with a permanent disability that limits or impairs the ability to walk. The Registrar determines the form, size, material, and color of the permanent placard, but it must display the word "permanent" on it. The BMV already issues two other types of removable windshield placards: a standard placard that expires ten years after the date of issuance and a temporary placard that expires within six months. The temporary placard is issued to a person whose disability is expected to last for less than six months (e.g., a broken leg). Those with a permanent disability, under prior law, had to continually renew the standard placard.

To obtain a permanent placard, an applicant must submit a completed application to the BMV that includes a prescription from an authorized health care provider stating that the applicant's disability is expected to be permanent. The cost of a permanent placard is \$15, compared to \$5 for the temporary or standard placard. Similar to the temporary and standard placard, that fee is waived for an armed forces veteran whose disability is service-connected.

If a person who was issued a permanent placard no longer requires it, the person must notify and surrender the placard to BMV within ten days of no longer requiring the placard. That person may still apply for a temporary or standard placard, if applicable.

The act consolidates and makes conforming changes within the statutory language pertaining to the three different types of removable windshield placards. However, it makes no substantive changes concerning the issuance, cost, or display of the temporary placard or standard placard.

## **Titling a motor vehicle from another state**

(R.C. 4505.061)

Under continuing law, when a person applies for a certificate of title for a motor vehicle that was last registered in another state, a physical inspection of the motor vehicle is required. The inspection may be conducted at various locations specified in the law. A physical inspection includes a verification of the make, body type, model, and vehicle identification number of the motor vehicle. The act requires the inspection to also verify the mileage of the vehicle. It also clarifies that the Registrar must issue the required physical inspection certificate, rather than DPS as in prior law.

## **Reinstatement fees for noncompliance (PARTIALLY VETOED)**

(R.C. 4509.101)

The Governor partially vetoed provisions that would have lowered to \$40 all of the reinstatement fees associated with a driver's license suspension for failing to have proof of financial responsibility (i.e., auto insurance). Under prior law, the reinstatement fee for noncompliance was \$100 for a first offense. The act lowers that fee to \$40. However, with respect to subsequent offenses, the Governor vetoed provisions that would have lowered to \$40 the reinstatement fee of \$300 for a second offense within five years and \$600 for a third or subsequent offense within five years.

The act also lowers the portion of the fee that is distributed to the Indigent Defense Support Fund to \$10 (regardless of the number of prior offenses), rather than the prior law distribution of \$25 for a first offense, \$50 for a second offense within five years, and \$100 for a third or subsequent offense within five years. The remaining portion of the fee is distributed to the Public Safety – Highway Purposes Fund.

Under continuing law, after the term of the driver's license suspension, the offender must pay a reinstatement fee in order to reinstate his or her driver's license. The fee compensates BMV for suspensions, cancellations, or disqualifications of a person's driving privileges and the administration of programs intended to reduce and eliminate threats to public safety through education, treatment, and other activities.

## **Traffic and vehicle equipment laws**

### **Distracted driving safety course**

(R.C. 4511.204 and 4511.991)

### **Driving while using an electronic wireless communication device**

Under continuing law, a person is prohibited from using an electronic wireless communication device (EWCD) when driving a motor vehicle. For a first offense within a two-year period, an offender who violates this prohibition is subject to a fine of up to \$150 and a two point assessment on the offender's driver's license. However, if the offender completes a distracted driving safety course, the person is not required to pay the fine and points are not assessed against the person's license. The offender is required to submit written evidence to the court of course completion.

The act requires the offender to submit the evidence of course completion to the court within 90 days of the violation in order to qualify for the exemption from fine payment and point assessment. Further, it clarifies that successful completion of the course does not result in a dismissal of the charges for the violation, and the violation constitutes a prior offense if the offender is subsequently convicted of an EWCD violation within two years of the initial offense.

### **Driving distracted**

The act makes similar changes to the law governing distracted driving. Under continuing law, an offender who commits a moving violation while distracted may be charged with distracted driving if the distracting activity was a “contributing factor” to the commission of the underlying moving violation. Generally, distracted includes any activity that is not necessary to operate a motor vehicle and that impairs the ability of the driver to drive the motor vehicle safely. Distracted also specifically includes illegally using an EWCD while driving. The penalty for driving while distracted is up to a \$100 fine in addition to any penalties for the underlying moving violation.

Continuing law allows a distracted driving offender to take a distracted driving safety course in lieu of paying the \$100 fine. As with an EWCD violation, the offender must submit written evidence of the successful completion of the course to the court in order for the fine exemption to apply. The act requires the evidence to be submitted within 90 days of the underlying violation that led to the distracted driving charge.

### **Emergency vehicles using flashing lights**

(R.C. 4513.17)

The act allows a vehicle being used on a road or highway for emergency preparedness, response, and recovery activities to use flashing amber or flashing red and white lights, if a person from one of the following is operating the vehicle:

1. The Ohio Emergency Management Agency;
2. A countywide emergency management agency;
3. A regional authority for emergency management; or
4. A program for emergency management.

Generally, flashing lights are prohibited on motor vehicles, except as a means for indicating a right or a left turn, or in the presence of a vehicular traffic hazard requiring unusual care in approaching, or overtaking or passing. Continuing law provides for other exceptions to this prohibition, including certain flashing lights on all of the following: emergency vehicles, road service vehicles servicing or towing a disabled vehicle, stationary waste collection vehicles actively collecting garbage, rural mail delivery vehicles, highway maintenance vehicles, farm machinery and vehicles escorting farm machinery, and a funeral hearse or funeral escort vehicle.

## Peer-to-peer car sharing programs

(R.C. 4516.01, 4516.02, 4516.05, 4516.06, 4516.08, 4516.09, and 4516.10)

The act makes numerous changes related to a peer-to-peer (P2P) car sharing program's responsibilities and insurance requirements. In general, under continuing law, a program must collect specified information from the shared vehicle owners and shared vehicle drivers both before entering into a P2P car sharing program agreement and as ongoing information for shared vehicles that are part of the platform. The act removes information collection requirements for the following:

- The name and address of any alternative drivers (but still requires an alternative driver to submit their driver's license information);
- Information regarding whether the shared vehicle owner or shared vehicle drivers have a motor vehicle liability policy or other proof of financial responsibility;
- Information about any outstanding safety recalls on the shared vehicle; and
- Verification that the shared vehicle is properly registered in either Ohio or another state.

Additionally, the act removes law that prohibited a P2P car sharing program from allowing a P2P car sharing agreement through its platform if it knew that (1) the person driving the shared vehicle was not a party to the agreement or did not have a valid driver's license, or (2) that the shared vehicle was not properly registered. The act also removes requirements that the program collect, verify, and maintain records pertaining to the dates, times, and duration of time that a shared vehicle driver possesses a shared vehicle through the program.

Similarly, the act removes requirements that the program establish commercially reasonable procedures to determine safety recalls that apply to the shared vehicles on its platform after initial registration with the platform. However, it retains the requirements that the program verify that there are no outstanding safety recalls on initial registration and that shared vehicle owners alert the program to safety recalls after registration. The act specifies that P2P car sharing is subject to the laws governing consumer sales practices, but it removes references and specifications regarding the roles of each party (the program, the shared vehicle owner, and the shared vehicle driver) within those laws.

Related to the P2P car sharing agreement between the parties, the act clarifies that if the parties agree to an alternative location for return of the vehicle, that new location must be incorporated into the agreement in order to trigger the car sharing termination time.

### Insurance requirements

The act expands on the law's general statement that an insurer may limit, restrict, or exclude coverage of a shared vehicle within its insurance policies. It specifies that an insurer may exclude or limit coverage for bodily injury and property damage, uninsured or underinsured motorist coverage, medical payments coverage, comprehensive physical damage coverage, collision physical damage coverage, and loss of earnings coverage. Insurance companies are free to either include, exclude, or otherwise limit coverage of a shared vehicle as they determine appropriate within the policies they establish with their customers.

Given that some insurance companies may not provide shared vehicle coverage to their customers, the act requires a P2P car sharing program to have either a policy of insurance or a self-insurance mechanism to cover its liabilities and obligations, which include providing coverage when the shared vehicle owner or shared vehicle driver cannot. Policies (and other forms of proof of financial responsibility) must still provide the minimum coverage required by Ohio law and recognize the motor vehicle as a shared vehicle. The act adds that the policies must also not expressly exclude the use of the insured vehicle as a shared vehicle by a shared vehicle driver and that the program must cover the difference in minimum coverage if the shared vehicle is operated in a state that has higher minimum coverage requirements.

The act retains law specifying that the shared vehicle owner, shared vehicle driver, or P2P car sharing program may provide the necessary insurance over the shared vehicle and the use of that vehicle through the program. However, it designates the person providing the insurance as the “primary insurance.” The primary insurance must assume primary liability for the claim if:

- There is a dispute over who was operating the shared vehicle at the time of the loss (and the program does not have any records to note the operator at the time); or
- There is a dispute as to whether the shared vehicle was returned to the correct location.

Additionally, the act removes the requirement that the P2P car sharing program examine the insurance policy of the shared vehicle owner or shared vehicle driver (to determine if car sharing coverage is excluded) if the owner or driver refuses coverage provided by the program. The removal does not relieve the program of the requirement to provide insurance if the shared vehicle owner or shared vehicle driver’s insurance does not provide the required coverage and to ensure that the shared vehicle is insured during the car sharing period.

## **Motor vehicle sales, dealers, and manufacturers**

### **Motor vehicle sales**

(R.C. 4517.01)

The act expands the meaning of “person” under the Motor Vehicle Sales Law to expressly include a variety of business entities, such as a sole proprietorship, a limited liability company, a limited liability partnership, and a business trust. Thus, it clarifies that these legally recognized business entities are subject to the requirements, prohibitions, and penalties of that law. The definition already included a variety of business entities; however, those listed above were not expressly included in that list.

The act also expands the meaning of “business” and “retail sale” within the Motor Vehicle Sales Law to encompass activities that are conducted and sales that occur through the internet or other computer networks. In recent years, numerous motor vehicle dealers, both established dealers and newer start-ups, have attempted to make the car buying process simpler by offering online buying options. The act ensures that businesses selling motor vehicles online are still subject to BMV regulations pertaining to motor vehicle sales by expanding those definitions.

Likewise, the act modifies the meaning of “motor vehicle leasing dealer,” affecting which entities must meet the statutory requirements for leasing dealers. The modification consists of both of the following:

1. It includes a financial institution acting as the lessor for a lease or a sublease; and
2. It excludes a new motor vehicle dealer that is not acting as the lessor and is only assisting in arranging a lease on the lessor’s behalf.

Additionally, the act creates a definitive meaning of “established place of business,” which was previously regulated, but undefined, under the law. Specifically, an established place of business is a permanent, enclosed building or structure that meets the following conditions:

1. It is owned, leased, or rented by the motor vehicle dealer;
2. It meets local zoning or municipal requirements;
3. At least one person regularly occupies it;
4. It is easily accessible to the public;
5. The records and files necessary to conduct the business are generally kept and maintained at the location or are readily accessible and available for reasonable inspection from that location (e.g., electronic files); and
6. It is not a residence, tent, temporary stand, storage shed, lot, or any temporary quarters, unless otherwise authorized by the Registrar.

Under continuing law, motor vehicle dealers (new, used, and leasing), motor vehicle auction owners, and distributors are required to have an established place of business to sell, display, offer for sale, deal in, or lease motor vehicles.<sup>128</sup> Thus, the specified conditions for an established place of business could potentially prevent those that do not meet those conditions from licensure under the Motor Vehicle Sales Law.

### **Manufacturer, dealer, and distributor vehicle registration**

(R.C. 4503.27, 4503.271, 4503.28, 4503.30, 4503.301, 4503.31, 4503.311, 4503.312, 4503.32, 4503.33, and 4503.34)

The act requires the Registrar to issue a license plate, rather than a placard as under prior law, to vehicle manufacturers, dealers, distributors, and other similar professionals that require a temporary identification for the vehicles that are in their possession. Under continuing law, the Registrar and BMV license and regulate motor vehicle manufacturers, dealers, and distributors. As part of that licensing, the Registrar assigns those entities a distinctive number. The Registrar, historically, issued the entity a placard displaying that distinctive number. The entity could then use the placard on its various vehicles when each of the vehicles was operated on the public streets and highways (e.g., during a test drive by a customer). According to the BMV, current practice is to issue a license plate, rather than a placard, for the entities to use on the vehicles.

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<sup>128</sup> R.C. 4517.03, 4517.12, and 4517.13, not in the act.

In addition to the original license plate, a manufacturer, dealer, or distributor may request additional license plates with the same distinctive number. Having additional copies allows the entity to have multiple vehicles driven at the same time. The entity pays an annual \$5 fee for each additional license plate. Historically, the Registrar issued certified copies of the original certificate of registration for each of the additional placards. However, the Registrar currently issues an additional registration certificate with the same numbering as the original. The act updates the registration laws related to motor vehicle manufacturers, dealers, and distributors to reflect these current practices.

Along with motor vehicle manufacturers, dealers, and distributors, other similar professionals use the temporary identification placards/license plates. The act applies the same changes specified above related to license plates and additional certificates of registration to those professionals. Those professionals include:

- Manufacturers, dealers, and distributors of commercial cars, commercial tractors, trailers, or semitrailers;
- Those engaged in testing motor vehicles or motorized bicycles;
- Those who collect motor vehicles as the collateral of a secured transaction;
- Those transporting or holding motor vehicles for an insurance company for salvage disposition;
- Those engaged in salvage operations or scrap metal processing;
- Those testing motor vehicles as part of an Ohio nonprofit corporation;
- Those engaged in rustproofing, reconditioning, or installing equipment or trim on motor vehicles;
- Those engaged in manufacturing articles for attachment to motor vehicles;
- Towers (for the motor vehicle being towed to a point of storage);
- Those using trailers who are engaged in the business of selling tangible personal property other than motor vehicles;
- Manufacturers and dealers in watercraft trailers;
- Manufacturers, distributors, and retail sellers of utility trailers or trailers used for motorcycles, snowmobiles, or all-purpose vehicles; and
- A drive-away operator or trailer transporter (a person that transports new or used motor vehicles).

## Motor Vehicle Dealers Board

(R.C. 4517.32 and 4517.35)

Under the Open Meetings Law, public bodies must take official action and conduct all deliberations in open meetings, unless specifically excepted by law, and a member of a public body must be present in person at a meeting open to the public to be considered present.<sup>129</sup>

The act establishes an exemption to that law by authorizing the Motor Vehicle Dealers Board to conduct virtual meetings and hearings by means of teleconference, video conference, or any other similar electronic technology. It applies all of the following to those meetings:

1. Any decision, resolution, rule, or formal action of any kind has the same effect as if it occurred during an open meeting or hearing in which members are present in person.

2. Board members who attend meetings or hearings by means of teleconference, video conference, or any other similar electronic technology, are considered present as if in person, are permitted to vote, and are counted for purposes of determining whether a quorum is present.

3. The Board must provide notification of meetings and hearings to the public, to the media that have requested notification of a meeting, and to the parties required to be notified of a hearing. It must provide the notice at least 24 hours in advance of the meeting or hearing by reasonable methods by which any person may determine the time, location, and the manner by which the meeting or hearing will be conducted, except for an emergency requiring immediate official action. For an emergency, the Board must immediately notify the applicable persons of the time, place, and purpose of the meeting or hearing.

4. The Board must provide the public access to a meeting held under this provision, and to any hearing held under this provision that the public would otherwise be entitled to attend, commensurate with the method in which the meeting or hearing is being conducted. Methods that may be used include livestreaming by means of the internet, local radio, television, cable, public access channels, call in information for a teleconference, or by means of any other similar electronic technology. The Board must ensure that the public can observe, when applicable, and hear the discussions and deliberations of all Board members, whether the member is participating in person or electronically.

5. Individuals subject to Board business, including licensees, representatives, witnesses, or subject matter experts must attend the meeting in person.

The act also specifies that when Board members conduct a hearing by means of teleconference, video conference, or any other similar electronic technology, it must establish a means that is widely available to the general public, to converse with witnesses and to receive documentary testimony and physical evidence.

Also, the act clarifies that meetings held under this provision do not exempt the Board from other requirements of Open Meetings Law that do not conflict with it.

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<sup>129</sup> R.C. 121.22, not in the act.

## Corrective changes

(R.C. 4517.05, 4517.06, 4517.07, and 4517.08)

The act makes corrective changes to several references to an “annual renewal” for the used motor vehicle license, the motor vehicle leasing dealer’s license, the motor vehicle auction owner’s license, and the distributor’s license. In practice, and in a separate reference for all of the licenses, they renew biennially.<sup>130</sup>

## State Board of Emergency Medical, Fire, and Transportation Services

(R.C. 4765.02)

The act eliminates a requirement that each organization required to nominate persons to the State Board of Emergency Medical, Fire, and Transportation Services put forth three nominees. Instead, it allows each organization to nominate any number of persons. Under continuing law, the Governor must then appoint a Board member from those nominees.

For example, one member of the Board must be a physician certified by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine who is active in the practice of emergency medicine and is actively involved with an emergency medical service (EMS) organization. Prior law required the Ohio Chapter of the American College of Emergency Physicians and the Ohio Osteopathic Association each to nominate three persons for this position. Under the act, each organization may nominate any number of persons for the position. The Governor must then appoint the physician Board member from those nominees.

In addition, the act does both of the following regarding the Board member who must be certified to teach EMS training and who must hold a certificate to practice as an EMT, AEMT, or paramedic:

- Eliminates the requirement that the Governor appoint the member from among three persons nominated by the Ohio Emergency Medical Technician Instructors Association and the Ohio Instructor/Coordinators’ Society; and
- Instead, requires the member to be appointed from among EMTs, AEMTs, and paramedics nominated by the Ohio Association of Professional Firefighters and EMTs, AEMTs, and paramedics nominated by the Northern Ohio Fire Fighters.

The act specifies that if any organization required to make nominations to the Board ceases to exist or fails to make a nomination within 60 days of a vacancy, the Governor may appoint any person who meets the professional qualifications designated for that member.

Finally, the act extends the potential time a member of the Board may continue in office if a successor does not take office from 60 days to three years. For reference, a Board member’s term is three years.

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<sup>130</sup> R.C. 4517.10.

## **Trauma Committee**

(R.C. 4765.04)

The act eliminates a requirement that each organization required to nominate persons to the Board's Trauma Committee put forth three nominees. Instead, each designated organization may nominate any number of persons. The DPS Director must then appoint members from those nominees. If any nominating organization ceases to exist or fails to nominate a member within 60 days of a vacancy, the Director may appoint any person who meets the professional qualifications designated for that member.

The act eliminates a restriction preventing the Director from appointing more than one member to the Trauma Committee who is employed by or practices in the same health system. It also allows the Director to appoint persons who practice at the same hospital or with the same EMS organization, provided they do not primarily practice at the same hospital or with the same EMS organization. Previously, the Director could not appoint more than one member who was employed by or practiced at the same hospital, health system, or EMS organization.

## **Emergency vehicle permits and ambulance inspections**

(R.C. 4766.07)

The act requires the State Board of Emergency Medical, Fire, and Transportation Services issue or deny a permit application for an emergency medical vehicle or aircraft within 45 days, instead of 60 days, of receiving the application. It also specifies that the Board must deny an application in accordance with the Administrative Procedure Act (R.C. Chapter 119).

The act allows the Board to determine the sufficiency of an ambulance's medical equipment, communication system, and interior by applying new sets of standards that were not allowed under prior law. Under prior law, the Board had to evaluate all of these interior components by applying the federal requirements for ambulance construction in effect at the time the ambulance was manufactured. The act allows the Board also to apply the following standards in effect at the time the ambulance was manufactured:

1. The national standard for ambulance construction approved by the American National Standards Institute (ANSI); and
2. The standard for ambulance construction approved by the Commission on Accreditation of Ambulance Services (CAAS).

Thus, the Board has the option of applying the federal standards, the ANSI standards, or the CAAS standards.

## **Assistant EMS and firefighter instructors**

(R.C. 505.38, 737.22, 4765.11, and 4765.55)

H.B. 509 of the 134<sup>th</sup> General Assembly made changes to the law governing several occupational licenses, including eliminating the EMS Assistant Instructor Certificate and the Assistant Fire Instructor Certificate. In order to effectuate the elimination of the certifications, the State Board of Emergency Medical, Fire, and Transportation Services, after April 6, 2023, was

required to no longer require certification to practice as an EMS or fire assistant instructor, to no longer issue those certifications, and to no longer renew any current certifications. A person certified as an EMS or fire assistant instructor, however, could retain that certification until its expiration, subject to any of the conditions or responsibilities of retaining it.

The act modifies the elimination of these certifications by allowing anyone holding an unexpired and valid EMS Assistant Instructor Certificate or Assistant Fire Instructor Certificate prior to April 6, 2023, to continue to both hold and to renew those certifications. The certification remains valid (still subject to the conditions and responsibilities of retaining it) until its holder allows it to expire or to lapse. The Board cannot issue new certifications (consistent with H.B. 509); however, the act preserves the existing certifications and their renewal.

## **Ohio Narcotics Intelligence Center**

(R.C. 5502.69)

The act codifies the Ohio Narcotics Intelligence Center in DPS. According to DPS, the Center was created by Governor DeWine in 2019 via Executive Order 2019-20D.

The Center must do all of the following:

1. Coordinate law enforcement response to illegal drug activities for state agencies and act as a liaison between state agencies and local entities for the purposes of communicating counter-drug policy initiatives;

2. Collect, analyze, maintain, and disseminate information to support law enforcement agencies, other government agencies, and private organizations in detecting, deterring, preventing, preparing for, prosecuting, and responding to illegal drug activities. The records received and created are confidential law enforcement investigatory records that are not considered a public record.

3. Develop and coordinate policies, protocols, and strategies that may be used by local, state, and private organizations to detect, deter, prevent, prepare for, prosecute, and respond to illegal drug activities; and

4. Develop, update, and coordinate the implementation of an Ohio drug control strategy to guide state and local governments and public agencies.

The DPS Director must appoint an executive director of the Center. The executive director must serve at the Director's discretion. The executive director must advise the Governor and the Director on matters pertaining to illegal drug activities. To carry out the duties assigned under the act, the executive director, subject to the direction and control of the Director, may appoint and maintain necessary staff and may enter into any necessary agreements.

## **Security Grants Program**

(Sections 373.10 and 373.20)

The act expands the eligible purposes of grants issued under the Security Grants Program. The Emergency Management Agency (EMA) administers the program and it has existed in its current form since approximately 2019. Through the program, the EMA issues grants of up to

\$100,000 to nonprofit organizations, houses of worship, chartered nonpublic schools, and licensed preschools. Under continuing law, the EMA issues grants for various security and counterterrorism purposes. The act keeps to that general purpose, but expands the specific uses of the grant money to include:

1. The lease, in addition to purchase, of qualified equipment (e.g., equipment for emergency and crisis communication, crisis management, or trauma and crisis response);
2. The placement of qualified equipment at a location that is not owned by the grantee, provided the appropriate authorizations are given by the political subdivision or law enforcement agency with jurisdiction over the location;
3. To fund coordinated training between law enforcement, counterterrorism agencies, and emergency responders; and
4. To continue coverage of costs that were covered by a prior grant issued to the grantee by the EMA.

The act also authorizes a nonprofit organization that serves a broad community or geographic area to use the grant money to provide antiterrorism-related services for all of its served area, including armed security personnel. Prior to receiving the grant, however, the nonprofit organization must provide the EMA with any appropriate compliance documentation required by the EMA. Additionally, multiple nonprofit organizations that are located at the same address may apply for separate security grants, if the nonprofit organizations can explain how they will each use the funding to address a different vulnerability. The act requires the EMA to include information about the Security Grants and the application process on its website.

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## **PUBLIC UTILITIES COMMISSION**

### **Electric infrastructure development (VETOED)**

- Would have permitted an electric distribution utility (EDU), prior to beginning an infrastructure development, to apply to PUCO for approval of an infrastructure development application for an economic development project (a land development of at least ten contiguous acres with the potential for commercial or industrial development but without adequate electric distribution service from an EDU).
- Would have permitted PUCO to approve such an application, if the infrastructure development would have been necessary to support or enable a state or local economic development project.
- Would have allowed PUCO, for an application, to approve the collection of certain infrastructure development costs using funds from either (but not both) (1) disbursements from the All Ohio Future Fund or (2) a rider or rate mechanism under the public utility ratemaking or competitive retail electric service laws.

### **Natural gas companies**

- Expands what is included as “natural gas” for purposes of determining entities that are natural gas companies under public utilities law.

### **Natural gas distribution service instrumentalities and facilities**

- Expands the property, equipment, or facilities installed or constructed by a natural gas company that may be treated as instrumentalities and facilities for distribution service after PUCO approval.

### **Electric infrastructure development (VETOED)**

(R.C. 4928.85 to 4928.89)

The Governor vetoed the electric infrastructure development provision that would have permitted an electric distribution utility (EDU) to file an application with PUCO for approval of infrastructure development necessary for a state or local economic development project (a land development of at least ten contiguous acres with the potential for commercial or industrial development but without adequate electric distribution service from an EDU). The provision would have required the EDU, prior to beginning the infrastructure development, to file, and receive PUCO approval for, the application and would have permitted PUCO to approve an infrastructure development application, if the infrastructure development would have been necessary to support or enable the project. For such applications, PUCO would have had the authority to approve the collection of certain infrastructure development costs from either (1) a disbursement from the All Ohio Future Fund or (2) a rider or rate mechanism under the public utility ratemaking law or an electric security plan under the competitive retail service law. But, it would have prohibited using funds from both of these sources for the cost collection.

A detailed description of the vetoed provisions is available on pages 562 to 564 of [LSC's analysis of H.B. 33, As Passed by the Senate \(PDF\)](#). The analysis is available online at the Legislation tab of the General Assembly's website at [legislature.ohio.gov](http://legislature.ohio.gov).

## **Natural gas companies**

(R.C. 4905.03)

The act expands what is included as “natural gas” for purposes of determining entities that are natural gas companies under public utilities law. Continuing law defines a person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, as a “natural gas company” when engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within Ohio. The act provides that “natural gas” includes natural gas that has been processed to enable consumption or to meet gas quality standards or that has been blended with propane, hydrogen, biologically derived methane gas, or any other artificially produced or produced gas.

## **Natural gas distribution service instrumentalities and facilities**

(R.C. 4929.18)

The act expands the property, equipment, or facilities installed or constructed by a natural gas company that may be treated as instrumentalities and facilities for distribution service, if PUCO determines that treatment is just and reasonable, to include:

- Property, equipment, or facilities to enable the blending of biologically derived methane gas (under continuing law, this is gas from the anaerobic digestion of organic materials, including animal waste and agricultural crops and residues<sup>131</sup>) to consumers in Ohio.
- Property, equipment, or facilities to enable interconnection with or receipt from any property, equipment, or facilities used to generate, collect, gather, or transport hydrogen, or to enable the blending of hydrogen with natural gas for supply to consumers in Ohio.

The act also provides that the property, equipment, or facilities described above that are determined to be just and reasonable by PUCO must be considered used and useful in rendering public service for purposes of determining reasonable public utility rates.

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<sup>131</sup> R.C. 5713.30(H), not in the act.

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## PUBLIC WORKS COMMISSION

### Clean Ohio Conservation Fund grant agreements

- Requires the Ohio Public Works Commission (OPWC) to amend certain Clean Ohio Conservation Fund grant agreements (and related deeds) made with a municipal corporation or nonprofit to acquire land or rights in land in Guernsey and Belmont counties.
- Stipulates that any amendment to a grant agreement must specify all of the following:
  - That any use restriction on the land concerning the grant agreement applies only to the surface of the land;
  - That the use restriction on the land does not apply to the mineral rights under the land surface;
  - That the grantee may sell, assign, transfer, lease, exchange, convey, or otherwise encumber the property's mineral rights; and
  - That the holder of those mineral rights may extract the resources subject to those mineral rights in accordance with applicable law.
- Allows OPWC to pursue remedies specified in deed restrictions or to exercise its legal right to pursue liquidated damages as authorized under Ohio law.

### OPWC appointments and vacancies

- Establishes a schedule for appointments to fill vacancies on OPWC, and changes the length of terms for Commission members from three years to four years.

### Clean Ohio Conservation Fund grant agreements

(Section 701.60)

#### Background

Under continuing law, the Ohio Public Works Commission (OPWC) may issue grants from the Clean Ohio Conservation Fund to local political subdivisions and nonprofit organizations for open space acquisition and riparian corridor and watershed enhancement. Natural resources assistance councils, which have geographical jurisdiction over proposed project areas and are appointed by each district public works integrating committee, initially approve grant applications for subsequent submission to OPWC. The types of eligible projects are:<sup>132</sup>

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<sup>132</sup> R.C. 164.22, not in the act.

Clean Ohio Conservation Fund eligible projects	
Type of project	Project emphasis
Open space acquisition of land	The support of comprehensive open space planning and incorporation of aesthetically pleasing and ecologically informed design.
	The enhancement of economic improvement that relies on recreation and ecotourism in areas with relatively high unemployment and lower incomes.
	The protection of habitat for rare, threatened, and endangered species or the preservation of high quality, viable habitat for plant and animal species.
	The preservation of existing high quality wetlands or other scarce natural resources within the geographical jurisdiction of the council.
	The enhancement of educational opportunities and provision of physical links to schools and after-school centers.
	The preservation or restoration of water quality, natural stream channels, functioning floodplains, wetlands, streamside forests, and other natural features that contribute to the quality of life in Ohio and to Ohio's natural heritage.
	The reduction or elimination of nonnative, invasive species of plants or animals.
	The proper management of areas where safe fishing, hunting, and trapping may take place in a manner that will preserve a balanced natural ecosystem.
	The increase of habitat protection.
The protection and enhancement of riparian corridors or watersheds	Inclusion as part of a stream corridor-wide or watershed-wide plan.
	The provision of multiple recreational, economic, and aesthetic preservation benefits.
	The preservation or restoration of floodplain and streamside forest functions.
	The preservation of headwater streams.
	The restoration and preservation of aquatic biological communities.

## **Agreement and deed to allow the transfer of mineral rights**

Under the act, OPWC must amend agreements (and related deeds) with a grantee under which it issued a grant to acquire land or rights in land in Guernsey and Belmont counties, if the grantee so agrees. The amendment to the agreement must specify all of the following:

1. That any use restriction on the land concerning the grant agreement applies only to the surface of the land;
2. That the use restriction on the land does not apply to the mineral rights under the land surface;
3. That the grantee may sell, assign, transfer, lease, exchange, convey, or otherwise encumber the property's mineral rights; and
4. That the holder of those mineral rights may extract the resources subject to those mineral rights in accordance with applicable law.

## **Remedies and liquidated damages**

The act allows OPWC to pursue remedies specified in deed restrictions or to exercise its legal right to pursue liquidated damages as authorized under Ohio law.<sup>133</sup> It also specifies that a grantee is liable for payment of liquidated damages resulting from a violation of a deed restriction that occurred prior to the amendment of the deed restriction (i.e., if a grantee has already sold mineral rights in violation of the current deed restriction terms). OPWC must deposit the liquidated damages in the Clean Ohio Conservation Fund and allocate it as follows:

- First, to the natural resources assistance council that approved the original grant in an amount equal to the total grant received by the grantee (if the liquidated damages cover the total amount).
- Then, any excess amount must remain in the Clean Ohio Conservation Fund to be used for new grants for eligible projects and allocated on an annual basis to natural resources assistance councils in accordance with continuing law.

## **OPWC appointments and vacancies**

(R.C. 164.02; Section 701.80)

The act establishes a schedule for appointments to fill vacancies on OPWC, and changes the length of terms for OPWC members from three years to four years. It specifies that a person who is a member of OPWC before October 3, 2023, may complete the term to which the person was appointed.

The act requires that, by November 2, 2023, the Senate President must appoint one member to a term of four years, and the House Speaker, the House Minority Leader, and the Senate Minority Leader each must appoint one member to an initial term of two years. All subsequent appointments to OPWC, including those for the three positions whose terms expire

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<sup>133</sup> See R.C. 164.26, not in the act.

on December 31, 2023, must be for terms of four years. All terms commence from the date of appointment.

The act clarifies that a member who is appointed to fill a vacancy must complete the remainder of that term, and may be reappointed for up to two subsequent four-year terms.

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## **DEPARTMENT OF REHABILITATION AND CORRECTION**

### **Targeted Community Alternatives to Prison (T-CAP)**

- Changes the name “Targeting Community Alternatives to Prison” program to “Targeted Community Alternatives to Prison” program.
- Requires the Department of Rehabilitation and Correction (DRC) to establish deadlines for a voluntary county to indicate its participation in T-CAP before each state fiscal biennium.
- Requires a memorandum of understanding to set forth the plans by which the county will use the grant money provided to it in the state fiscal years within the specified state fiscal biennium.

### **Earned credit**

- Effective April 4, 2024, increases the maximum credit a prisoner may earn for participating in a DRC-approved program from 8% to 15% of the prisoner’s sentence; specifies that if a prisoner has met the 8% cap as of October 3, 2023, or reaches the 8% cap between October 3, 2023, and April 3, 2024, the cap is 15% of the prisoner’s sentence.
- Stipulates that this change applies only with respect to the time the prisoner is confined between October 3, 2023, and April 4, 2024, and the 15% cap that takes effect April 4, 2024, will apply only with respect to the time a prisoner is confined on or after that date.

### **Public records – correctional and youth services employee**

- Modifies the public records exception for “restricted portions of a body-worn or dashboard camera recording” by adding correctional employees and youth services employees in each place there is a reference to peace officers and law enforcement.

### **Adult Parole Authority termination of post-release control**

- Modifies the Adult Parole Authority’s functions with respect to the classifying, as “favorable” or “unfavorable,” the termination of an offender’s post-release control.

### **Full board hearings**

- Removes the ability for a board hearing officer, a board member, or the Office of Victims’ Services to petition for a full parole board hearing.
- Provides that if a victim of certain offenses, the victim’s representative, or specified other persons request a full board hearing, they must do so through the Office of Victims’ Services.
- Permits certain family members of a victim to request, through the Office of Victims’ Services, for the board to hold a full board hearing and, if a request is made, the majority of those present at the board meeting must determine whether a full board hearing will be held.

- Requires the parole board to grant a full board hearing request submitted by a prosecuting attorney.
- Allows the State Public Defender, when designated by DRC, to appear at a full board hearing and to give testimony or to submit a written statement.

## **Ohio Penal Industries**

- Requires DRC to allow prisoners working toward completion of a high school diploma or equivalent to participate in Ohio Penal Industries.

## **Victim conference communications**

- Provides that communications during a victim conference are confidential and are not public records.

## **Local jail grants**

- Requires DRC to determine, by July 1, 2024, which counties will receive local jail grant assistance, using a funding formula by which TAX ranks counties by their property tax and sales tax revenues.
- Requires DRC to adopt application guidelines and conduct a needs assessment before determining which counties receive funding.
- Provides that a county's portion of the basic project cost is a percentage equal to the county's percentile ranking pursuant to the funding formula, except that the state must pay at least 25% of the basic project cost.

## **Targeted Community Alternatives to Prison (T-CAP)**

(R.C. 2929.34 and 5149.38)

The act changes the name "Targeting Community Alternatives to Prison" program to "*Targeted* Community Alternatives to Prison" (T-CAP) program. It clarifies that in any voluntary county, the board of county commissioners and the Administrative Judge of the General Division of the Court of Common Pleas may agree to have the county participate in the program by submitting a memorandum of understanding (MOU), either as a single county or jointly with other counties, to the Department of Rehabilitation and Correction (DRC) for approval.

The act requires DRC to establish deadlines for a voluntary county to indicate its participation in T-CAP before each state fiscal biennium. In reviewing a submitted MOU for approval, DRC must prioritize a voluntary county that has previously been a voluntary county. DRC may review a MOU for a new voluntary county if the General Assembly has appropriated sufficient funds for that purpose. Under former law, the MOU had to be submitted to DRC for approval by no later than September 1, 2022.

The act requires the MOU to set forth the plans by which the county will use grant money in the fiscal years within the state fiscal biennium. Under continuing law, the MOU must specify the manner in which the county will address a per diem reimbursement of local correctional

facilities for prisoners who serve a prison term under T-CAP. The per diem reimbursement rate must be determined and specified in the MOU.

## **Earned credit**

(R.C. 2967.193 and 2967.194)

Under continuing law, until April 4, 2024, the aggregate days of credit provisionally earned by a person for participating in and completing a program or activity and the aggregate days of credit finally credited to a person must not exceed 8% of the total number of days in the person's stated prison term.

The act provides that if a person is confined in a state correctional institution or in the substance use disorder treatment program after October 3, 2023, and if the person as of October 3, 2023, has met the 8% limit, or the person meets that 8% limit between October 3, 2023, and April 3, 2024, both of the following apply:

- On or after October 3, 2023, the 8% limit no longer applies to the person;
- On or after October 3, 2023, the aggregate days of credit provisionally earned by a person for program or activity participation and completion and the aggregate days of credit finally credited to a person must not exceed 15% of the total number of days in the person's stated prison term.

The act clarifies that the above provisions will apply to the prisoner with respect to the time that the prisoner was confined on and after October 3, 2023, and prior to April 4, 2024.

Under continuing law, on or after April 4, 2024, the aggregate days of credit provisionally earned by a person for program or activity participation and program and activity completion and the aggregate days of credit finally credited to a person must not exceed 15% of the total number of days in the person's stated prison term. The act reaffirms that this provision will apply only with respect to the time that a prisoner is confined on or after April 4, 2024.

## **Public records – correctional and youth services employee**

(R.C. 149.43)

Under continuing law, "public record" means records kept by any public office. "Restricted portions of a body-worn or dashboard camera recording" is an exception to the Public Records Law. The definition of "restricted portions of a body-worn or dashboard camera recording" contains references to peace officers and law enforcement. When the references are made, the definition sometimes refers to correctional employees and youth services employees. The act modifies the definition of "restricted portions of a body-worn or dashboard camera recording" by adding a reference to correctional employees and youth services employees in each place that refers to peace officers and law enforcement. "Restricted portions of a body-worn or dashboard camera recording" means any visual or audio portion of a body-worn camera or dashboard recording that shows, communicates, or discloses any of the following:

- The image or identity of a child or information that could lead to the identification of a child who is a primary subject of the recording when DRC, the Department of Youth

Services (DYS), or the law enforcement agency knows or has reason to know the person is a child based on its records or content of the recording (under continuing law);

- The death of a person or a deceased person's body, unless the death was caused by a correctional employee, youth services employee, or peace officer or the consent of the decedent's executor or administrator has been obtained (under continuing law);
- The death of a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder, occurring while the decedent was engaged in the performance of official duties, unless the consent of the decedent's executor or administrator has been obtained (under continuing law);
- Grievous bodily harm, unless the injury was effected by a correctional employee, youth services employee, or peace officer or the consent of the injured person or the injured person's guardian has been obtained (under continuing law);
- An act of severe violence against a person that results in serious physical harm to the person, unless the act and injury was effected by a correctional employee, youth services employee, or peace officer or the consent of the injured person or the injured person's guardian has been obtained (under continuing law);
- Grievous bodily harm to a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless the consent of the injured person or the injured person's guardian has been obtained (under continuing law);
- An act of severe violence resulting in serious physical harm against a correctional employee, youth services employee, peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless the consent of the injured person or the injured person's guardian has been obtained (under continuing law);
- A person's nude body, unless the person's consent has been obtained (under continuing law);
- Protected health information, the identity of the person in a health care facility who is not the subject of a correctional, youth services, or law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a correctional, youth services, or law enforcement encounter (under the act);
- Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence (under continuing law);
- Information that does not constitute a confidential law enforcement investigatory record, that could identify a person who provides sensitive confidential information to DRC, DYS, or a law enforcement agency when the disclosure of the person's identity or the information provided could reasonably be expected to threaten or endanger the safety or property of the person or another person (under continuing law);

- Personal information of a person who is not arrested, cited, charged, or issued a written warning by a peace officer (under continuing law);
- Proprietary correctional, youth services, or police contingency plans or tactics that are intended to prevent crime and maintain public order and safety (under the act);
- A personal conversation unrelated to work between correctional employees, youth services employees, or peace officers or between a correctional employee, youth services employee, or peace officer and an employee of a law enforcement agency (under the act);
- A conversation between a correctional employee, youth services employee, or peace officer and a member of the public that does not concern correctional, youth services, or law enforcement activities (under the act);
- The interior of a residence, unless the interior of a residence is the location of an adversarial encounter with, or a use of force by, a correctional employee, youth services employee, or peace officer (under the act);
- Any portion of the interior of a private business that is not open to the public, unless an adversarial encounter with, or a use of force by, a correctional employee, youth services employee, or peace officer occurs in that location (under the act).

## **Adult Parole Authority termination of post-release control**

(R.C. 2967.16)

The act modifies law that pertains to the Adult Parole Authority's functions with respect to the termination of an offender's post-release control (PRC). PRC is imposed on specified categories of offenders convicted of a felony, upon their release from confinement in a state correctional institution. Under continuing law, when a prisoner released under a period of PRC has faithfully performed the conditions and obligations of the prisoner's PRC sanctions, and has obeyed the Authority's rules and regulations that apply to the prisoner, or has the period of PRC terminated by a court, the Authority may terminate the period of PRC and issue to the prisoner a certificate of termination.

Specifically, the act:

1. Replaces the law that required the Authority to classify the termination as "favorable" or "unfavorable," depending on the offender's conduct and compliance with the supervision conditions, with a provision that instead allows the Authority to classify the termination as "unfavorable" if the offender's conduct and compliance with the supervision conditions is unsatisfactory (it removes the references to a "favorable" classification);

2. Specifies that if the Authority does not classify the termination of PRC as "unfavorable," the offender's conduct and compliance with the supervision conditions may not be considered as an "unfavorable" termination by a court, when considering the factors described in a specified provision of the Felony Sentencing Law at a future sentencing hearing for a felony. (The specified Felony Sentencing Law provision requires the sentencing court to consider a list of factors as indicating that the felon is likely to commit future crimes – the listed factors include that, at the time of committing the offense, the felon had been "unfavorably" terminated from post-release

control for a prior offense, under the provision described above in (1) or under continuing law's R.C. 2929.141.)

3. In a provision that requires DRC, to adopt a rule by January 2003, establishing the criteria for classification of a PRC termination as "favorable" or "unfavorable," eliminates the reference to "favorable."

## **Full parole board hearings**

(R.C. 5149.101)

The act removes the ability for a board hearing officer, a board member, or the Office of Victims' Services to petition for a full parole board hearing that relates to the proposed parole or re-parole of a prisoner. Under the act, if a victim of certain offenses, the victim's representative, spouse, parent or parents, sibling, or child of a victim requests a full board hearing, they must do so through the Office of Victims' Services.

A family member of a victim who is not listed above may also request for the board to hold such a full board hearing through the Office of Victims' Services. If such a request is made, the majority of those present at the board meeting must determine whether a full board hearing will be held.

Under the act, if a prosecuting attorney requests such a full board hearing, the board must hold a full board hearing.

The act allows the State Public Defender, when designated by the DRC, to appear at a full board hearing and to give testimony or to submit a written statement, as permitted by the board.

## **Ohio Penal Industries**

(R.C. 5145.161)

The act modifies the requirements of DRC's "program for employment of prisoners" by giving prisoners the opportunity to be assigned a job with the Ohio Penal Industries, or any other job level or grade of prisoner employment that the DRC Director may designate, if the prisoner is working toward the completion of, but has not yet obtained, a high school diploma or equivalent.

## **Victim conference communications**

(R.C. 2930.16)

The act requires the communications during a victim conference held pursuant to the Victim's Rights Law and the rules adopted by the Adult Parole Authority to be confidential, and provides that they are not public records under the Public Records Law.

The Victim's Rights Law requires the Authority to adopt rules providing for a victim conference upon request of the victim, a member of the victim's immediate family, or the victim's representative, prior to a parole hearing in the case of a prisoner who is incarcerated for the commission of aggravated murder, murder, or an offense of violence that is a first, second, or third degree felony or is under a sentence of life imprisonment.

## Local jail grants

(Section 383.10)

Regarding funding line item 5ZQ0 501505, “Local Jail Grants,” the act requires DRC to distribute the funds to counties for the construction and renovation of county jails by July 1, 2024, using a funding formula to determine which counties will receive the funding, and what their percentage of the basic project cost will be.

### Funding formula

DRC must choose which projects to fund using a funding formula that ranks counties based on sales tax and property tax revenue. TAX conducts the ranking. The ranking formula is as follows:

- First, TAX takes the total value of all property in the county listed and assessed for taxation on the tax list in the preceding tax year, and lists each county in order of total value, ascending, so that the county with the lowest value is number one on the list – its property tax ranking.
- Second, TAX ranks each county based on the estimate of the gross amount of taxable retail sales sourced to the county as reported by TAX for the preceding fiscal year, computed by dividing the total amount of tax revenue received by the county during that period from sales taxes and use taxes by the aggregate sales tax rate currently levied by the county. TAX lists each county in order of total value, ascending, so that the county with the lowest value is number one on the list – its sales tax ranking. Any county that does not currently levy sales taxes is automatically ranked at number 88 on the list.
- Then, for each county, TAX adds the numbered rank for property values to the numbered rank for sales tax, and orders the counties according to the sum of the two ranks, the county with the lowest sum being number one on the list. The percentile ranking is determined by taking the county’s ranking on this final list, dividing it by 88, and multiplying it by 100. This percentile ranking not only is used to help determine which counties to invite to apply for assistance, but also is used to determine the county’s basic share of the project cost.

For this final ranking, if two or more counties are tied, the county with the lowest population receives the lowest final ranking. The final ranking for the counties should be numbers 1 through 88.

### Application process and needs assessment

Upon receiving the final rankings, DRC must select a number of the lowest ranking counties and invite the selected counties to apply for assistance. Two or more counties may apply jointly as long as at least one was invited to apply.

DRC must adopt guidelines to accept and review applications and designate projects, including guidelines requiring counties to justify the need for the project.

Upon a county's application, DRC must conduct a needs assessment for that county, to determine the following:

- The county's need for additional jail facilities, or for renovations or improvements to existing jail facilities, based on whether and to what extent existing facilities comply with safety and construction standards, including the age and condition of the facilities;
- The number of jail facilities to be included in a project;
- The estimated annual, monthly, or daily cost of operating the facility once it is operational, as reported and certified by the county auditor;
- The estimated basic project cost of constructing, acquiring, reconstructing, or making additions to each facility; and
- Whether the county has recently received a grant from the state to construct or renovate jail facilities.

Following the needs assessment, DRC may approve constructing, acquiring, reconstructing, or making additions to a jail facility only upon evidence that the proposed project conforms to existing construction and renovation standards, and that it keeps with the needs of the county or counties as determined by the needs assessment. Exceptions are authorized only in those areas where topography, sparsity of population, and other factors make larger jail facilities impracticable.

### **Basic project cost**

The county's portion of the basic project cost is equal to 1% of the basic project cost times the percentile in which the county ranks according to the county's percentile ranking. The state's portion is the remainder, except that the state's portion is always at least 25%. If the county's portion is calculated to exceed 75%, the county's portion must be 75%. For multicounty jail facilities, if the sum of two or more counties' portions of the total basic project cost are calculated to exceed 75% of the total basic project cost, the counties' portions are determined pro rata, so that the sum of the portions is 75%.

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## STATE RETIREMENT SYSTEMS

### **SERS contribution based benefit cap**

- Requires the School Employees Retirement Board (SERS Board) to establish the “contribution based benefit cap” (CBBC), a limit on the retirement allowance a member may receive.
- Requires the SERS Board, beginning August 1, 2024, to calculate a member’s CBBC based on the member’s contributions converted to an annuity and multiplied by the CBBC factor designated by the Board, and reduce the member’s retirement allowance to an amount equal to the member’s CBBC if the retirement allowance would exceed the CBBC.
- Applies the CBBC to retirement allowances and to survivor benefits that are based on retirement allowances.

### **PERS combined plan consolidation**

- Allows the Public Employees Retirement System (PERS) to consolidate the PERS combined plan with the PERS defined benefit plan and establishes requirements for how members’ accounts and funds are to be treated following the consolidation.
- Specifies the eligibility requirements for age and service retirement of a member participating in the PERS combined plan following consolidation with the PERS defined benefit plan.
- Establishes the formulas used to calculate the amount of the retirement allowance such a member is eligible to receive based on the funds in the member’s individual account.
- Specifies that the laws governing PERS regarding coordination of benefits, purchases or transfers of service credit, refunds of contributions, service as a PERS law enforcement or public safety officer, and long-term care insurance do not apply to a member’s individual account if the member was a participant in the PERS combined plan at the time of consolidation.

### **Additional PERS service credit purchase**

- Allows a PERS member appointed by the Speaker of the House or Senate President to serve full-time as a member of a board, commission, or other public body to purchase additional PERS service credit for the appointment period.

### **SERS contribution based benefit cap**

(R.C. 3309.363)

The act requires the School Employees Retirement (SERS) Board to establish the “contribution based benefit cap” (CBBC). The CBBC is a limit on the retirement allowance a member may receive. It also is a limit on the survivor benefit based on a member’s retirement allowance the member’s beneficiary may receive. Under the act, if the member’s retirement

allowance exceeds the member's CBBC, beginning August 1, 2024, the Board must reduce the allowance to an amount equal to the CBBC.

The SERS Board must designate a number as the "CBBC factor" and may revise the CBBC factor based on the advice of a Board-appointed actuary. According to SERS, the CBBC factor reflects the size of the gap between a member's statutorily calculated benefit and the annuity payable based on the member's accumulated contributions.<sup>134</sup> The act requires the SERS Board, beginning August 1, 2024, to determine a member's CBBC before paying a retirement allowance. To determine the CBBC, the Board must do both of the following:

1. Determine the amount that would result if the total of employee contributions made by the member was paid out as an annuity for the member's life;
2. Multiply the amount determined under (1) by the Board-designated CBBC factor.

For example, if the CBBC factor was 6, the SERS Board would multiply the amount determined under (1), which is based on the member's contributions, by 6. The result would be the member's CBBC. If the member's retirement allowance exceeds the CBBC, the retirement allowance is reduced to equal the CBBC. If the SERS Board reduces the member's retirement allowance under the act, the reduced retirement allowance is the member's single lifetime allowance.

The Board may adopt rules to implement the CBBC.

## **PERS combined plan consolidation**

(R.C. 145.196 and 145.335, with conforming changes in multiple R.C. sections)

The act allows the Public Employees Retirement System (PERS) to consolidate the PERS combined plan with the PERS defined benefit plan and establishes requirements for how members' accounts and funds are to be treated following the consolidation. Under continuing law, PERS may offer one or more defined contribution plans under which benefits are based on a member's accumulated contributions in an individual account. A defined contribution plan also may offer definitely determinable benefits similar to the benefits under the PERS defined benefit plan.<sup>135</sup> Benefits under the defined contribution plans are governed by plan documents adopted by the PERS Board, rather than by the Revised Code.<sup>136</sup>

The PERS combined plan is a hybrid plan that includes a defined benefit plan component and a defined contribution plan component that includes definitely determinable benefits. PERS

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<sup>134</sup> [Benefit Inflation Control \(PDF\)](#), which may be accessed by conducting a keyword "sustainability" search on the SERS website, [ohsers.org](https://ohsers.org), navigating to the "sustainability" page under the "About SERS" menu and selecting the "Materials" PDF link next to "Exploring Benefit Inflation Control Measures."

<sup>135</sup> R.C. 145.81 and 145.82, not in the act.

<sup>136</sup> See [The Public Employees Retirement System of Ohio Combined Defined Benefit/Defined Contribution Plan \(PDF\)](#), which may be accessed by conducting a keyword "Combined plan document" search and clicking on "OPERS Legal" on the PERS website: [opers.org](https://opers.org).

stopped offering the option for new members to enroll in the PERS combined plan beginning January 1, 2022.<sup>137</sup>

### **Treatment of consolidated funds and member accounts**

If PERS consolidates the PERS combined plan with the PERS defined benefit plan, the combined plan ceases to be a separate legal entity and all members participating in the combined plan become members of the defined benefit plan. All former members of the combined plan are entitled to the rights and benefits the member was entitled to under the combined plan before the consolidation occurred, subject to future amendments to the defined benefit plan.

The act also requires PERS to maintain each former combined plan member's individual account and deposit and credit the member's contributions under the defined benefit plan in the account. A member's individual account consists of the member's contributions under the PERS combined plan that are maintained in the Defined Contribution Fund and used to pay the member's benefits under a defined contribution plan. If PERS maintains a member's individual account in the Defined Contribution Fund for purposes of investing the account's funds, it must treat the account as deposited and credited to the defined benefit plan for accounting purposes. The act also requires PERS to administer a member's account in accordance with rules adopted by the PERS Board and in a manner consistent with the PERS defined contribution plan.

PERS must deposit and credit the employer contributions made under the defined benefit plan for a former combined plan member in the Employers' Accumulation Fund to pay the member's benefits.

### **Benefit eligibility and amounts**

A PERS combined plan member must meet the same eligibility requirements for age and service retirement, disability, survivor, or death benefits under the act that a PERS defined benefit plan member must meet under continuing law.<sup>138</sup> The act also establishes the benefit formulas used to calculate a combined plan member's retirement allowance.

Under continuing law, a member's retirement eligibility is designated as "Group A," "Group B," or "Group C," depending on when the member is eligible to retire as follows:

- **Group A** – members who, not later than January 7, 2018, met the eligibility requirements in effect before January 7, 2013;
- **Group B** – members who met the eligibility requirements in effect on January 7, 2013, not later than January 7, 2023, or have 20 or more years of service credit as of that date;

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<sup>137</sup> [Update to OPERS Plan Selection Options for New Hires \(PDF\)](#), which may be accessed by conducting a keyword "Plan selection options" search on the PERS website: [opers.org](https://opers.org).

<sup>138</sup> For eligibility requirements and benefit amounts for disability, survivor, and death benefits, see [OPERS Member Handbook \(PDF\)](#), which may be accessed by conducting a keyword "Member handbook" search on the PERS website: [opers.org](https://opers.org).

- **Group C** – members who are not in Group A or B and meet applicable eligibility requirements.

Under the act, and the same as under the Combined Plan document,<sup>139</sup> a Group A or Group B member's retirement allowance is calculated by multiplying 1% of the member's final average salary (FAS) by the first 30 years of service, plus 1.25% of the member's FAS for each subsequent year of service. The calculation for a Group C member is 1% of FAS for the first 35 years of service plus 1.25% of FAS for each subsequent year of service. A Group A or Group B member's FAS is the average of the member's three highest years of earnable salary; for a Group C member it is the average of the highest five years. A combined plan member is eligible for a reduced benefit if the member retires before becoming eligible for an unreduced benefit, similar to a defined benefit plan member under continuing law.

The benefit amounts for disability, survivor, or death benefits under the act are similar to the amounts under the PERS combined plan before the consolidation.<sup>140</sup>

Similar to benefits under the defined benefit plan, benefits paid to a former member of the combined plan cannot exceed the lesser of the following limits:

- If established, the CBBC (which is similar to the CBBC authorized by the act for SERS);
- 100% of the member's FAS; or
- Limits established under the Internal Revenue Code.

As under the Combined Plan document, benefits are paid in accordance with the same benefits plans to which defined benefit plan members are subject.<sup>141</sup>

## Exceptions

The act specifies that the following provisions of the law governing PERS do not apply to the individual account of a member participating in the PERS combined plan at the time of consolidation:

- The calculation of a member's retirement allowance who is participating in the PERS defined benefit plan or is a PERS public safety or law enforcement officer;
- Coordinating benefits for a member who also has service credit with the State Teachers Retirement System or SERS;
- Participation in long-term care insurance, if offered by PERS;

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<sup>139</sup> See Section 9.03 of [The Public Employees Retirement System of Ohio Combined Defined Benefit/Defined Contribution Plan \(PDF\)](#).

<sup>140</sup> See [The Public Employees Retirement System of Ohio Combined Defined Benefit/Defined Contribution Plan \(PDF\)](#).

<sup>141</sup> See [The Public Employees Retirement System of Ohio Combined Defined Benefit/Defined Contribution Plan \(PDF\)](#).

- Refunding a member's contributions who leaves the member's public employment;
- Treating a member's regular PERS service credit or PERS public safety officer service credit as PERS law enforcement officer service credit;
- The reemployment of retirants in certain positions covered by PERS;
- Continued employment of a PERS member who retires from one, but not all, positions in which the member works at the time of retirement;
- Restoring a member's service credit after the member withdrew the member's contributions from the system;
- A member's ability to make additional voluntary contributions to the member's account;
- The establishment of a retirement incentive plan by an employer for its employees;
- The calculation of the mitigating rate for alternative retirement programs;
- Crediting interest to certain members' accounts.

Under continuing law, these provisions do not apply to a PERS defined contribution plan unless the plan document governing the plan specifically incorporates the provision.<sup>142</sup>

## **Additional PERS service credit purchase**

(R.C. 145.201)

Under the act, a PERS member appointed by the Speaker of the House or Senate President to serve full time as a member of a board, commission, or other public body may, before retirement, purchase additional PERS service credit for the appointment period in an amount up to 35% of the credit allowed for that period. Continuing law allows a PERS member who is an elective official or is appointed by the Governor with the advice and consent of the Senate to serve as a full-time member of a board, commission, or other public body to purchase the additional service credit for the period as an elective or appointed official.

Continuing law allows the PERS Board to determine by rule who is full-time for purposes of determining eligibility to purchase additional service credit. Under those rules, a member of a board, commission, or other public body must earn a salary of at least \$1,000 per month to be considered full time.<sup>143</sup>

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<sup>142</sup> R.C. 145.82, not in the act.

<sup>143</sup> O.A.C. 145-2-07.

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## **SECRETARY OF STATE**

### **Data Analysis Transparency Archive (DATA) Act**

- Enacts the Data Analysis Transparency Archive (DATA) Act to create a new office within the Office of the Secretary of State (SOS) and to modify the ways in which the boards of elections must retain election data, enter it into the Statewide Voter Registration Database (SWVRD), and make it available to the public.
- Requires the SOS and the boards to implement these changes by January 1, 2025.

### **Office of Data Analytics and Archives**

- Creates the Office of Data Analytics and Archives in the Office of the SOS, which must retain, analyze, and publish election data and business services data.

### **Statewide Voter Registration Database**

- Codifies the data fields that must be included in the SWVRD for each registered elector and institutes uniform requirements for related recordkeeping.
- Provides uniform methods for determining an elector's voter registration date and voting history for inclusion in the SWVRD.
- Requires the SWVRD to include each elector's last activity date, as defined by the SOS by rule, along with any other information required by rule.
- Requires the boards to create daily archives of their voter registration databases and send them to the SOS during the period beginning on the 46<sup>th</sup> day before an election and ending on the 81<sup>st</sup> day after an election.

### **Public access to voter registration records**

- Specifies that voter registration forms and the SWVRD are public records subject to disclosure under the Public Records Law in the same manner as records of other public offices, instead of requiring those records to be open to public inspection under a separate provision of law.
- Clarifies which pieces of information contained in a voter registration record are subject to disclosure and prohibits the disclosure of an elector's telephone number or email address.
- Adds to the information that must be available about each elector on the public website version of the SWVRD.
- Requires that website to show an elector's birth date, voter registration date, and last activity date, in addition to other information that is included under continuing law.
- Prohibits any of the information that is exempt from disclosure as a public record from being made available on the website.

## **Retention of ballots after an election**

- Lengthens the time that boards of elections must preserve all used and unused ballots from a nonfederal election to at least 81 days after the day of the election, instead of 60 days.

## **Public inspection of ballot drop box surveillance**

- Removes the requirement that the video recordings of video surveillance of secure ballot drop boxes must be available for public inspection immediately upon request, and instead specifies that it be made available upon request in accordance with the procedures under the Public Records Act.
- Changes the requirement that each day's video recordings and video surveillance of secure ballot drop boxes be made available on the internet for streaming or download to the public within 24 hours after the video ends to 72 hours.

## **Canvass of election returns**

- Allows the boards of elections to begin the canvass of the election returns as early as the fifth day after Election Day, as opposed to the 11<sup>th</sup> day as under previous law.

## **Campaign communications regarding county political parties**

- Adds prohibitions to the Campaign Finance Law in order to prevent a political action committee or political contributing entity from impersonating or purporting to speak on behalf of a county political party without the party's permission.

## **Precinct election official training**

- Requires the SOS to make grants to the boards of elections to pay the cost of precinct election official training programs, instead of reimbursing counties for those costs.

## **Electronic pollbook reimbursement**

- Modifies procedures established under H.B. 45 of the 134<sup>th</sup> General Assembly for the SOS to reimburse the boards of elections for 85% of the cost of electronic pollbooks and ancillary equipment, up to each county's allocated share of a previously made appropriation.

## **Safe at Home fines**

- Allows courts to retain for administrative purposes up to 25% of fines collected by the court for the Address Confidentiality Program administered by the SOS, which is also known as Safe at Home.
- Allows a court to assign to the prosecuting attorney as reimbursement up to 25% of fines collected by the court for the Address Confidentiality Program.

## **Save our Farmland and Protect our National Security Act (PARTIALLY VETOED)**

- Requires the SOS to compile and publish a registry of individuals, businesses, organizations, and governments that constitute a threat to the agricultural production of Ohio or the U.S.
- Would have required the SOS to include in the registry individuals, businesses, organizations, and governments that constitute a threat to military defense. (VETOED)
- Requires the SOS, in compiling the registry, to consult certain federal government lists of foreign adversaries, terrorist organizations, and sanctioned persons.
- Prohibits all persons listed on the registry (“registered persons”) from acquiring agricultural land in Ohio.
- Would have also prohibited registered persons from acquiring other real property located within 25 miles of a military base, camp, airport, or other similar installation under the jurisdiction of the U.S. armed forces. (VETOED)
- Allows an exception for property acquired by devise or descent or by operation of law in the collection of a debt, but requires the registered person to divest of such acquisitions within two years.
- Allows registered persons to retain land holdings acquired before October 3, 2023.
- Specifies that property acquired in violation of the act escheats to the state and must be sold at public auction.
- Names the prohibition the Save our Farmland and Protect our National Security Act.

## **Data Analysis Transparency Archive (DATA) Act**

(R.C. 111.11, 3503.13, 3503.15, 3503.151, 3503.152, 3503.153, and 3505.31; Sections 395.10, 395.20, 735.10, and 803.290)

These provisions of the act, called the Data Analysis Transparency Archive (DATA) Act, create a new office within the Office of the Secretary of State (SOS) and make changes to the ways in which the boards of elections must retain election data, enter it into the Statewide Voter Registration Database (SWVRD), and make it available to the public. The SOS and the boards must implement these changes by January 1, 2025.

### **Office of Data Analytics and Archives**

The act creates the Office of Data Analytics and Archives in the Office of the SOS. Under the direction of the SOS, the new office must do both of the following:

- Retain voter registration and other election related data, including administering the SWVRD; analyze those data for purposes of maintaining accurate election data; and publish those data;

- Retain, analyze, and publish business services data.

The SOS's office already generally performed those functions, but the law did not specify which staff were responsible for doing so. The act also makes changes regarding the collection and retention of election data, as described below.

## **Statewide Voter Registration Database**

### **Background on the SWVRD**

The federal Help America Vote Act of 2002 (HAVA) requires each state to maintain a computerized statewide voter registration list that is administered at the state level.<sup>144</sup> Historically, each county in Ohio maintained its own voter registration records in a variety of paper or electronic formats. In order to comply with HAVA, the Revised Code was amended to create the SWVRD and to require each county to submit its voter registration records to the SOS on a daily basis for inclusion in the database. Under continuing law, the SOS must adopt rules under the Administrative Procedure Act concerning the format and method of data entry and various other procedures related to the SWVRD.

### **Uniform data entry**

The act codifies the data fields that must be included in the SWVRD for each registered elector and institutes uniform requirements for related recordkeeping. And, the act requires the SOS to prescribe rules under the Administrative Procedure Act, specifying the manner in which any voter registration records the boards maintain in other data formats must be converted for inclusion in the SWVRD and establishing a method for transmitting information securely to the SOS. A board of elections and any vendor with which it contracts to provide voter registration software or related services must ensure that the board's voter registration system and practices comply with the act and related rules.

Under prior law, the SWVRD generally included all of the information listed below, but the manner of data entry was not standardized, which could result in discrepancies when comparing data across counties. For example, when an elector requested an absentee ballot but did not return it, or cast an absentee or provisional ballot that was not counted, some counties might have recorded the elector as having voted in the election, but other counties might not. As a result, it might have been difficult to collect statewide data about the number of ballots cast and counted in a given election.

### ***Personal information***

For each elector, the SWVRD must include all of the following personal information:

- The elector's name;
- The elector's birth date;
- The elector's current residence address;

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<sup>144</sup> 52 U.S.C. 21083.

- The elector's precinct number;
- The elector's Ohio driver's license or state identification card number, if available;
- The last four digits of the elector's Social Security number, if available;
- The elector's telephone number and email address, if available. This information is not required to register or to vote, but the boards of elections do sometimes collect it from electors.<sup>145</sup>

### ***Voter registration date***

The SWVRD must include an elector's voter registration date, based on the elector's most recent application to register to vote in Ohio. For purposes of this field, a change of address or change of name is not considered a new voter registration, and a person who is already registered but submits a new voter registration form is not considered to have registered again. That is, once an elector is registered anywhere in Ohio, the elector remains registered under the same record if the elector moves within the state, changes the elector's name, or submits a duplicate registration form.

The voter registration date must be determined as follows:

- In the case of an application delivered in person to a board of elections, the SOS, or another government office, such as the Bureau of Motor Vehicles, the date is the date stamped on the application upon receipt by the government office.
- In the case of an application delivered by mail to a board of elections or the SOS, the date is the date the application is postmarked.
- In the case of an application submitted online, the date is the date of the online submission.
- In the case of an application submitted to a board of elections by fax or email, as is permitted for uniformed services and overseas absent voters, the date is the date of the receipt of the fax or email.
- In the case of a provisional voter whose ballot is not counted because the person is not registered to vote, but who has provided enough information on the provisional ballot affirmation for it to serve as a voter registration application for future elections, the date is the date the board of elections determines that the provisional ballot is invalid.

However, an elector's voter registration date must not be during the period beginning on the day after the close of voter registration before an election (generally, the 29<sup>th</sup> day before Election Day) and ending on the day of the election. If the date determined above would be during that period, the voter registration date instead must be the date on which the board processes the application after the election.

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<sup>145</sup> R.C. 3503.14 and 3503.20, not in the act.

### ***Voting history***

The SWVRD must include all of the following for each election in which an elector cast a ballot that was counted:

- The date of the election;
- If the election was a primary election, one of the following:
  - The political party whose ballot the elector cast;
  - An indication that the elector voted only on the questions and issues appearing on the ballot at a special election held on the day of the primary election. (An elector is considered unaffiliated if the elector casts an issues-only ballot at a primary.)
- The type of ballot the elector cast.

If an elector cast a ballot that was not counted, or applied for an absent voter's ballot but did not return it, the act prevents that activity from being listed as part of the elector's voting history.

### ***Last activity date***

The SWVRD must include each elector's last activity date, as determined in accordance with rules adopted by the SOS under the Administrative Procedure Act. This information is relevant to continuing-law list maintenance procedures. For example, under continuing law, after an elector has been mailed a confirmation notice, the elector must respond to the notice, vote in an election, or update the elector's registration within a four-year period in order to avoid having the elector's registration canceled.<sup>146</sup>

### **Other information required by rule**

Finally, the act allows the SOS to require the boards to include other information in the SWVRD by rules adopted under the Administrative Procedure Act.

### **Daily archives**

Under the act, during the period beginning on the 46<sup>th</sup> day before an election and ending on the 81<sup>st</sup> day after the election, each board of elections must create a daily record of its voter registration database as of 4:00 p.m. (That time period represents the start of voting before an election through the date the official election results must be finalized.) The board must transmit the daily record to the SOS in a manner prescribed by the SOS. The SOS must archive the daily record and retain it for at least 22 months after the election (see "**Retention of ballots after an election,**" below).

### **Relocated provisions**

In reorganizing the statute governing the SWVRD, the act relocates several provisions of law, largely unchanged. The following table shows those provisions and their new locations under the act:

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<sup>146</sup> R.C. 3503.21(A)(7), not in the act.

Provision	Prior location	Location under the act
Requires the SOS to obtain information from other state agencies and to share information with other states or groups of states for the purpose of maintaining the SWVRD. (The act requires the new Office of Data Analytics and Archives to perform these functions.)	R.C. 3503.15(A)(2) to (5) and (D)(6) to (7)	R.C. 3503.151
Requires the SOS to conduct an annual review of the SWVRD to identify persons who appear not to be U.S. citizens. (The act makes no changes to this provision.)	R.C. 3503.15(H)	R.C. 3503.152
Requires the SOS to make the SWVRD available online. (The act makes a few changes to these provisions, described below under “ <b>Public website of the SWVRD.</b> ”)	R.C. 3503.15(G)	R.C. 3503.153

## Public access to voter registration records

### Public records requests

The act changes the process for the boards of elections to make registration records available to the public and clarifies which pieces of information contained in a voter registration record are subject to disclosure.

Previous law required a board of elections to make voter registration forms and the SWVRD open to public inspection at all times when the office of the board was open for business, under such regulations as the board adopted, provided that no person could inspect voter registration forms outside the presence of a board employee. The statute did not provide a process for the board to redact any of an elector’s personal identifying information before allowing public access to its records, although other provisions of state and federal law prohibit the disclosure of certain information.

The act specifies instead that voter registration forms and the SWVRD are public records subject to disclosure under the Public Records Law in the same manner as records of other public offices. The Public Records Law includes procedures for the public to request records and for public offices to redact nonpublic information from records before providing them to requestors. For an overview, see LSC’s Members Brief, [Ohio’s Public Records Law \(PDF\)](#), which is available on LSC’s website, [lsc.ohio.gov](http://lsc.ohio.gov).

Additionally, the act exempts all of the following from disclosure through voter registration records:

- An elector’s full or partial Social Security number. Federal law already prohibits a government agency from disclosing a person’s Social Security number, and the Public

Records Law prohibits a public office from disclosing a Social Security number on the internet.<sup>147</sup>

- An elector’s driver’s license or state identification card number. The Public Records Law prohibits a public office from disclosing a driver’s license or state identification card number on the internet.<sup>148</sup>
- An elector’s telephone number or email address. Prior law generally did not prohibit the disclosure of this information.
- A confidential voter registration record of a participant in the Address Confidentiality Program, also known as Safe at Home. Continuing law prohibits the disclosure of any information from such a person’s voter registration record.<sup>149</sup>
- The address of a designated public service worker, if the person has submitted a redaction request to the board of elections. Continuing law exempts from disclosure the address of a designated public service worker, such as a peace officer, prosecutor, correctional employee, or firefighter. A board of elections typically will not be aware that an elector qualifies for this exemption unless the elector submits a redaction request on a form prescribed by the Attorney General.<sup>150</sup>
- Any other information that is prohibited from being disclosed by state or federal law.

### **Public website of the SWVRD**

Correspondingly, the act adds to the information that must be available on the public website version of the SWVRD. Under the act, all of the following information must be available regarding a registered elector:

- The elector’s name;
- The elector’s birth date (added by the act);
- The elector’s current residence address;
- The elector’s precinct number;
- The elector’s polling place, during the 30 days before Election Day;
- The elector’s voter registration date, as described above under “**Uniform data entry**” (added by the act);

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<sup>147</sup> 42 U.S.C. 405(c)(2)(C)(viii) and R.C. 149.45(A)(1).

<sup>148</sup> R.C. 149.45(A)(1).

<sup>149</sup> R.C. 111.44, not in the act, and 149.43(A)(1)(ee).

<sup>150</sup> R.C. 149.45(D).

- The elector’s voting history, as described above under “**Uniform data entry**” (prior law required the website to include the elector’s voting history, but did not define that term);
- The elector’s last activity date, as described above under “**Uniform data entry.**”

The act prohibits any of the information that is exempt from disclosure as a public record, as listed above, from being made available on the website, such as a Social Security number or information about an Address Confidentiality Program participant.

### **Retention of ballots after an election**

The act requires the boards of elections to preserve all used and unused ballots from a nonfederal election for at least 81 days after the day of the election, instead of 60 days as required under prior law. The act also specifies that the board must retain any electronic images of ballots in that manner. Continuing law requires that the canvass of election returns (the final count of the ballots) be deemed final as of 81 days after the election. By extending the retention period, the act ensures that the boards do not destroy any ballots before the canvass is finalized.

Under continuing law, the boards must retain ballots from a federal election for at least 22 months after the election.<sup>151</sup>

### **Public inspection of ballot drop box surveillance**

(R.C. 3509.05)

The act removes the requirement that the video recordings of video surveillance of secure ballot drop boxes must be available for public inspection immediately upon request and instead specifies that it be made available upon request in accordance with the procedures under the Public Records Act. The Public Records Act requires responses to public records requests to be promptly prepared and made available for inspection to the requestor at all reasonable times during regular business hours.

The act also changes the requirement that the board must make each day’s video recording available to the public on the internet for streaming or download without charge 24 hours after the recording ends to 72 hours after it ends. Continuing law requires the board to make those video recordings available to the public upon request in accordance with the procedures under the Public Records Act.<sup>152</sup>

Under continuing law, the board of elections may place not more than one secure ballot drop box outside the office of the board for the purpose of receiving absent voter’s ballots. The ballot drop box must be open to receive ballots only during the period beginning on the first day after the close of voter registration before the election (the first day of the absent voting period) and ending at 7:30 p.m. on the day of an election (the close of polls). The drop box must be monitored by recorded video surveillance at all times.

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<sup>151</sup> R.C. 3505.32(A), not in the act.

<sup>152</sup> R.C. 149.43(B)(1).

## Canvass of election returns

(R.C. 3505.32 and 3513.22)

The act allows the boards of elections to begin the canvass of the election returns as early as the fifth day after Election Day, as opposed to the 11<sup>th</sup> day under previous law. (The canvass of the election returns is the final, official count of the votes in an election.) Under continuing law, the boards must begin the canvass by the 15<sup>th</sup> day after Election Day and must complete it by the 21<sup>st</sup> day after Election Day.

Under recently enacted changes to the Election Law in H.B. 458 of the 134<sup>th</sup> General Assembly, absentee ballots that are postmarked by the day before Election Day and returned by mail to the board of elections must arrive by the fourth day after Election Day, instead of the tenth day, in order to be eligible to be counted. Deficient absentee and provisional ballots, such as ones for which the voter must provide identification or other information to the board, also must be cured by the fourth day after Election Day, instead of the seventh day.<sup>153</sup> These changes make it possible for the boards to begin the canvass as early as the fifth day after Election Day, instead of waiting until the 11<sup>th</sup> day. However, H.B. 458 did not change the statutory timelines for the canvass.

The act leaves in place a law that prohibits the boards of elections from counting certain uncured provisional ballots before the eighth day after Election Day. This requirement applies to provisional ballots for which the voter was required to provide additional information, such as identification, but did not.<sup>154</sup> As a result, not all ballots will be ready for inclusion in the canvass as of the fifth day after Election Day.

## Campaign communications regarding county political parties

(R.C. 3517.10 and 3517.20)

The act adds prohibitions to the Campaign Finance Law in order to prevent a political action committee (PAC) or political contributing entity (PCE) from impersonating or purporting to speak on behalf of a county political party without the party's permission. These prohibitions are in addition to provisions of continuing law that prohibit false campaign statements.

First, the act prohibits the SOS from accepting a designation of treasurer (an initial entity registration) from a new PAC or PCE if, in the opinion of the SOS, the name of the PAC or PCE would lead a reasonable person to believe that the PAC or PCE acts on behalf of or represents a county political party, unless the party consents. And, the act prohibits an existing PAC or PCE from using a name or address in a political communication that would lead a reasonable person to believe that the communication is made by or on behalf of a county party, unless the party consents. In both cases, the consent of a county party must take the form of a written statement,

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<sup>153</sup> R.C. 3505.183, 3509.05, 3509.06, and 3511.11, not in the act.

<sup>154</sup> R.C. 3505.183(G), not in the act.

signed by the chairperson of the county party's executive committee, granting the PAC or PCE permission to act on behalf of or represent the county party.

Continuing law prohibits any person, during the course of a campaign, from falsely identifying the source of a statement, issuing statements under the name of another person without authorization, or falsely stating that another person endorses or opposes a candidate or ballot issue.<sup>155</sup> It appears that this law would already prohibit at least some of the behavior described above. However, Ohio's law against false campaign statements is not currently being enforced because a federal appeals court ruled that the process for enforcing the law through the Ohio Elections Commission violates the First Amendment.<sup>156</sup> The act does not make any changes to that process, meaning that the new prohibitions would be enforced in the same manner. As a result, this portion of the act also might be challenged under the First Amendment.

## **Precinct election official training**

(R.C. 3501.27)

The act requires the SOS to make grants to the boards of elections to pay the cost of precinct election official training programs, instead of reimbursing counties for those costs. Under prior law, the SOS was required to reimburse counties for those costs upon receiving an itemized statement of expenses.

## **Electronic pollbook reimbursement**

(Section 610.30, amending Section 285.12 of H.B. 45 of the 134<sup>th</sup> G.A.)

The act modifies provisions of H.B. 45 of the 134<sup>th</sup> General Assembly that require the SOS to reimburse the boards of elections for 85% of the cost of purchasing electronic pollbooks and ancillary equipment, up to the county's allocated share of a \$7.5 million appropriation. Each county's allocation is determined based on its number of registered electors as of July 1, 2022.

First, the act adds a requirement that, when required under state purchasing requirements and at the request of the SOS, DAS's Office of Procurement Services must initiate a competitive solicitation for qualified vendors of electronic pollbooks that are approved for use under continuing law standards. Boards of elections must choose from the vendors identified through that process.

Further, the act allows a board of elections to be reimbursed for the cost of leasing electronic pollbooks instead of purchasing them, if the county chooses to do so. The act also specifies that a board of elections must notify the SOS of its selected electronic pollbooks and then acquire the equipment itself, instead of notifying the Office of Procurement Services of its choice and then having the Office acquire the equipment on behalf of the board.

The act adds a caveat to a provision of H.B. 45 requiring the SOS to reimburse a board of elections for 85% of the cost of electronic pollbooks it had already acquired on or after

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<sup>155</sup> R.C. 3517.21(B)(8) and 3517.22(B)(1), not in the act.

<sup>156</sup> *Susan B. Anthony List v. Driehaus*, 814 F.3d 466 (6<sup>th</sup> Cir. 2016).

January 1, 2020. Under the act, a board is eligible for that reimbursement only if it is in compliance with all applicable directives and statutes. And, the act requires the SOS to reimburse the board of elections instead of the county's general fund.

### **Safe at Home fines**

(R.C. 2929.18 and 2929.28)

The act allows a court that imposes a fine on an offender to benefit the Address Confidentiality Program (also known as Safe at Home) to retain up to 25% of the amount collected to cover administrative costs and to assign up to 25% of the amount collected to reimburse the prosecuting attorney for costs associated with prosecution of the offense.

Under continuing law, in addition to any other applicable fine, a court may impose a fine of between \$75 and \$500 on an offender for domestic violence, menacing by stalking, rape, sexual battery, or trafficking in persons, to be transmitted to the State Treasurer to be credited to the Address Confidentiality Program Fund. The Address Confidentiality Program allows a victim of such an offense who fears for the person's safety to have the person's address and other information shielded from disclosure to the public.

### **Save our Farmland and Protect our National Security Act (PARTIALLY VETOED)**

(R.C. 2105.15, and 5301.256; Section 753.10)

The act prohibits persons determined by the SOS to constitute a threat to the agricultural production of Ohio or the U.S. from acquiring agricultural land, i.e., land suitable for use in agriculture, including any water, air space, and natural products and deposits in, on, or over the land. The prohibition applies to persons listed on a registry compiled by the SOS, and to agents, trustees, and fiduciaries of such persons (collectively referred to in this analysis as "registered persons"). The act does not require any registered person to divest of agricultural land acquired before October 3, 2023, but it does prohibit registered persons from acquiring additional agricultural land or transferring agricultural land holdings to another registered person, unless an exception applies.

#### **Compilation of registry**

The SOS must compile and publish a registry of "persons" – which the act defines broadly to include individuals, businesses, organizations, legal or commercial entities, and governments other than the U.S. government, its states, subdivisions, territories, or possessions – that pose a threat to the agricultural products of Ohio or the U.S. In compiling this registry, the SOS must consult all of the following:

- The list of governments and other persons determined to be foreign adversaries by the U.S. Secretary of Commerce;
- The terrorist exclusion list compiled by the U.S. Secretary of State;
- The state sponsors of terrorism determined by the U.S. Secretary of State to have repeatedly provided support for acts of international terrorism;

- The list of individuals and entities designated by, or in accordance with Executive Order 13224, issued by the U.S. President on September 23, 2001, or Executive Order 13268, issued on July 2, 2002.

The act requires the Ohio SOS to compile and periodically update the registry using the “best information available,” and to publish it on the SOS website.

### **Exceptions**

The act provides for four exceptions to the general prohibition against registered persons acquiring agricultural land. First, as indicated above, registered persons are not required to divest of land interests acquired before October 3, 2023. Second, the act allows a registered person to acquire agricultural land through devise or descent. However, a registered person must divest itself of all right, title, and interest in the agricultural land within two years from the date of acquisition. Third, the act allows a registered person to acquire agricultural land through process of law in the collection of debts, by a deed in lieu of foreclosure, pursuant to a forfeiture of a contract for a deed, or by any procedure for the enforcement of a lien or claim on the land. Like the second exception, the registered person must divest itself of all right, title, and interest in the agricultural land within two years of acquisition. Furthermore, the land must not be used for any purpose other than agriculture or leased to another registered person, even if that registered person intends to use the land for agriculture. Fourth, the act allows a registered person to acquire agricultural land that does not exceed 150 acres, and is to be used for purposes other than agriculture.

### **Subsequent addition to registry**

A person that acquires agricultural land in Ohio, other than by devise or descent, after October 3, 2023, and is subsequently added to the SOS’s registry is required to divest of all right, title, and interest in the land within two years of being added to the registry.

### **Enforcement**

If the SOS finds that a registered person has acquired agricultural land in violation of the act’s prohibition, the SOS must report the violation to the Attorney General. Upon receiving a report, the Attorney General is required to initiate an action in the court of common pleas in the county where the land is located. If the land is located in more than one county, the Attorney General may either initiate a single action in the county in which the majority of the land is located or initiate separate actions in each such county.

After the action is initiated, the Attorney General must file a notice of pendency of the action with the county recorder. If the court finds that the agricultural land was acquired in violation of the act, the land escheats to the state. The clerk of the court must notify the Governor that the title to the land is vested in the state by the court. The land must be sold at public auction in the same manner as real property foreclosed upon due to the owner’s failure to pay a debt, except that the registered person has no right of redemption.

After the sale of the land, the proceeds are first used to pay for the court costs and other expenses related to the action initiated by the Attorney General. The remaining proceeds are paid to the registered person whose agricultural land escheated, but only up to the amount paid

by the registered person for the land. If any proceeds remain, they are distributed to the general fund of each county in which the land is located in proportion to the percentage of the territory located in each such county.

### **Name and purpose**

The act's prohibitions are named the Save our Farmland and Protect our National Security Act. The act stipulates that the purpose of the restrictions is to recognize that Ohio has a substantial and compelling interests in protecting its agricultural production.

### **Other protected property (VETOED)**

The Governor vetoed a provision that would have prohibited registered persons from acquiring real property located within 25 miles of any military base, camp, airport, or similar installation in Ohio and under the jurisdiction of the armed forces (referred to in this analysis as "other protected property"). Under continuing law, "armed forces" includes all of the following:

- The Army, Navy, Air Force, Marine Corps, Coast Guard, or any reserve components of those forces;
- The national guard of any state;
- The commissioned corps of the U.S. Public Health Service;
- The merchant marine service during wartime;
- The Ohio organized militia when engaged in full-time National Guard duty for a period exceeding 30 days;
- Other services that may be designated by Congress.<sup>157</sup>

All of the same exceptions and enforcement procedures that apply to agricultural land under the act, would have applied to other protected property under the vetoed provision. The vetoed provision would have also required the SOS to consider the military defense of Ohio and the U.S. in compiling and updating the registry of persons who would have been prohibited from acquiring agricultural land and other protected property.

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<sup>157</sup> R.C. 5903.01, not in the act.

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## DEPARTMENT OF TAXATION

### Income tax

- Phases down income tax rates and reduces the number of income tax brackets over two years, beginning with the 2023 taxable year.
- Suspends the annual inflation indexing adjustment of income tax brackets and personal exemption amounts for taxable years beginning in 2023 and 2024.
- Would have further suspended those inflation adjustments after 2024 until taxpayers paid no tax on their first \$26,050 of income (VETOED).
- Would have required that, beginning in September 2024, TAX reduce income tax withholding rates so that the total estimated reduction in withholding collections equaled an amount earmarked from the Budget Stabilization Fund (VETOED).
- Authorizes an income tax deduction for individuals who contribute to a homeownership savings account.
- Authorizes, for homeownership savings account holders, an income tax deduction for interest earned on savings in, and employer contributions to, an account.
- Allows donations to scholarship granting organizations made by the state income tax return filing deadline (typically April 15) to be the basis of an income tax credit claim for the preceding taxable year (the year for which the return is filed).
- Allows taxpayers with income of \$100,000 or more to qualify for the nonrefundable income tax credit for tuition paid to a nonchartered, nonpublic school.
- Increases the value of that credit.
- Includes certain pass-through entity (PTE) taxes remitted on behalf of an investor in the calculation of the investor's Ohio income tax resident credit.
- Requires a PTE investor to add back certain PTE taxes imposed by another state that the investor deducts from federal adjusted gross income as a business expense.
- Applies the PTE provisions to taxable years ending on or after January 1, 2023, but allows taxpayers to apply, at their option, the provisions to taxable years ending on or after January 1, 2022, with an amended or original return.
- Removes the requirement for employers who withhold and remit employee income taxes on a partial weekly basis to file quarterly reconciliation returns, instead requiring such employers to file an annual return, starting in 2024.

### Municipal income taxes

- Exempts the income of minors from municipal income taxation.
- Corrects an erroneous cross-reference governing the deduction of net operating losses and requires municipal corporations to incorporate the change in 2023.

- Allows a business with remote employees to use a modified municipal income tax apportionment formula with respect to those employees.
- Limits the circumstances under which municipal income tax inquiries or notices may be sent by a municipal tax administrator or the Tax Commissioner to a taxpayer subject to a filing extension.
- Limits the penalty that may be imposed on a taxpayer for failing to timely file municipal income tax returns from a \$25 monthly penalty, up to \$150, to a one-time \$25 penalty. Exempts a taxpayer's first failure to timely file from the penalty.
- Provides an additional, automatic one-month extension for municipal income tax returns where a business entity has received a six-month federal extension.
- Requires the Department of Taxation (TAX) to provide information to municipal corporations on any businesses that had municipal taxable income apportioned to such a municipal corporation in the preceding five or seven months as opposed to in any prior year.
- Requires a municipal corporation to notify TAX any time there is a decrease in the municipal corporation's income tax rate.

## **Sales and use tax**

- Authorizes a sales tax holiday for most items priced under \$500 to be held sometime in August of 2024 (PARTIALLY VETOED).
- Requires the state to hold similar, possibly shorter, sales tax holidays in future years if the surplus revenue in the GRF reaches a certain threshold.
- Uses this mechanism to replace the income tax reduction fund, which had used surplus revenues to temporarily reduce income tax rates.
- Suspends the existing sales tax holiday for clothes and school supplies in any year in which the act's sales tax holiday applies.
- Exempts children's diapers, creams, and wipes and car seats, cribs, and strollers from sales and use tax, beginning October 1, 2023.
- Adds specific references to construction material and services sold or rented to government entities for temporary traffic control or drainage purposes to a sales and use tax exemption for sales and rentals to government entities (PARTIALLY VETOED).

## **Lodging taxes**

- Authorizes Hamilton County to levy an additional 1% lodging tax to fund convention, entertainment, or Major League Soccer sports facilities, and to repurpose a portion of the revenue from its existing 3% general and special lodging tax to fund or promote such a facility.

- Authorizes Cincinnati to repurpose a portion of the revenue from its 3% general lodging tax or 1% special convention center lodging tax to fund such facilities.
- Authorizes a county to use a portion of the revenue from its general lodging tax to fund public safety services in a municipality or township designated as a resort area.
- Authorizes a county with a population exceeding 800,000 or a municipality within such a county to wholly or partially exempt from county and municipal lodging taxes a designated hotel associated with a convention center (“headquarters hotel”).
- Authorizes the county or municipality to require payments in lieu of taxes (PILOTs) from the headquarters hotel, to be used to finance facilities associated with the hotel or convention center.
- Authorizes the county or municipality, or a port authority, to enter into an agreement with the headquarters hotel operator for the operator to make binding payments to ensure funds for the completion of such associated facilities.
- Authorizes Delaware County or port authorities in that county, to issue bonds backed by proceeds from the county’s existing or renewed special 3% lodging tax to finance permanent improvements at fairground sites.

### **Commercial activity tax (CAT)**

- Excludes, for tax periods beginning in 2024, taxable gross receipts of \$3 million or less and, for tax periods in 2025 and thereafter, taxable gross receipts of \$6 million or less from the CAT (PARTIALLY VETOED).
- Would have indexed the \$6 million exclusion threshold to increase with inflation in 2026 and thereafter (VETOED).
- Eliminates the CAT minimum tax, only applying the CAT to a business’s gross receipts in excess of the applicable exclusion threshold.
- Eliminates calendar year CAT filing, which was principally available to taxpayers with less than \$1 million in gross receipts, who are excluded from the CAT under the act.
- Excludes from gross receipts taxable under the CAT any federal, state, or local grants received or debt forgiven to provide or expand broadband service in Ohio.
- Modifies the method of allocating CAT revenue for the payment of tangible personal property tax replacement payments.

### **Financial institutions tax**

- Clarifies which entities are included in a taxpayer group subject to the financial institutions tax (FIT).
- Repeals an expired FIT deduction allowed for investments in a qualifying real estate investment trust.

## **Sports gaming tax**

- Increases the sports gaming receipts tax rate from 10% to 20% beginning July 1, 2023.
- Requires nearly all of the sports gaming tax revenue to be used for the general support of K-12 education.

## **Cigarette and tobacco and vapor product taxes**

- Would have allowed a wholesaler or distributor to obtain a refund of excise taxes on cigarettes, other tobacco products, and nicotine vapor products remitted on bad debts arising from the sale of those products and charged off on or after January 1, 2024 (VETOED).
- Would have authorized an exemption from the vapor products tax for certain distributors (VETOED).
- Extends the deadline for renewing annual cigarette tax licenses to June 1 instead of the 4<sup>th</sup> Monday in May.
- Modifies the authority of Cuyahoga County to levy cigarette taxes and rescinds its authority to levy a new tax on nicotine vapor products.

## **Motor fuel taxes**

- Authorizes townships to use motor fuel tax revenue to purchase buildings suitable for housing road machinery and equipment, in addition to the currently permitted uses of planning, constructing, and maintaining such buildings.
- Imposes personal liability for the fuel use tax on individual owners, employees, officers, and trustees who are responsible for reporting and paying the tax for a taxpayer.

## **Public utility taxation**

- Exempts heating companies from the state's public utilities excise tax, and instead subjects such companies to the CAT.

## **Tax incentives**

### **Low-income housing tax credit**

- Authorizes a nonrefundable credit against the insurance premiums, financial institution, or income tax for the development of low-income rental housing that is awarded in conjunction with the federal low-income housing tax credit (LIHTC).
- Allows the Ohio Housing Finance Agency (OHFA) to reserve a state tax credit for any project in Ohio that receives a federal LIHTC allocation, as long as the project is located in Ohio and begins renting units after July 1, 2023.
- Prohibits OHFA from reserving any credits after June 30, 2027.

- Generally limits the amount of state credits that may be reserved in a fiscal year to \$100 million, but allows unreserved credit allocations and recaptured or disallowed credits to be added to the credit cap for the next fiscal year.
- Limits the amount of credit reserved for any single project to an amount necessary, when combined with the federal credit, to ensure financial feasibility.
- Requires OHFA to reserve credits in a manner that ensures projects create additional housing units they would not otherwise create.

### **Single-family housing development credit**

- Authorizes a nonrefundable tax credit against the insurance premiums tax, FIT, or income tax for investment in the development and construction of affordable single-family homes.
- Requires local governments and quasi-public development entities to submit applications for the credit, but allows them to allocate credits to project investors.
- Allows OHFA to reserve a tax credit for any project in Ohio that may qualify for the credit, as long as the project meets affordability qualifications adopted by OHFA.
- Prohibits OHFA from reserving any credits after June 30, 2027.
- Generally limits the amount of credits that may be reserved in a fiscal year to \$50 million, but allows unreserved credit allocations and recaptured or disallowed credits to be added to the credit cap for the next fiscal year.
- Limits the amount of credit reserved for any single project to the amount by which the project's development costs exceed the fair market value of the project's homes.

### **Film and theater credits**

- Increases the total amount of film and theater production tax credits that may be awarded each fiscal year from \$40 million to \$50 million and requires that \$5 million of the total be reserved for Broadway theatrical productions.
- Authorizes, beginning in FY 2025, a refundable tax credit against the FIT, income tax, and CAT for production companies that complete certain capital improvement projects in Ohio.
- Sets the credit amount at 25% of the amount a production company spends to construct, acquire, repair, or expand facilities that will be used in a motion picture or theatrical production, up to \$5 million per project.
- Caps the total amount of new credits that may be awarded each fiscal year at \$25 million and caps the credits that may be awarded to projects in a single county at \$5 million per fiscal year.
- Allows DEV to allocate any amount of the otherwise allowable capital improvement credit to the film and theater production credit.

### **Job creation and retention credits**

- Authorizes the Tax Credit Authority to adjust the amount that a noncompliant taxpayer must repay from a job creation or job retention tax credit one time within 90 days after initially certifying a repayment.

### **Research and development credits**

- Modifies the manner in which a taxpayer that consists of multiple individuals or entities may compute and claim a research and development (R&D) tax credit against the FIT or CAT.
- Requires a taxpayer claiming a R&D credit to retain records substantiating the claim for four years.
- Allows TAX to audit a representative sample of a taxpayer's R&D expenses to verify that the taxpayer correctly computed the R&D credit.

### **Exemption and exclusion for consumer-grade fireworks fee**

- Exempts the 4% fee on the sale of consumer-grade fireworks from sales and use tax, so long as the fee is separately stated on the sales receipt.
- Authorizes a CAT exclusion for collections of the separately stated fireworks fees.

### **Deduction and exclusion for East Palestine derailment payments**

- Authorizes a personal income tax deduction for government or railroad company payments received by a taxpayer as the result of the February 3, 2023, train derailment in East Palestine.
- Authorizes a CAT exclusion for compensation for business losses resulting from that derailment.

### **Property tax**

- Authorizes a park district to renew, increase, or decrease an existing voted property tax levy.
- Indexes the amount of all homestead exemptions so that each exemption, and the resulting tax savings, increase in proportion to the increase in a broad price inflation index (gross domestic product deflator).
- Requires the Tax Commissioner to prescribe a formula for uniformly valuing federally subsidized rental housing that takes into account a property's operating income and expenses and a uniform capitalization rate.
- Sets a minimum total value for such property of 150% of the value of the underlying land or \$5,000 per dwelling unit, whichever is greater.
- Requires the owner of such property to regularly report the property's operating income and expenses to the county auditor of the county in which the property is located.

- Removes law explicitly authorizing a county auditor to value LIHTC property by employing the income approach, cost approach, or comparable sales approach.
- Requires OHFA to prepare and annually update a list of all Ohio federally subsidized residential rental property and annually certify the list to the Auditor of State, the Board of Tax Appeals, and TAX, who in turn certifies it to all county auditors.
- Exempts from property tax the value of unimproved land subdivided for residential development in excess of the last arms-length sales price of the property from which that land was subdivided, apportioned according to the relative value of each subdivided parcel.
- Authorizes the development exemption for up to eight years, or until residential construction begins or the land is sold.
- Does not allow the exemption for development land included in a tax increment financing (TIF) project.
- Authorizes owners of real property which qualified for a brownfield tax abatement in 2020 but which was not subject to the abatement until 2022 to apply for the abatement to apply retroactively for two years and terminate two years earlier than scheduled.
- Allows a subdivision to remove a parcel from a TIF and include the parcel in a new TIF under certain circumstances.
- Authorizes an impacted city, i.e., a city that meets certain urbanization or disaster criteria, to, before July 1, 2024, reallocate TIF service payments to certain projects that do not directly benefit the assessed parcels.
- Extends the circumstances under which a county, municipality, or township may extend the maximum term of a parcel TIF by up to 30 years.
- Allows a municipality to extend the life of an existing TIF for up to 15 years if certain conditions are met.
- Authorizes the second and third publication of a notice of an impending property tax foreclosure action to be made online, provided the notice's first publication continues to be made in a newspaper of general circulation.
- Specifies that existing abbreviated newspaper publication procedures for government notices apply to the publication of a property tax foreclosure notice if the second and third publication of the notice continues to be made in a newspaper.
- Extends the sunset date of a property tax exemption for qualified energy projects from 2025 to the later of 2029 or the year the federal government determines there has been a 75% reduction in greenhouse gas levels compared to 2022.
- Reduces the ratio of Ohio-domiciled full-time equivalent (FTE) employees required to be employed, as a condition of receiving that exemption, at a new solar energy project from 80% to 70% of all FTE project employees.

- Requires new large renewable energy projects to comply with prevailing wage and apprenticeship requirements as a condition of obtaining that exemption.
- Allows existing solar energy projects that voluntarily comply with the prevailing wage and apprenticeship requirements that apply to new projects to apply the same reduced 70% ratio for Ohio-domiciled FTE employees.
- Would have included out-of-state workers who reside within 50 miles of Ohio and are members of certain labor organizations as “Ohio-domiciled” employees for purposes of calculating compliance ratios for that exemption (VETOED).
- Changes the calculation of FTE employee hours for the purpose of complying with the terms of that exemption.
- Creates a joint legislative committee to make recommendations on reforms to property tax law and hold hearings on pending property tax legislation.

### **Special improvement districts**

- Prohibits park district property from being included in a special improvement district unless the park district consents to its inclusion.

### **Tax administration**

- Authorizes TAX to send any tax notice previously required to be sent by certified mail by ordinary mail or, with the taxpayer’s consent, electronically.
- Removes required recordkeeping standards a delivery service must meet before it may be used by TAX to deliver tax notices.
- Requires county auditors to accept real property and manufactured home conveyance forms electronically.
- Eliminates a requirement that taxpayers file amended reports with respect to the defunct corporation franchise tax.
- Streamlines the authority of TAX to share confidential tax information with state agencies.
- Makes conforming changes to a recently enacted law that allows taxpayers to obtain a refund of tax-related penalties and fees.

### **Local Government and Public Library Funds**

- Permanently increases the percentage of state tax revenue that the Local Government Fund (LGF) and Public Library Fund (PLF) each receive per month, from 1.66% to 1.7%.
- Increases the minimum amount that may be distributed from the LGF to each county to \$850,000, beginning in FY 2024.
- Requires the county budget commission of a county that adopts an alternative distribution formula for the county undivided local government fund, using the standard procedure to adopt such a formula, to hold a hearing on the formula every five years.

## Income tax

### Rate reduction

(R.C. 5747.02)

The act phases-down the income tax rates applicable to nonbusiness income over two years. For the 2023 taxable year, the act reduces the number of brackets from four to three, by consolidating and modifying the two lowest tax brackets, and reduces the rates of the lowest and highest tax brackets. Beginning with the 2024 taxable year, the act consolidates the remaining three brackets into two, and further reduces the highest tax rate. The tax table for the 2022 taxable year compared to the 2023 tax table, as modified by the act, is as follows:

TY 2022		TY 2023, as modified by the act	
Ohio taxable income	Marginal tax rate	Ohio taxable income	Marginal tax rate
\$26,050-\$46,100	2.765%	\$26,050-\$100,000	2.75%
\$46,100-\$92,150	3.226%	\$100,000-\$115,300	3.688%
\$92,150-\$115,300	3.688%	More than \$115,300	3.75%
More than \$115,300	3.99%		

The tax table for the 2024 taxable year, as modified by the act, is as follows:

Ohio taxable income	TY 2024 marginal tax rate, as modified by the act
\$26,050-\$100,000	2.75%
More than \$100,000	3.5%

### Inflation indexing adjustments (PARTIALLY VETOED)

(R.C. 5747.02 and 5747.025; Section 757.50)

Continuing law requires the Tax Commissioner to adjust the income tax brackets and personal exemption amounts for inflation on an annual basis.<sup>158</sup> The act suspends these adjustments for taxable years beginning in 2023 and 2024. Consequently, the 2022 income tax brackets will also apply in 2023 and 2024 (although the tax rates corresponding with two of those brackets will be reduced as described above).

<sup>158</sup> R.C. 5747.02(A)(5); R.C. 5747.025, not in the act.

The Governor vetoed a provision that would have further suspended the inflation adjustments after 2024. Under the vetoed provision, the amounts would have remained suspended until taxpayers paid no tax on their first \$26,050 of income.

Under continuing law, taxpayers with less than \$26,050 of income pay no tax, but taxpayers with income of \$26,050 or more do pay tax on that first \$26,050. That first tax amount currently equals \$360.69. Under the act, the Tax Commissioner would have been required to determine the amount by which that dollar amount could be reduced each year, based on the annual savings from the indexing suspension. The amount would have been reduced each year until it equaled \$0, at which time the inflation adjustments would have resumed.

### **Withholding rate adjustments (VETOED)**

(R.C. 131.43 and 5747.06)

The Governor vetoed a provision that would have required TAX to reduce income tax employee withholding rates. The act would have earmarked \$650 million of the Budget Stabilization Fund's (BSF) investment earnings for that purpose. (Recall that the act would have, if not for the Governor's veto, directed all BSF investment earnings to the GRF, instead of the BSF itself, see "**Budget Stabilization Fund**," above.)

Every July, beginning in 2024, the Director of OBM would have been required to certify to the Tax Commissioner the amount of BSF investment earnings that were credited to the GRF in the preceding fiscal year, until the \$650 million threshold was met. The Commissioner, beginning in the following September, would have been required to reduce income tax employee withholding rates so that the estimated reduction in employee withholding collections during the period of September 1 through August 31 equaled the amount so certified.

In essence, this mechanism would have, over a period of likely several years, gradually required TAX to reduce employee withholding rates such that collections were reduced by a total of \$650 million. The mechanism only would have affected the amount of income taxes withheld from an employee's compensation, not the amount of taxes the employee actually owed.

### **Deduction for contributions to homeownership savings accounts**

(R.C. 5747.01(A)(42) and (43) and 5747.85; Section 803.220)

The act authorizes an income tax deduction for individuals who contribute to homeownership savings accounts, which are accounts authorized in the act that can be used towards the down payment and closing costs associated with the purchase of a home (see "**Home Improvement Linked Deposit Program**," below).

The deduction has two components:

- A deduction for contributions to an account. This deduction is limited to \$10,000 per year, per account for joint filers and \$5,000 per year, per account for all other filers, with a lifetime maximum per contributor, per account of \$25,000. Only the account holder, or the account holder's parent, spouse, sibling, stepparent, or grandparent are eligible to take this deduction.

- A deduction for the interest earned on deposits in, and employer contributions to, an account. This deduction is only available to the account holder.

Under the act, if an account holder withdraws money from a homeownership savings account, but does not use the money to pay the closing costs on a home that will be the account holder's primary residence, that individual is required to pay income tax on the amount withdrawn. The amount is added back to the account holder's taxable income, even if the amount was originally contributed by someone else.

The tax deduction is available for taxable year 2024 and thereafter. The act allows the Tax Commissioner to adopt rules to administer the deductions.

### **Scholarship granting organization donation credit**

(R.C. 5747.73; Section 803.360)

The act allows donations to scholarship granting organizations (SGOs) made by the state income tax return filing deadline (typically April 15) to be the basis of a tax credit claim against the income tax for the preceding taxable year (the year for which the return is filed). Under prior law, such donations could be the basis for an income tax credit claim, but only for the taxable year in which the donations were made. The act does not change other aspects of the credit, such as a \$1,500 cap for spouses filing jointly, and a \$750 cap for single filers.

An SGO is a charitable organization certified by the Attorney General that primarily awards academic scholarships to primary and secondary school students.

### **Income tax credit for nonchartered, nonpublic school tuition**

(R.C. 5747.75; Section 803.320)

Continuing law authorizes taxpayers to claim a nonrefundable income tax credit for tuition paid to a nonchartered, nonpublic school. The credit equals the amount of tuition paid by the taxpayer, up to certain annual maximums. Under prior law, the credit could only be claimed if the taxpayer's and the taxpayer's spouse's total federal adjusted gross income (FAGI) for the year was less than \$100,000.

The act authorizes the credit to be claimed by a taxpayer whose FAGI exceeds this threshold. It also increases the annual maximum credit from \$500 to \$1,000 for taxpayers with a total income below \$50,000 and from \$1,000 to \$1,500 for taxpayers with a total income at or above \$50,000.

### **Pass-through entity taxes**

(R.C. 5747.01(A)(36), (41), and (S), 5747.05, 5747.11, and 5747.13; Section 803.310)

Under federal law, an itemized income tax deduction is allowed for state and local taxes. That deduction was capped at \$10,000 in 2017. As a result, many states, including Ohio, enacted laws allowing owners of pass-through entities (PTEs), i.e., entities that are disregarded for federal income tax purposes, such that their tax liability passes through to their owners, to pay a tax on the PTE's income at the entity level, with the cost of the tax passing through to its owners. According to IRS guidance issued after the \$10,000 cap was enacted, these entity-level taxes are

subject to deduction as business expenses and are not subject to the \$10,000 cap. As a result, owners could claim their full share of the entity-level taxes as a federal income tax deduction.<sup>159</sup>

Ohio's PTE tax allows PTEs to elect to pay an entity-level tax, the cost of which is then passed through to each PTE owner as part of their distributive share of gains and losses. Each PTE owner is allowed an Ohio income tax credit equal to the cost of their distributive share of the tax liability, but the amount of that tax liability is deductible against the federal income tax, reducing the taxpayer's federal adjusted gross income (FAGI) and the tax liability calculated against it. In other words, the state PTE tax is cost-neutral to the taxpayer, but it reduces federal income tax liability.

FAGI is the basis for the Ohio income tax, and Ohio adjusted gross income (OAGI) is FAGI adjusted with various deductions and additions. When the Ohio PTE tax was enacted, a related provision requiring the addition of a taxpayer's proportionate share of the elective PTE entity tax discussed above that was deducted from federal taxes was also enacted. This avoids a scenario in which a taxpayer pays the state PTE tax designed to reduce federal-income tax liability, but receives the same amount of money back in a credit and then also reduces OAGI based on the Ohio tax that is completely credited to the taxpayer.

The act makes several changes related to how Ohio's PTE tax and similar taxes levied in other states interact with other aspects of Ohio's income tax. First, the act requires the addition to FAGI, when calculating OAGI (and Ohio taxable income in the context of estates and trusts), of any income taxes deducted from FAGI on the basis of a PTE entity tax designed to reduce FAGI pursuant to the IRS guidance discussed above and levied by another state or the District of Columbia. As mentioned above, Ohio was among a group of states that enacted these types of PTE taxes, so FAGI could be reduced by any one of them.

Second, the act specifies that the addition, to the extent it is related to an individual's "business income," is to be treated as such. Business income is relevant in various contexts of the income tax law, one of which is for a deduction allowed for \$125,000 of business income for each spouse filing a separate return or \$250,000 for other filers and another of which is a special 3% rate that applies to business income above that threshold. Thus, this provision clarifies how amounts added back are to be classified.

Third, continuing law allows an income tax credit for taxes due for the taxes residents pay to other states and the District of Columbia. The credit is applied against the amount of a taxpayer's OAGI, before applying any tax credits. The act provides that, for purposes of the credit, a resident taxpayer's OAGI that is subject to an income tax levied in another state includes income that is subject in the other state, or the District of Columbia, to either (1) an entity-level tax imposed on a PTE and paid by the PTE through a composite return covering all PTE owners, with the cost of the tax passed on to the resident taxpayer as part of the taxpayer's distributive share of PTE gain and loss, or (2) a PTE tax, similar to Ohio's, adopted in response to the \$10,000

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<sup>159</sup> R.C. 5747.38, not in the act, and Internal Revenue Service Notice 2020-75.

cap on the federal deduction for state and local taxes. It also requires OAGI, for purposes of the credit, to be calculated by first deducting the business income deduction described above.

In other words, for purposes of the resident income tax credit for taxes paid to other states, the act includes taxes paid to those states on account of the resident taxpayer's ownership of a PTE that paid taxes to the other jurisdiction on behalf of the taxpayer, either as part of a composite return or as part of a tax designed to avoid the \$10,000 state and local tax deduction cap. But, the tax liability against which that credit is applied is first reduced because it is calculated with an OAGI that has been reduced by the business income deduction.

The act applies these changes to taxable years ending on or after January 1, 2023. Taxpayers may, however, apply them to taxable years ending on or after January 1, 2022, by filing an amended or original return for that year.

### **Eliminate quarterly employer reconciliation return**

(R.C. 5747.07 and 5747.072; Section 803.60)

The act removes the requirement that employers who withhold and remit employee income taxes on a partial weekly basis, i.e., two times in a single week, file quarterly withholding reconciliation returns. Instead, these employers will only be required to file the annual reconciliation returns required for other employers under continuing law starting on January 1, 2024. Reconciliation returns allow an employer to calculate and pay any required employee withholding that was not remitted in the preceding period.

Under continuing law, employers are required to remit employee withholding on a partial weekly basis if they withhold and accumulate a significant amount of it. Employers with smaller accumulated withholding may remit it monthly or quarterly.

## **Municipal income taxes**

### **Exemption for minors' income**

(R.C. 718.01(C)(15); Section 803.10)

The act requires municipal corporations to exempt the income of individuals under 18 years of age from municipal income taxation. The exemption applies to taxable years beginning on or after January 1, 2024. Under prior law, only municipal corporations that authorized such an exemption before 2016 were authorized to grant such an exemption.

### **Net operating loss deduction cross-reference**

(R.C. 718.01; Section 803.10)

The act corrects an erroneous cross-reference in the municipal income tax law governing the deduction of net operating loss (NOL). From 2018-2022, a business was allowed to deduct 50% of its NOL from its taxable net profits. Beginning in 2023, the 50% limitation is discontinued and a business may deduct the full amount of its NOL. The act's correction clarifies that the 50% limitation ceases to apply in 2023. The act requires municipalities that levy an income tax to incorporate this cross-reference change into their municipal tax ordinances and apply it to taxable years beginning in 2023.

## **Net profits apportionment for remote employees**

(R.C. 718.02, 718.021, 718.82, and 718.821; R.C. 718.021 (718.17); Section 803.240)

Under continuing law, municipal corporations may impose an income tax on the net profit of businesses operating within their jurisdictions. When determining the portion of a business' total net profit that is taxable by a particular municipality, the business uses a three-factor formula based on the business' payroll, sales, and property.

The act allows businesses with employees who work remotely to use a modified version of this apportionment formula. Instead of apportioning the payroll earned, sales made, or property used by a remote employee to that employee's remote work location, the employer may instead apportion those amounts to a designated "reporting location." This alternative is available both to businesses that file returns with municipal tax administrators and businesses that elect to file a single return covering all municipal corporations with the Tax Commissioner.

Under continuing law, an employee's payroll is generally only included in the existing apportionment formula if the employee performs services at a location "owned, controlled, or used by, rented to, or under the possession of" the employer, or a vendor or customer of the employer.

### **Designating a reporting location**

To use the act's modified apportionment formula, the business must assign a remote employee to a designated reporting location, which is any location owned or controlled by the employer or, in some circumstances, by a customer of the employer.<sup>160</sup> An employee's designated reporting location will be (a) the location at which the employee works on a regular or periodic basis, (b) if no such location exists, the location at which the employee's supervisor works on a regular or periodic basis, or (c) if neither such locations exist, any reporting location designated by the employer, provided that the designation is made in good faith and is reflected in the employer's business records.

A business can change a remote employee's designated reporting location at any time. If the business is a pass-through entity, e.g., a partnership or LLC, it can also designate a reporting location for any of its equity owners who work remotely.

### **Election**

A business that wishes to use the act's modified apportionment formula must make an election to do so with each municipality in which it is required to file a net profits tax return or, if the business has elected to file a single return with the Tax Commissioner, with the Commissioner. The election can be made on the business' net profit return, timely filed amended return, or a timely filed appeal of an assessment. Once the election is made, it applies to each municipality in which the business operates and to all future taxable years, until it is revoked.

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<sup>160</sup> A customer location qualifies only if it is located in a municipality to which the employer is required to withhold income taxes on employee wages, due to one or more employees providing services at that location. R.C. 718.021(A)(3)(b).

## **Application of continuing formula and effective date**

Aside from the apportionment of payroll, sales, and property attributable to remote employees, all other aspects of continuing law's apportionment formula will continue to apply to a business that makes the election allowed under the act. The business can still request to use an alternative apportionment method, as under the continuing apportionment formula, although the act specifies that the business cannot be compelled to use an alternative method that would require it to file a return with a municipality solely because an employee is working remotely in that municipality.

The act applies to taxable years ending on or after December 31, 2023.

## **Prohibited inquiries and notices**

(R.C. 718.05 and 718.85; Section 803.100)

The act limits when a municipal tax administrator or the Tax Commissioner may make inquiries or send notices to taxpayers whose income tax filing deadline has been extended. Under continuing law, taxpayers generally report and remit municipal income tax to municipal tax administrators, but a business that owes taxes on its net profits may elect to report and remit municipal net profits taxes to TAX, which then disperses payments to each municipality to which such tax is owed.

Under continuing law, the due date of a taxpayer's municipal income tax return, whether filed with a municipality or the Tax Commissioner, may be extended under various circumstances, including any of the following:

- The taxpayer has requested an extension of the deadline to file the taxpayer's federal income tax return.
- The taxpayer has requested an extension of the deadline to file the taxpayer's municipal income tax return from the municipal tax administrator or Commissioner.
- The Commissioner extends the state income tax filing deadline for all taxpayers.

When a taxpayer receives an extension, the act prohibits a municipal tax administrator or the Commissioner from sending any inquiry or notice regarding the municipal return until after either the taxpayer files the return or the extended due date passes. If a tax administrator sends a prohibited inquiry or notice, the municipality must reimburse the taxpayer for any reasonable costs incurred in responding to it, up to \$150.

The act's new limitations apply to taxable years ending on or after January 1, 2023. The limitations do not apply, and a municipal tax administrator or the Commissioner may send an otherwise prohibited inquiry or notice, if either has actual knowledge that the taxpayer did not actually file for a federal or municipal income tax extension.

## **Penalty limitations**

(R.C. 718.27 and 718.89; Section 803.100)

The act limits the penalty a municipal corporation or the Tax Commissioner may impose for the failure to timely file a municipal income tax return. Previously, a municipal corporation

could impose a penalty of \$25 for each month a taxpayer failed to file a required income tax or withholding return, up to \$150 for each return. The Commissioner could impose the same monthly penalty on those unfiled returns as well as on unfiled estimated tax declarations. The act reduces these penalties to a one-time \$25 penalty. The act also exempts a taxpayer's first failure to timely file from the penalty, requiring the municipal corporation or Commissioner to either refund or abate the penalty after the taxpayer files the late return. These changes also apply to taxable years ending on or after January 1, 2023.

### **Extension for businesses**

(R.C. 718.05(G)(2) and 718.85(D)(1); Section 803.100)

The act provides an additional, automatic one-month filing extension for municipal income tax returns where a business entity has received a six-month federal extension, bringing the full duration of the extension to seven months beginning in taxable years ending on or after January 1, 2023. The previous extended deadline for individuals and business entities was the same as the extended federal deadline.

### **Net profits tax reports and notifications**

(R.C. 718.80 and 718.84; Section 803.80)

Under continuing law, a business that operates in multiple municipalities, and is therefore subject to multiple municipal income taxes, may elect to have TAX serve as the sole administrator for those taxes. For electing taxpayers, a single municipal net profit tax return is filed through the Ohio Business Gateway for processing by TAX, which handles all administrative functions for those returns, including distributing payments to the municipalities, billing, assessment, collections, audits, and appeals. The act modifies, as described below, the reporting and notification requirements associated with this state-administered municipal net profits tax.

#### **TAX's municipal income tax report**

The act requires that twice a year, in May and December, TAX provide information to municipalities on any businesses that had net profits apportioned to the municipality, as reported to TAX, in the preceding five or seven months only, as applicable. (Net profits apportionable to the municipality, e.g., earned in the municipality, are generally subject to the municipality's income tax.) Under prior law, this twice-per-year notification, which had been done in May and November, was required to list information for businesses that had net profits apportioned to the municipality in any prior year. This change applies to reports required to be filed after October 3, 2023.

#### **Rate decrease notification**

Under continuing law, by January 31 of each year, a municipal corporation levying an income tax must certify the rate of the tax to TAX. If the municipality increases the rate after that date, the municipality must notify TAX of the increase at least 60 days before it goes into effect. The act requires a municipality to notify TAX, within the same 60-day notice period, when there is any change in its municipal income tax rate, including a decrease.

## Sales and use tax

### Sales tax holidays

(R.C. 131.44, 5739.01(TTT) to (WWW), 5739.02(B)(55), and 5739.41; Section 510.10)

The act authorizes a sales tax holiday for most items priced under \$500 to be held in August of 2024. The act also requires the state to hold similar, possibly shorter, tax holidays in future years if the surplus revenue in the GRF reaches a certain threshold.

Continuing law authorizes a “back-to-school” sales tax holiday during the first Friday and following weekend in August of each year for school supplies that cost \$20 or less and clothing that costs \$75 or less. The act’s expanded sales tax holidays would occur during this same period, but would apply to a broader array of items and involve a higher price threshold.

#### **August 2024 sales tax holiday (PARTIALLY VETOED)**

The act authorizes a sales tax holiday in August of 2024. The Governor vetoed a provision that would have required the holiday to last at least 14 days. Instead, TAX, in consultation with OBM and the County Commissioners’ Association of Ohio (CCAO), will determine the length of the holiday by calculating the number of days for which the \$750 million earmarked for the holiday is sufficient to reimburse the state and local governments for their lost revenue. In making this determination, the state must consider changes in consumer behavior as a result of the holiday.

During the sales tax holiday, most items priced under \$500 will be exempt from state and local sales taxes. The holiday does not apply to motor vehicles, watercraft, alcohol, marijuana, and tobacco and nicotine vapor products.

Once the holiday is completed, TAX and OBM will estimate the amount of state and local revenue foregone as a result of the holiday and will reimburse the GRF, Local Government Fund, Public Library Fund, and counties and transit authorities that levy sales taxes for their proportionate revenue loss. For the August 2024 holiday, the reimbursements cannot exceed \$750 million.

#### **Future sales tax holidays**

In each year thereafter, beginning in August of 2025, the state will hold a similar tax holiday if there is at least \$60 million of surplus GRF revenue at the end of the preceding fiscal year. The holiday must be three days or more, depending on the surplus revenue available, as determined by TAX, in consultation with OBM and CCAO. Similar to the 2024 holiday, the parties must consider changes in consumer behavior around the time of the holiday when calculating the number of days the surplus revenue will support.

Under prior law, any surplus revenue remaining at the end of a fiscal year, after any required transfer to the Budget Stabilization Fund, was required to be used to temporarily reduce income tax rates through a mechanism called the Income Tax Reduction Fund, or ITRF. The act discontinues and liquidates the ITRF, and instead directs any surplus revenue to be used for future sales tax holidays. Any money remaining in the ITRF is transferred to fund these holidays, starting with the 2024 holiday described above.

Each future tax holiday will apply to the same items as the August 2024 holiday, and will include the same \$500 per-item limit and the same reimbursement mechanism for the state and local governments. If there is insufficient surplus revenue to hold an expanded tax holiday in any year, continuing law's "back-to-school" sales tax holiday will still be held in that year. If an expanded holiday is held, TAX must notify vendors of the holiday's dates by the first day of June preceding the holiday.

### **Streamlined Sales and Use Tax Agreement**

Ohio is currently a full member of the Streamlined Sales and Use Tax Agreement (SSUTA), which is a multistate agreement that imposes uniform sales tax collection and administration protocol on member states. Under the SSUTA, member states may only offer sales tax holidays for specific, defined items. For example, the SSUTA specifically allows sales tax holidays for school supplies, clothing, and Energy Star appliances.

The act's sales tax holidays would exempt items that are not defined in the SSUTA, in possible conflict with the SSUTA. The act requires TAX to coordinate with the SSUTA's governing board to pursue means by which the state can comply with the SSUTA.

### **Baby product exemption**

(R.C. 5739.01(SSS) and 5739.02(B)(60) to (64); Section 803.50)

The act exempts, beginning October 1, 2023, children's diapers, creams, and wipes and car seats, cribs, and strollers from sales and use tax. Under continuing law, sales of both children and adult diapers are exempt during the first weekend of August each year as part of Ohio's "back-to-school" sales tax holiday for school supplies and clothing. In addition, adult diapers are exempt under continuing law if sold to a Medicaid recipient pursuant to a prescription.

### **Sales and rentals to government entities (PARTIALLY VETOED)**

(R.C. 5739.02(B)(1) and (10); Section 803.140)

Continuing law exempts sales and rentals to federal, state, and local government entities from the sales and use tax. The act specifically adds construction material and services sold or rented to government entities for temporary traffic control or drainage purposes to those exemptions. The Governor vetoed a provision that would have specified that the addition was a remedial measure intended to clarify existing law and applied to all cases pending on a petition for reassessment or on further appeal, and to transactions subject to an audit by TAX.

## **Lodging taxes**

### **Convention, entertainment, and sports facilities**

(R.C. 5739.08 and 5739.09(X))

Under continuing law, counties, municipal corporations, and townships are authorized to levy an up to 3% excise tax on transactions by which hotels provide lodging to transient guests (referred to in this analysis as the "3% general lodging tax"). For counties, the use of such a tax's revenue is generally limited to making contributions to a convention and visitors' bureau under continuing law.

The act authorizes a county with a population between 800,000 and 1 million, i.e., Hamilton County, to repurpose a portion of the revenue from its existing lodging taxes (its 3% general lodging tax and a special 3.5% convention center tax that county is authorized to levy) and to levy an additional 1% lodging to fund the acquisition, construction, renovation, expansion, maintenance, operation, or promotion by a convention facilities authority, convention and visitors' bureau, or port authority of a convention or entertainment facility or a sports facility intended to house a Major League Soccer team.

The act also authorizes Cincinnati to repurpose a portion of the revenue from its existing 3% general lodging tax and its existing 1% special convention center lodging tax for those same purposes.

### **Public safety services in a resort area**

(R.C. 5739.09(A))

The act authorizes a county to use a portion of the revenue from its 3% general lodging tax to fund public safety services in a municipality or township designated as a resort area, which is an area where at least 62% of the housing units are for seasonal, recreational, or occasional use, and where there are seasonal peaks of employment and demand for government services, among other similar requirements. Certain Lake Erie islands are the only currently designated resort areas in Ohio.

### **Headquarters hotel exemption and financing**

(R.C. 5739.093)

The act authorizes a county with a population exceeding 800,000, i.e., Cuyahoga, Franklin, or Hamilton County, or a municipal corporation located in such a county ("eligible subdivision") to wholly or partially exempt a hotel associated with a convention center and located in that subdivision from lodging taxes levied by the designating county or municipality. Only one such hotel, referred to in the act as a "headquarters hotel," may be designated for any convention center.

Alongside the exemption, the eligible subdivision may impose payments in lieu of taxes (PILOTs) on the hotel operator, up to the amount of the exempted taxes, to be paid to the subdivision or directly to a convention facility authority, port authority, or an agent of either. The eligible subdivision or agency may then use these PILOTs, which are collected in the same manner as the exempted lodging taxes, to pay the costs of acquiring, constructing, renovating, or maintaining the headquarters hotel, the associated convention center, or any related infrastructure improvements. In essence, the act creates a mechanism by which lodging tax revenue may be redirected to those specific facility projects, similar to a tax increment financing (TIF) arrangement in the context of property taxes.

To initiate this process, the eligible subdivision must notify any other eligible subdivision, the county's convention and visitors' bureau (CVB), and any township that levies a lodging tax on the proposed headquarters hotel. Then the eligible subdivision may adopt a resolution designating the headquarters hotel and listing the percentage of county and municipal lodging

taxes that will be exempt and the duration of the exemption, which may not exceed 30 years. The resolution must list whether PILOTs will be imposed and to whom they are to be pledged.

The PILOTs must be pledged by the eligible subdivision to an “issuing authority,” i.e., an eligible subdivision, convention facilities authority, or port authority, to pay the costs of the project for which the PILOTs are imposed, including the costs of any debt issued for that project. The issuing authority may also authorize the eligible subdivision to use PILOTs for the same purposes as any exempted lodging taxes could be used for, e.g., funding CVBs or general municipal purposes. Any PILOTs unspent at end of the project may be used by the eligible subdivision for the same purposes as its lodging taxes. The hotel operator may charge hotel guests for the cost of the PILOTs, in the same manner as lodging taxes are collected from guests.

An eligible subdivision may enter into an agreement with the headquarters hotel’s operator by which the operator, and any succeeding operator, pledges to make binding payments to the subdivision or a port authority to ensure sufficient funds are available to finance the PILOT-funded facilities project.

The act also prohibits the designation of a headquarters hotel that has not furnished lodging to guests before its designation from being considered to result in a diminution of the rate or revenue of the lodging tax. Under continuing law, in some instances, laws are prohibited from making such a diminution if lodging tax-backed bonds and notes are outstanding.

### **Delaware county fairgrounds tax**

(R.C. 5739.09(T) and 133.07)

The act authorizes counties in which an agricultural society owns a facility used to conduct an annual harness horse race with at least 40,000 in attendance, i.e., Delaware County, or port authorities in such counties, to issue bonds backed by proceeds from an existing or renewed special 3% lodging tax authorized for such a county to finance permanent improvements at fairground sites.

### **Commercial activity tax (CAT)**

#### **Increased exclusion (PARTIALLY VETOED)**

(R.C. 5751.01(E)(1), (N), (O), and (R), 5751.02(A), 5751.03, 5751.04, 5751.05, 5751.051, 5751.06, 5751.08, and 5751.091; Section 803.340)

Continuing law imposes a commercial activity tax (CAT) on businesses’ taxable gross receipts. Under prior law, a business with less than \$150,000 in total gross receipts paid no CAT, while businesses with gross receipts of less than \$1 million paid a minimum tax of \$150. Businesses with more than \$1 million of gross receipts paid a minimum tax on that first \$1 million, the amount of which varied based upon the taxpayer’s total gross receipts, plus 0.26% of the excess.

The act increases the threshold at which the CAT begins to apply. For 2024, all businesses may exclude their first \$3 million of taxable gross receipts and, for 2025 and thereafter, their first \$6 million of taxable gross receipts. Businesses with gross receipts below that threshold will pay

no tax, while businesses with higher gross receipts will pay 0.26% of their receipts in excess of that threshold. This effectively repeals the CAT minimum tax.

The Governor vetoed a provision that would have, after 2025, indexed the \$6 million threshold for inflation so that it increased according to increases in the prices of all goods and services composing the national gross domestic product (GDP). The Tax Commissioner would have been required to compute the adjustments in August of each year to be applied the following calendar year. The Governor also vetoed language relating to the application of the thresholds to clarify that a taxpayer may exclude up to \$3 million or \$6 million each year, rather than in each quarterly reporting period.

The act also eliminates calendar year filing, which was principally available to taxpayers with less than \$1 million in taxable gross receipts, requiring all taxpayers to file quarterly.

### **Broadband funding exclusion**

(R.C. 5751.01(F)(2)(rr); Section 803.190)

The act excludes from gross receipts taxable under the CAT any federal, state, or local funding received or debt forgiven to provide or expand Internet broadband service in Ohio, including video service, voice over internet protocol service, and internet protocol-enabled services. The exclusion applies to CAT tax periods ending on or after October 3, 2023.

### **Revenue distribution**

(R.C. 5751.02(C) and (D); Section 812.20)

The act repeals a provision that earmarked a set percentage of CAT receipts for the payment of tangible property tax replacement payments. Under prior law, the School District Tangible Property Tax Replacement Fund (Fund 7047) received 13% of CAT receipts, while the Local Government Tangible Property Tax Replacement Fund received 2%. The remaining 85% was credited to the GRF.

The act removes these percentage allocations to the two replacement funds and, instead, requires the Tax Commissioner to transfer CAT receipts to those funds as necessary. Under continuing law, money in those funds is used to reimburse local governments for their revenue loss from the state's repeal of the tax on business tangible personal property.

### **Financial institutions tax**

#### **Financial institution taxpayer group**

(R.C. 5726.01; Section 803.70)

Continuing law imposes the financial institutions tax (FIT) on financial institutions, including all entities that are reported on the institution's federal regulatory FR Y-9 or call report. The act clarifies that a "financial institution" includes all of the entities consolidated, rather than "included," in the institution's report. The act further clarifies that, in the case of a small bank holding company that is not required to file a FR Y-9 under federal law, the financial institution includes all of the entities that would be included in statement FR Y-9 if the company were required to file one.

## **Repeal deduction for REIT investments**

(R.C. 5726.04; repealed R.C. 5726.041)

The act repeals an expired FIT deduction that was allowed for an institution's investment in a qualifying real estate investment trust. The deduction was available between 2014, the first year the FIT was levied, and 2017. It essentially allowed an institution that owned shares of a publicly traded REIT to phase in the value of that investment into the institution's tax base over those four years.

## **Sports gaming tax**

### **Rate increase**

(R.C. 5753.021; Sections 803.40 and 812.20)

The act increases the rate of the state's sports gaming tax, from 10% to 20%. Under the continuing law, the tax is levied on the "sports gaming receipts" of online and in-person sports gaming businesses, other than those that offer gaming through lottery terminals. A business' sports gaming receipts include the total amount the business receives as wagers, less winnings paid, voided wagers, and, beginning in 2027, a portion of the promotional gaming credits wagered by patrons.

The rate increase applies to sports gaming receipts received on and after July 1, 2023.

### **Allocation of sports gaming revenue**

(R.C. 5753.021 and R.C. 5753.031; Sections 803.40 and 812.20)

Prior law allocated nearly all (98%) of sports gaming tax revenue to K-12 education and athletics. Specifically, 50% of such revenue had to be used to generally support K-12 education and 50% had to be used for K-12 athletics and extracurricular activities. The act requires that all of this revenue be used for the general support of K-12 education, effectively eliminating the 50% reserved for K-12 athletics.

This reallocation begins to apply on and after July 1, 2023.

## **Cigarette and tobacco and vapor product taxes**

### **Refund on bad debts (VETOED)**

(R.C. 5743.06 and 5743.53; Section 803.150)

The state levies excise taxes on the sale of cigarettes, other tobacco products (OTP), and vapor products containing nicotine. Cigarette taxes are generally paid by wholesalers, whereas, OTP and vapor products taxes are paid by distributors. The Governor vetoed a provision that would have allowed a wholesaler or distributor to obtain a refund of excise taxes remitted on certain bad debts arising from the sale of those products, less any discounts allowed, under continuing law, for affixing the tax stamp or prompt payment (referred to in this analysis as "qualifying bad debts"). The deduction would have applied only to the specific tax levied on the product that was the basis of the qualifying bad debt, and applied to both the state and, if applicable, local excise taxes.

The act would have allowed a wholesaler or distributor to apply to the Tax Commissioner for a refund of the cigarette, OTP, or vapor products taxes paid on qualifying bad debts. The application would have had to include a copy of the original invoice and evidence of delivery of the product to the purchaser, that the purchaser did not pay, and that the wholesaler or distributor used reasonable collection practices to try to collect the debt. An application must also have included evidence of the wholesale price or vapor volume, as applicable, at the time the product was subject to taxation and any other information the Commissioner required.

Under the vetoed provision, a qualifying bad debt would have been any debt arising from the sale of cigarettes, OTP, or vapor products that satisfied each of the following criteria:

- The cigarette, OTP, or vapor products tax had been paid.
- The debt had become worthless or uncollectible.
- The debt had been uncollected for at least six months, but not more than three years from either the time the debt became uncollectible (in the case of cigarette taxes) or the time the tax was remitted (OTP and vapor products taxes).
- The wholesaler or distributor charged off the debt as uncollectable on its books on or after January 1, 2024.
- The wholesaler or distributor deducted, or would have been allowed to deduct, the bad debt in calculating federal income tax liability.

A qualifying bad debt did not include interest or financing charges, collections costs, accounts receivable that have been sold or assigned to a third party, or repossessed property. No person other than a wholesaler or distributor that remitted the applicable tax and generated the bad debt may have received a bad debt refund. If any portion of a bad debt for which a wholesaler or distributor receives a refund was later paid, the wholesaler or distributor would have been required to pay the applicable tax on the amount of the debt recovered.

The Commissioner would have been authorized to adopt any rules necessary to administer these refunds.

Continuing law authorizes a very similar deduction and refund for sales taxes paid on bad debt.<sup>161</sup> However, sales taxes are assessed against a consumer and remitted to the vendor, for payment to the state. In contrast, the wholesaler or distributor is generally liable for the cigarette, OTP, and vapor products tax even though each tax is generally passed down to retailers and consumers as a matter of practice.

### **Taxation of vapor product dealers (VETOED)**

(R.C. 5743.01, 5743.51, 5743.63, and 5743.64)

The Governor vetoed a provision that would have authorized an exemption from the state's vapor products tax for certain distributors.

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<sup>161</sup> R.C. 5739.121, not in the act.

In general, the vapor products tax applies at the first point in which a distributor receives untaxed products in the state. Under the vetoed provision, a distributor that received untaxed vapor products would not have been required to pay the tax if the distributor (1) was a manufacturer or importer of vapor products registered with the state and the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives and (2) only sold vapor products to other state-licensed distributors or to purchasers outside of the state. However, the provision would have allowed such a distributor to pay the tax voluntarily on products it sold to another distributor in the state, if that other distributor agreed to the arrangement in a signed statement filed with the Tax Commissioner.

The vapor products tax also applies to the “storage, use, or consumption” of vapor products, if the tax has not already been paid on the products by a distributor or an out-of-state seller. The vetoed provision would have exempted a manufacturer or importer described above from paying this tax on its storage, use, or consumption of vapor products sold outside of Ohio.

Additionally, under continuing law, any person that intends to transport vapor products with a volume greater than 500 milliliters (for liquid products) or 500 grams (nonliquids) must first obtain consent from the Tax Commissioner. The consent is not required if the tax has already been paid on the transported product. The vetoed provision would have added that consent is also not required if that volume of product is transported by a manufacturer or importer described above, even if the tax had not been paid.

### **Cigarette tax license renewal deadline**

(R.C. 5743.15; Section 757.10)

The act extends the deadline for renewing annual cigarette tax licenses. Under continuing law, a retailer, wholesaler, importer, or manufacturer of cigarettes is required to hold a license issued by TAX before selling or otherwise trafficking in cigarettes in Ohio. Such cigarettes are subject to state and county cigarette excise taxes. Under prior law, each license expired on, and had to be renewed by, the fourth Monday in May. The act extends the renewal deadline to June 1.

The act applies the renewal extension to existing licenses, so those licenses will remain valid until June 1, 2024, rather than May 27, 2024.

### **Cuyahoga County cigarette and vapor products taxes**

(R.C. 5743.01, 5743.021, 5743.025, 5743.03, 5743.05, 5743.33, 5743.511, 5743.52, 5743.521, 5743.54, 5743.55, 5743.56, 5743.57, 5743.59, 5743.60, 5743.62, 5743.621, 5743.63, 5743.631, and 5743.64; Section 803.230)

The act modifies the authority of Cuyahoga County to levy cigarette and vapor products taxes. First, the act rescinds a recent act, S.B. 164 of the 134<sup>th</sup> General Assembly, which allows the county to modify its cigarette tax base and to levy a new tax on nicotine vapor products. Second, the act removes a 30¢ limit on the amount of cigarette taxes that can be levied.

## **Cigarette tax base**

Under continuing law, Cuyahoga County can levy a tax on the sale, distribution, or use of cigarettes. Before S.B. 164, the tax could consist of two different levies: a tax of 30¢ per pack to support arts and cultural facilities and a tax of 4.5¢ per pack to fund the operation of a sports facility. Cuyahoga County is currently the only county authorized to levy a cigarette tax.

S.B. 164 allowed the county to convert its existing 30¢ per pack tax for arts and cultural facilities to a tax based on wholesale price. The new tax could have equaled up to 9% of the wholesale price of a pack of cigarettes.

The act rescinds this change. Instead, the county may continue to levy a cents-per-pack tax to support arts and cultural facilities. However, the act also removes the previous 30¢ limit on the tax, allowing the county to levy a rate greater than that amount, provided that county voters approve the increase.

## **Vapor products tax**

The act also repeals a provision of S.B. 164 that allowed Cuyahoga County to levy a new wholesale tax on nicotine vapor products to fund its arts and cultural district. That tax would be collected in the same manner as the state's existing tax on vapor products, which is paid primarily by distributors. However, unlike the state tax, which is volume-based, the county tax would be based on the products' wholesale price, at a rate of up to 9%.

## **Application to pending proposals**

If Cuyahoga County has already submitted a ballot question to modify its cigarette tax base or levy a vapor products tax before October 3, 2023, the act requires that the board of elections decline to place the question on the ballot.

## **Motor fuel taxes**

### **Revenue for township garages**

(R.C. 5735.27)

The act authorizes townships to use state motor fuel tax revenue distributed to the township to purchase buildings suitable for housing road machinery and equipment. Under continuing law, townships are only authorized to use such revenue for planning, constructing, and maintaining such buildings. Counties are permitted under continuing law to use their portion of motor fuel tax revenue to purchase such buildings.

### **Motor fuel use tax**

#### **Personal liability**

(R.C. 5728.16)

The act imposes personal liability for the fuel use tax on individual owners, employees, officers, and trustees who are responsible for reporting and paying the tax on behalf of a business taxpayer. An individual's personal liability under the act is not discharged by the dissolution, termination, or bankruptcy of the business. If more than one individual has personal liability

under the act for the unpaid taxes, all of those individuals will be joint and severally liable. Several other state taxes have similar personal liability imposed.<sup>162</sup>

### ***Fuel use tax background***

In addition to a motor fuel tax imposed on motor fuel dealers, the state imposes a motor vehicle fuel use tax on heavy trucks on the amount of motor fuel consumed in Ohio, but purchased outside Ohio. The rate of this tax is the same as for the dealer-imposed motor fuel tax. A refund or credit is allowed for the fuel use tax on fuel purchased in Ohio for use in another state, provided that the other state imposes a tax on such fuel and allows a similar credit or refund.

## **Public utility taxation**

### **Taxation of heating companies**

(R.C. 5727.30 and 5751.01(E)(2); Sections 757.80 and 803.330)

The act exempts heating companies from the state's public utilities excise tax, and instead subjects such companies to the CAT. A heating company is a public utility that supplies water, steam, or air to consumers for heating purposes.

Under continuing law, the state levies a tax on the gross receipts of certain public utilities, including heating companies. Since public utilities pay this separate gross receipts tax, they are exempt from the CAT, which is a general tax on businesses' gross receipts. Under the act, heating companies would become exempt from the public utility excise tax beginning on May 1, 2023. Since this is in the middle of a CAT quarterly tax period, heating companies would not become subject to the CAT until the beginning of the next quarter, on July 1, 2023.

The act additionally requires that, if a heating company is currently recovering public utility excise tax amounts from customers in the company's rates, the company must pass on to customers its net reduction in taxes. The act requires a company, no later than six months after May 1, 2023, to use one of three options in ongoing public utility law to pass on the reduction. At the company's option, it must (1) file an application not for an increase in rates under the ratemaking law, (2) file a modified schedule, or enter into a modified reasonable arrangement, regarding rate adjustments allowed under the law, or (3) enter into a modified agreement with a customer who has entered into an agreement with a company under the law that allows agreements for free or reduced rates.<sup>163</sup>

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<sup>162</sup> E.g., R.C. 5735.40 (motor fuel tax), 5743.57 (tobacco and vapor products taxes), and 5747.07 (employer income tax withholding), not in the act.

<sup>163</sup> R.C. 4905.31, 4905.34, and Chapter 4909, not in the act.

## Tax incentives

### Low-income housing tax credit

(R.C. 175.16, 5725.36, 5726.58, 5729.19, and 5747.83, with conforming changes in R.C. 175.12, 5725.98, 5726.98, 5729.98, and 5747.98)

The act authorizes a nonrefundable tax credit for the development of low-income rental housing that is awarded in conjunction with an existing federal low-income housing tax credit (LIHTC). The credit may be claimed against the insurance premiums tax, FIT, or income tax. The Executive Director of the Ohio Housing Finance Agency (OHFA) reserves credit amounts for federal projects up to the amount necessary to ensure the project's financial feasibility. The total amount of state credits reserved by OHFA is limited to \$100 million per fiscal year, though unreserved or recaptured amounts in one fiscal year may be carried forward and reserved in the next. Eligibility begins for projects placed in service on or after July 1, 2023, and OHFA is prohibited from reserving credits after June 30, 2027.

### Federal LIHTC

The federal LIHTC is a federal income tax credit that offsets a portion of a developer's construction costs in exchange for reserving a certain number of rent-restricted units for lower-income households in a new or rehabilitated facility. In Ohio, the federal LIHTC is administered by OHFA.

To receive a federal LIHTC, developers must apply to OHFA before undertaking a project. If the project preliminarily qualifies for credit, based on federal criteria and the state's allocation plan, OHFA may set aside (or "allocate") a credit. Receipt of the credit is contingent upon completion of the project and the project entering service, i.e., beginning to rent units, generally within two years of allocation.<sup>164</sup> In practice, developers typically sell the rights to claim federal LIHTCs upon receiving an allocation to secure up-front financing necessary to undertake the project.

### Ohio LIHTC

Any project that is allocated a federal LIHTC may also qualify for the act's Ohio LIHTC, as long as the project is located in Ohio and placed into service at any time on or after July 1, 2023.

### *Reserved credit*

A developer does not need to separately apply for the Ohio LIHTC. Instead, OHFA may reserve a state credit for any qualified project when allocating a federal LIHTC. When reserving a state credit, OHFA must send written notice of reservation to each of the qualified project's owners, which must include the aggregate amount of the credit reserved for all years of the qualified project's ten-year credit period and state that the receipt of the credit is contingent upon issuance of an eligibility certificate after the project is placed into service. After receipt of that notice, the projects owners must identify to OHFA the party that will issue annual credit

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<sup>164</sup> 26 U.S.C. 42.

allocation reports to OHFA (see “***Claiming the credit and reporting requirements,***” below). This “designated reporter” may be the owner or its member, shareholder, or partner.

The amount of credit reserved for any particular qualified project is determined by OHFA, but in no case may the reserved credit, combined with the allocated federal credit, exceed the amount necessary to ensure the financial feasibility of the project. The act additionally requires OHFA to reserve credits in a manner that ensures the qualified project is creating housing units that would not otherwise be created.

### ***Awarded credit***

After the project for which a credit is reserved is placed into service and OHFA approves the federal LIHTC, OHFA must issue an eligibility certificate to each project owner and send a copy to TAX and INS. The certificate must state the amount of the credit that may be claimed for each year of the ten year credit period, which is the lesser of:

- The amount of the federal LIHTC that would be awarded for the first year of the federal credit period absent a first-year reduction required by federal law;
- $\frac{1}{10}$  of the reserved credit amount stated in the notice reserving the state LIHTC.

This provision effectively caps the amount of a state LIHTC at the amount of the corresponding federal credit.

### ***Claiming the credit and reporting requirements***

The act allows the qualified project’s owners, or the equity owners of a pass-through entity that is the project owner, to claim the state LIHTC. An owner is a person holding a fee simple or ground lease interest in the project. The credit may be applied against more than one tax over more than one year, and the credit may be allocated amongst various owners and their equity owners by agreement. The total credits claimed in connection with the applicable year of the project’s credit period must not, however, exceed the amount stated on the eligibility certificate. Even though the credit is nonrefundable, any unclaimed amounts may be carried forward for up to five years.

Each year, a project’s designated reporter must report to OHFA a list of each project or equity owner that has been allocated a portion of the credit awarded for that year, the amount that has been allocated to each, the tax each portion will be claimed against, and the aggregate credit amount allocated, which must not exceed the credit amount listed on the eligibility certificate. Any changes to this information must also be reported to OHFA within a time frame that OHFA must prescribe. A credit cannot be claimed without being listed on this annual report. Information in the report is not a public record, except for the aggregate amount of credits allocated.

### ***Recapture***

Federal law allows for the recapture of federal LIHTCs. Under the act, if any portion of the federal LIHTC allocated to a qualified project is recaptured, OHFA must recapture a proportionate amount of the state credit allocated to the same project. To effectuate this recapture, OHFA must request that TAX or INS, as applicable, issue an assessment to recover any previously claimed

credit. Statutes of limitations that normally apply to the issuance of tax assessments, i.e., three or four years after the tax is due, do not apply to these assessments.

### ***Fees and rules***

The act allows OHFA to assess application, processing, and reporting fees to cover the cost of administering the tax credit. It also allows OHFA, in consultation with TAX and INS, to adopt rules necessary to administer the credit.

### **Single-family housing development credit**

(R.C. 175.17, 5725.37, 5726.60, 5729.20, and 5747.84, with conforming changes in R.C. 175.12, 5725.98, 5726.98, 5729.98, and 5747.98)

The act authorizes a nonrefundable tax credit against the insurance premiums tax, FIT, or income tax for investment in the development and construction of affordable single-family homes. To obtain a credit, a local government or quasi-public development entity, in partnership with a private “development team,” must submit an application to the OHFA executive director. Upon approving an application, OHFA reserves a credit for the applicant to be awarded when the project is completed. The credit equals the amount by which the project’s development costs exceed the fair market value of the project’s completed homes. The applicant may allocate credits to taxpayers of the credit-eligible taxes who invest capital in the project. The total credit amount is claimed in equal increments over the ten years after the project’s completion, and each project home is subject to an OHFA-prescribed affordability requirement for the ten years following its initial sale to a qualified buyer (“affordability period”).

### **Application process**

A county, township, municipal corporation, regional planning commission, community improvement corporation, economic development corporation, port authority, or county land reutilization corporation, i.e., a land bank, may apply for a credit. Each application must identify a project’s development team, a person that will make annual credit allocation reports on behalf of the applicant (“designated reporter”), and an estimate of the project’s total development costs. OHFA may charge application, processing, and reporting fees to cover the cost of administering the credit.

### **Credit reservation and limits**

The act requires OHFA to develop a plan for competitively awarding tax credits by establishing criteria and metrics by which projects will be evaluated. OHFA is allowed to reserve a credit for any single-family housing development project that is located in Ohio and that meets the plan’s qualifications. OHFA’s plan may allocate credits in a pooled manner. The act sets forth several criteria, described below, that OHFA may consider when evaluating applications, but allows OHFA to adopt rules, in consultation with TAX and INS, specifying the exact criteria to be considered.

### Suggested criteria to consider

Underwriting criteria to assess the risk associated with a project and criteria by which the sponsoring applicant shall be responsible for risk associated with the project, such as homeowner abandonment, default, or foreclosure.

Requirements that the applicant provide capital assets or other investments to the project.

Criteria regarding the purchase, ownership, and sale of completed project homes.

Measures to maintain affordability of project homes during the affordability period, which may include a deed restriction for some or all of the tax credit value or appreciated value of the home.

OHFA must notify each applicant, in writing, whether or not the applicant's project is approved for a credit reservation. If a project is approved, the notice will include the tax credit reservation amount with the stipulation that final receipt of the credit is contingent upon the project's completion and meeting certain reporting requirements. The amount of credit reserved for any single project is limited to the amount by which the project's estimated development costs exceed the fair market value of the project's homes, as appraised by OHFA. However, this amount can be increased or decreased depending on the actual development costs as they are certified at the time the credit is issued after completion of the project.

The act generally limits the amount of total credits that may be reserved in a fiscal year to \$50 million, but allows unreserved credit allocations and recaptured or disallowed credits to be added to the credit cap for the next fiscal year. OHFA is prohibited from reserving any credits after June 30, 2027.

### **Project completion and claiming the credit**

When a project is completed, the act requires the original applicant to notify OHFA and provide a final development cost certification. At that time, OHFA is required to appraise the project's finished homes and, after approving the applicant's final cost certification, compute the amount of the tax credit. OHFA then issues an eligibility certificate to the applicant that states the amount of the credit, i.e.,  $\frac{1}{10}$  of the amount issued in the initial certification, subject to any increase or decrease as a result of the final appraisal and cost certifications. That credit amount may then be claimed in each year of the ten year credit period listed on the certificate. OHFA is required to certify a copy of each eligibility certificate to TAX and INS.

The applicant may allocate all or a portion of the annual credit amount for any year of the credit period to one or more project investors or equity owners of a pass-through entity project investor. An investor or owner allocated a credit may claim it against the insurance premiums, financial institution, or income taxes after the eligibility certificate has been issued and the annual reporting requirements discussed below have been complied with. To do so, the investor or owner must submit a copy of the certificate with the tax return for the year in which they claim the credit. The act authorizes TAX and INS to request other documentation which an investor or owner must provide to claim the credit. If the credit exceeds the taxpayer's tax liability for that year, the credit may be carried forward for up to five years.

If a project ceases to qualify for a credit, OHFA may disallow and recapture any credit issued by requesting that TAX or INS, as applicable, issue an assessment to recover any previously claimed credit. Statutes of limitations that normally apply to the issuance of tax assessments, i.e., three or four years after the tax is due, do not apply to these assessments.

### **Continuing obligations and reporting requirements**

Throughout the development of the project, the applicant must maintain ownership of the homes until they are sold to qualified buyers. The act authorizes OHFA to establish, by rule, criteria to evaluate the qualifications for buyers. A qualified buyer must occupy a home constructed as part of a covered project as the buyer's primary residence for all ten years of the affordability period. During this period, the affordability of the home, as determined by OHFA by rule, is to be maintained and services are to be provided by the applicant's development team.

Each year, a project's designated reporter must report to OHFA a list of each investor or equity owner that has been allocated a portion of the credit awarded for that year, the amount that has been allocated to each, the tax each portion will be claimed against, and the aggregate credit amount allocated, which must not exceed the credit amount listed on the eligibility certificate. Any changes to this information must also be reported to OHFA within a time frame that OHFA must prescribe. A credit cannot be claimed without being listed on this annual report. Information in the report is not a public record, except for the aggregate amount of credits allocated.

## **Film and theater tax credits**

### **Film and theater production credit cap**

(R.C. 122.85)

The act increases the total amount of film and theater tax credits that may be awarded each fiscal year. Under prior law, film and theater tax credits equaling \$40 million, plus any amounts not awarded from the previous fiscal year's \$40 million cap, could be awarded each fiscal year. The act increases the annual base amount to \$50 million, carries forward amounts available but not awarded in the previous fiscal year, and allows DEV to allocate any amount available to award as film and theater capital improvement tax credits (see "**Film and theater capital improvement tax credit**," below) for that fiscal year instead as film and theater production credits. It also requires that \$5 million of the cap be reserved for Broadway theatrical productions each fiscal year.

Continuing law allows a refundable tax credit for companies that produce all or part of a motion picture or Broadway theatrical production in Ohio and incur at least \$300,000 in Ohio-sourced production expenditures. The credit equals 30% of the company's Ohio-sourced expenditures for goods, services, and payroll involved in the production. A company can claim the credit against the CAT, FIT, or income tax.

Also under continuing law, DEV awards credits in two rounds, with the first ending July 31 and the second ending January 31. Previously, DEV could only award up to \$20 million in the first round, plus any unused credits from the previous year. The act increases that limit to \$25 million, plus any unused credits from the previous year and any allocation from the capital improvement

tax credit, and requires unawarded credits from the \$5 million reserved for Broadway productions to remain reserved for those productions when carried forward to the next year. For FY 2024, the first round limit remains \$20 million because this provision will not have taken effect before the July 31 application deadline.

### **Film and theater capital improvement tax credit**

(R.C. 122.852, 122.85(A)(4), 5726.59, 5726.98, 5747.67, 5747.98, 5751.55, and 5751.98)

The act authorizes a new tax credit for a motion picture or Broadway theatrical production company that completes a capital improvement project in Ohio. Eligible projects include the construction, acquisition, repair, or expansion of facilities or equipment that will be used in a motion picture or Broadway production or for postproduction.

Generally, the credit equals 25% of either the company's actual qualified expenditures, or the amount of such expenditures estimated on the company's application, whichever is less. Qualified expenditures are Ohio-sourced capital improvement expenditures and include the purchase of goods or services directly for use in a capital improvement project, as well as any accounting and auditing expenses incurred to comply with the act's reporting requirements. They do not include expenses on the basis of which an existing motion picture and theater credit has been awarded.

The credit is capped at \$5 million per project, \$5 million per county, and \$25 million per fiscal year overall. If DEV does not issue the full \$25 million allotment in a particular fiscal year, the excess allotment can be carried forward to the next fiscal year. Additionally, DEV may reduce the maximum amount for any fiscal year and increase the maximum amount for the film and theater production tax credit (see "**Film and theater production credit cap**," above) by a corresponding amount.

Key features of the new capital improvement tax credit include the following:

- The credit is refundable and may be claimed against the CAT, FIT, and income tax;
- A credit recipient can sell or transfer all or part of the credit to another person or persons with notice to DEV;
- A production company must show that it is making reviewable progress on its capital improvement project within 90 days after the Director approves the project. DEV can rescind approval of a project that does not begin between that 90-day deadline, unless there is good cause for the delay.
- The production company must engage an independent certified public accountant to certify the company's qualified capital improvement expenditures.
- DEV must adopt rules governing the credit program, including rules for evaluating applications.
- DEV will review and award applications for the credit in one round each fiscal year, beginning in FY 2025. A production company may apply for the credit either before or

after the capital improvement project is complete. DEV may charge an application fee equal to the lesser of \$10,000 or 1% of the estimated value of the credit.

The application must include a description of the project, the project's schedule, the estimated project expenditures and credit amount, and the estimated economic impact of the project in the state as a whole and in the community in which the project is located. DEV will rank applications based on their likely economic impact, the potential number of new jobs created, and the potential new payroll for employees in this state. After ranking the applications, DEV will award credits to projects in the order of their ranking, starting with the projects that have the greatest economic and workforce development impact.

Once a project is approved and an accountant has certified the qualified expenditures, DEV will issue the production company a tax credit certificate.

### **Job creation and retention credit recapture adjustments**

(R.C. 122.17 and 122.171)

Under continuing law, when DEV discovers that a taxpayer that has received a job creation or job retention tax credit (JCTC or JRTC) is not in compliance with the agreement for the credit, DEV may report that noncompliance to the Tax Credit Authority (TCA). After giving the taxpayer an opportunity to explain the noncompliance, TCA may require the taxpayer repay a portion of the credit by certifying the repayment to TAX or INS. The act authorizes TCA to adjust that repayment amount if circumstances change after this, but only once within 90 days after the certification. However, no adjustment is allowed if the taxpayer has already repaid the amount or if TAX's or INS's assessment has been certified to the Attorney General for collection.

#### **Background**

Under continuing law, the TCA is authorized to enter into JCTC and JRTC agreements with employers to foster job creation or retention and capital investment in the state. The amount of the credit equals an agreed-upon percentage of the amount by which the employer's "Ohio employee payroll" (i.e., the compensation paid by the employer and used in computing the employer's tax withholding obligations) exceeds the employer's "baseline payroll" (i.e., Ohio employee payroll for the 12 months preceding the tax credit agreement). The credits may be claimed against the CAT, FIT, petroleum activity tax, domestic or foreign insurance premiums taxes, or personal income tax. The JCTC is a refundable credit, while the JRTC is nonrefundable. To ensure compliance with the terms of the agreement, each employer must file an annual report with TCA in which it reports its number of employees and payroll, among other metrics.

### **Research and development tax credits**

(R.C. 5726.56 and 5751.51)

Continuing law allows a nonrefundable tax credit against the FIT and CAT equal to 7% of the taxpayer's excess qualified research and development (R&D) expenses above the average of the taxpayer's R&D expenses in the three preceding years. Unclaimed credits may be carried forward for up to seven years. The act changes the way certain taxpayers calculate and claim that credit, imposes recordkeeping requirements, and allows TAX more flexible audit authority.

## **Taxpayer groups**

The act modifies how a taxpayer comprised of more than one person – e.g., a pass-through entity with several owners – may calculate and claim R&D credits. Both the FIT and CAT require or allow such a “taxpayer group” to file and pay the tax as a single taxpayer.

The act requires a taxpayer group to compute the R&D credit on a member-by-member basis, rather than across the entire taxpayer group. In other words, the group’s total R&D credit equals the aggregate credit computed against each member’s qualified R&D expenses. This computation and the R&D credit that may be claimed must be made on a form prescribed by TAX.

The act also limits the members whose R&D expenses may be included in a group’s aggregate credit amount by only allowing such members to include their portion of the credit if they are members of the group on December 31 of the year during which the R&D expenses are incurred. A similar membership requirement applies to the computation of any R&D credit carryforwards.

## **Recordkeeping requirements**

The act requires a taxpayer claiming an R&D credit to retain records substantiating the claim. The records must be kept for four years after the due date for the return on which the credit is claimed, or four years after it is actually filed, whichever is later. Records required to be retained include those relating to any R&D expenses used in calculating the credit and incurred in the year for which the credit was claimed and for the three preceding years.

## **Audits**

In addition to TAX’s general audit authority, the act authorizes TAX to audit a representative sample of a taxpayer’s R&D expenses to verify that the taxpayer has correctly computed its R&D credit. In undertaking this audit, the act requires that TAX make a good faith effort to agree on a representative sample, but it does not preclude a representative sample audit absent such an agreement.

## **Exemption and exclusion for consumer-grade fireworks fees**

(R.C. 5739.02(B)(65) and 5751.01(F)(2)(tt); Sections 803.50 and 803.190)

Continuing law imposes a 4% fee, collected by the State Fire Marshal, on the gross receipts from consumer-grade fireworks sales by licensed fireworks manufacturers, wholesalers, and retailers. The manufacturer, wholesaler, or retailer may separately or proportionately bill the fee to another person, including the consumer.<sup>165</sup>

The act exempts the consumer-grade fireworks fees from sales and use tax, beginning October 1, 2023, so long as they are separately stated on the invoice, bill of sale, or similar document the vendor gives the consumer in the retail sale. The act also authorizes a business to

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<sup>165</sup> R.C. 3743.22, not in the act.

exclude from its taxable gross CAT receipts collections of any separately stated and billed fireworks fees, beginning for CAT tax periods ending after October 3, 2023.

### **Deduction and exclusion for East Palestine derailment payments**

(R.C. 5747.01(A)(39) and 5751.01(F)(2)(ss); Section 803.160)

The act authorizes an income tax deduction and a more limited CAT exclusion for certain payments received by a taxpayer and related to the train derailment near East Palestine that occurred on February 3, 2023. The deduction and exclusion applies to taxable years or tax periods beginning on or after January 1, 2023.

#### **Income tax deduction**

Under federal income tax law, a taxpayer may deduct payments received to reimburse or compensate the taxpayer for costs incurred for certain declared disasters.<sup>166</sup> The act authorizes a state income tax deduction for any such payments resulting from that derailment that would be deductible under federal law if the derailment was a declared disaster that triggered the federal deduction. The payments must be made by a federal, state, or local government agency, a railroad company or any subsidiary, insurer, related person, or agent of a railroad company (“eligible payers”). The act additionally authorizes the taxpayer to deduct any payments received from an eligible payer to compensate for business losses.

#### **CAT exclusion**

The act authorizes a CAT exclusion for gross receipts received by a taxpayer from an eligible payer as compensation for business losses resulting from that derailment.

### **Property tax**

#### **Park district renewal levies**

(R.C. 1545.21)

The act authorizes park districts to propose renewal levies, which extend the term of any existing levy at its current effective millage rate unless coupled with an increase or decrease. Under continuing law, a park district’s voted property tax may be extended through a replacement procedure unique to park districts. Unlike these replacement levies, a renewal levy authorized by the act may only be proposed in the last year of the levy it is renewing or the following year. Most other types of voted property taxes may be renewed, increased, or decreased under continuing law in a similar manner.

#### **Index homestead exemption to inflation**

(R.C. 323.152 and 4503.065; Section 803.90)

The act indexes the amount of the property tax homestead exemption for a homeowner who is elderly or disabled, a disabled veteran, or the surviving spouse of a public service officer killed in the line of duty so that the exemption amounts – and therefore the tax savings – increase

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<sup>166</sup> 26 U.S.C. 139.

according to increases in the prices of all goods and services composing the national gross domestic product (GDP).

Continuing law provides a property tax credit for the residence, or “homestead,” of certain qualifying individuals. Under previous law, this “homestead exemption” equaled the taxes that would be charged on up to \$25,000 of the true value of a home owned by a person who (a) is 65 years of age or older, permanently and totally disabled, or at least 59 years old and the surviving spouse of an individual who previously received the exemption, and (b) has an Ohio modified adjusted gross income of \$36,100 or less, as computed for state income tax purposes (including all business income and excluding Social Security and disability benefits). Under continuing law, this income limit is increased each year to adjust for inflation. Homeowners who received this homestead exemption before 2014 are not subject to the income limit. The credit essentially exempted \$25,000 of the value of a homestead from taxation.

Also under continuing law, special “enhanced” exemptions are available for homes of military veterans who are totally disabled and their surviving spouses and for surviving spouses of peace officers, firefighters, or other emergency responders who die in the line of duty or by an injury or illness sustained in the line of duty. No income limit applies to either enhanced exemption, which, under previous law, were equal to the taxes charged on up to \$50,000 of the home’s value.

The act requires the amount of each homestead exemption to be adjusted for inflation each year. The adjustments are made in the same manner as inflationary adjustments are made to the income limit for the \$25,000 homestead exemption: by multiplying the current year’s exemption amount by the percentage increase in the GDP deflator over the preceding year and adding that result to the current exemption amount. An adjustment would not be made for any year the GDP deflator does not increase.

The Tax Commissioner must compute the adjustments and certify the resulting amounts to each county auditor by December 1 to be applied the following tax year, or, in the case of the manufactured home tax, the second ensuing tax year. The difference in application is accounted for by the fact that the manufactured home tax is payable on a current-year basis, whereas property tax is payable in arrears. Because of this, the act’s adjustment and certification requirements begin to apply in tax year 2023 or, for the manufactured home tax, 2024.

### **Valuation of subsidized residential rental housing**

(R.C. 5713.03, 5713.031, and 5715.01)

The act requires the Tax Commissioner to adopt rules prescribing a uniform tax valuation method for federally subsidized residential rental property, which is any property subsidized by the following programs, listed according to their most commonly used name and the section of federal law they are authorized under:

- Section 42, federal low-income housing tax credit (LIHTC);
- Section 202, Supportive Housing for the Elderly;
- Section 811, Supportive Housing for Persons with Disabilities;

- Section 8, Housing Choice Voucher Program;
- Section 515, Rural Rental Housing Loans;
- Section 538, Guaranteed Rural Rental Housing Program; and
- Section 521, USDA Rural Rental Assistance Program.

Generally, under continuing law and practice, real property is appraised for tax purposes by a county auditor by using one of three methods – the income method (i.e., capitalizing the income generated by the property), cost method (i.e., the cost of constructing or improving the property), or comparable sales method (i.e., a comparison of the neighborhood sales prices of comparable properties).<sup>167</sup> All three methods are employed to value real property at its true, or fair market value, which is the uniform standard that all real property, except certain agricultural property, must be valued at, as required by the Ohio Constitution.<sup>168</sup> In the context of federally subsidized rental housing, courts have generally held that using the income approach is superior to the other two approaches when determining the property’s fair market value. These cases generally result in subject property’s fair market value being determined on the basis of its market rent, rather than any subsidized contract rent.<sup>169</sup> Courts and continuing law additionally require any valuation to take into account the effect of limitations on the property’s value due to involuntary, governmental actions, such as the rent restrictions federal subsidies may impose.<sup>170</sup>

Under previous law, county auditors were explicitly authorized to use any of the three methods in valuing LIHTC property. The act repeals this authorization and instead requires the Tax Commissioner to adopt rules prescribing a formula for the uniform valuation of all federally subsidized residential rental property, including LIHTC property. The formula must take into account the operating income and expenses of the property, as reported by the owner, and a uniform capitalization rate.

The formula must consider up to three years of operating income, which includes gross potential rent, forgiveness of or allowance received for vacancy or unpaid rent losses, and any income derived from other sources. Certain income and expense amounts are presumed as a percentage of gross potential rent including the allowance for vacancy losses (4%) and unpaid rent losses (3%) for income and repair or replacement reserve fund or account contributions (5%) for expenses. Expenses as a whole are presumed to be 48% of total operating income, plus utility expenses as reported by the owner. These presumptions may be exceeded based on any evidence of the actual income or expenses reported by the property owner. Operating expenses do not include property taxes, depreciation, and amortization expenses. Finally, the capitalization

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<sup>167</sup> O.A.C. 5703-25-05 and 5703-25-07.

<sup>168</sup> Ohio Const., art. XII, sec. 2.

<sup>169</sup> See, e.g., *Alliance Towers v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16, 23 (1988).

<sup>170</sup> R.C. 5713.03; *Woda Ivy Glen L.P. v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762, ¶¶ 17, 23-24.

rate must be uniform and market-appropriate and include a tax additur accounting for the property tax rate applicable to a particular property's location. For LIHTC property, the capitalization rate must be 1% lower than the uniform rate applied to all other subsidized properties. Though the act prescribes the factors that must be included in the formula, the act delegates the task of prescribing the formula to the Tax Commissioner.

The rules must also set a minimum total value for subsidized residential rental property of 150% of the value of the unimproved land upon which it is situated or \$5,000 per dwelling unit, whichever is greater.

The formula is only utilized so long as the property remains subject to the conditions and restrictions imposed by the federal program that subsidizes it and the owner makes the required reports (see "**Information sharing**," below). If it is no longer subject to federal restrictions, then the property is valued as other real property, presumably employing the income, cost, or comparable sales method.

### **Information sharing**

The act requires the owner of subsidized residential rental property to report to the county auditor of the county in which the property is located the property's operating income and expenses a prospective buyer might consider in purchasing the property. The report must include all of the information necessary to value the property via the formula described above, such as gross potential rent, allowances for losses due to vacancy or unpaid rent, any other income, expenses such as those related to staffing, utilities, repairs, supplies, audits, legal and contract services, and any contributions to a replacement reserve fund. This information must be audited by an independent public accountant or auditor or another certified public accountant before it is submitted to the auditor. If such an audit was not completed by the filing deadline, the owner must file updated records within 30 days after an audit is done.

A property owner must file this information before the subject property is placed in service, after commencing operations, and each following reappraisal or update year, i.e., every three years, on or before March 1. If an owner fails to timely file the information, the county auditor is not required to utilize the formula described above to value the property. The information submitted must cover up to three previous years. Any submitted information is not a public record. As with the formula, this submission is no longer required after the property is no longer subject to any federally imposed conditions and restrictions.

### **Subsidized rental property annual list**

(R.C. 175.20)

The act requires OHFA to prepare and annually update a list of all federally subsidized residential rental property subject to the act's special valuation formula (see "**Valuation of subsidized residential rental housing**," above). The list must be organized by county and include information about each property including the owner, address, parcel numbers, program it is subsidized by, and, for LIHTC property, the name and business address of any person allocated the credit. Metropolitan housing authorities are required to supply information for the list at OHFA's request. The act also makes the list a public record.

The first list must include all covered properties as of January 1, 2024, and must be prepared and certified to the Auditor of State, Board of Tax Appeals, and TAX by January 31, 2024. OHFA is required to update and recertify the list to those agencies in January of each following year. TAX, in turn, certifies the list to all county auditors.

## **Residential development land exemption**

(R.C. 5709.56)

The act authorizes a partial property tax exemption for unimproved land that has been subdivided for residential development. The value exempted is the value in excess of the property's most recent arms-length sale price, apportioned according to the relative value of each subdivided parcel (see "**Exempted portion**," below). Specifically, the exemption applies to any unimproved parcel subdivided pursuant to a plat and on which construction of residential buildings, e.g., single- or multi-family dwellings, is planned but has not started. The exemption does not apply to land included in a tax increment financing (TIF) arrangement.

The exemption applies beginning with the tax year in which the subdivided parcel first appears on the tax list, but no sooner than tax year 2023. The exemption may be claimed for up to eight years, or until either the land is sold to another person or construction begins on a residential building. The exemption ceases to apply to the tax year following the year in which either event occurs. Construction of streets, sidewalks, curbs, or driveways or the installation of water, sewer, or other utility lines does not trigger the end of the exemption. Transferring the parcel to another person without consideration does not terminate the exemption.

The exemption is only available to the owner or owners of the land at the time it was subdivided, unless the land is transferred to another without consideration as mentioned above. As with other property tax exemptions, a parcel's owner is required to apply annually to the Tax Commissioner for the exemption. As part of an exemption application, the owner must expressly certify that the parcel qualifies as preresidential development property.

### **Exempted portion**

To calculate the exempt portion of a parcel, the act first assigns a base value to the original property equal to the price at which the property was most recently sold in an arm's length transaction. This base value is apportioned to each subdivided parcel according to the parcel's appraised value once the subdivision occurs in proportion to the total of the appraised values of all parcels resulting from the subdivision. Any increase above that apportioned value is exempt.

The act accounts also for how the exemption applies if a residential development parcel that resulted from a prior subdivision is itself further subdivided. In such a case, the exemption continues to apply to the new parcels resulting from the later subdivision, with each of the new parcels having an unexempted value that is a proportion of the unexempted value of the larger parcel from which it was most recently subdivided; the proportion is based on each new parcel's appraised value relative to the total appraised value of all the new parcels.

The act specifies that the partial exemption does not create a new method for valuing property for tax purposes. The act also specifies that subdivided farmland may continue to be valued at its current agricultural use value (CAUV) as long as it is still used for farming, and

requires the county auditor to routinely inspect such land to ensure that such land continues to qualify for CAUV valuation.

### **Brownfield property tax abatement**

(Section 757.40)

The act authorizes the owner of property currently subject to a ten-year property tax exemption for remediated brownfield development land to apply for an abatement or refund of taxes assessed on the property in tax years 2020 and 2021 that would not have been assessed had the property been subject to that exemption for those years. The property only qualifies if the owner was issued a covenant not to sue by the Ohio EPA in 2020 based on the owner's remediation activities and if the owner applies for the abatement within one year after October 3, 2023.

Under continuing law, the brownfield remediation exemption starts to apply not in the tax year that the covenant not to sue is issued, but the year in which the Ohio EPA certifies the covenant to TAX.<sup>171</sup> Thus, the act applies to a situation where the covenant not to sue was issued two years before it was certified to TAX.

If the abatement is obtained, the act shortens the exemption's duration by two years to account for the two years of abatement.

### **Tax increment financing**

#### **TIF background**

Continuing law allows municipalities, townships, and counties to create a tax increment financing (TIF) arrangement to finance public infrastructure improvements. Through a TIF, the subdivision grants a property tax exemption for the increase in the assessed value of designated parcels that are part of a development project. The exemption may apply to specific parcels or to entire areas, known as "incentive districts." The owners of the parcels make payments in lieu of taxes to the subdivision equal to the amount of taxes that would otherwise have been paid with respect to the exempted improvements ("service payments"). TIFs thereby create a flow of revenue back to the subdivision, which generally uses those service payments to pay the public infrastructure costs necessitated by the development project.

#### **Removal of nonperforming parcels**

(R.C. 5709.40 and 5709.73)

The act authorizes a township or municipality to remove a parcel from an existing municipal or township TIF, either individually or as part of an incentive district, and add the parcel to a new incentive district TIF, if the parcel's owner is required to make service payments under the existing TIF, but has not yet done so. Once added to the new TIF, the parcel is excluded from its former TIF and the owner is no longer required to make service payments under that former TIF. When the township or municipality subsequently applies to TAX for the TIF-authorized

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<sup>171</sup> R.C. 5709.87(B) and (C), not in the act.

property tax exemptions, necessary to allow for service payments under the new TIF, it must identify the affected parcels, the original TIF ordinance or resolution, and the value history of each affected parcel since the original TIF ordinance or resolution was passed.

### **Impacted city TIF service payment reallocation**

(Section 757.70)

The act authorizes the legislative authority of an impacted city, i.e., a city that meets certain urbanization or disaster criteria, to, under certain circumstances, reallocate parcel TIF service payments. Under prior law, these payments had to generally be used to fund public improvements that benefit the parcel being assessed. The act allows these payments to be reallocated for other projects that relate to urban development generally, but do not benefit the assessed parcel, if the reallocation is made before July 1, 2024, and the parcel benefitting public improvements have been sufficiently funded.

### **30-year parcel TIF extension**

(R.C. 5709.51)

In general, TIFs may be designated for a term of up to ten years or, with the approval of the appropriate school district, 30 years. Continuing law authorizes a county, municipality, or township to extend the term of a parcel TIF by an additional 30 years. The act modifies the circumstances under which such an extension may be authorized.

First, as an alternative to the existing requirement that the aggregate TIF service payments exceed \$1.5 million in the year before an extension can be adopted, the act allows a subdivision to determine that payments will meet the \$1.5 million threshold in any future year of the TIF and adopt the extension on the basis of that determination. Second, the act also applies a bar that prohibits such an extension if the service payments exceeded \$1.5 million in any year preceding the year before the extension is adopted to extensions adopted after 2023. Prior law only applied this bar to extensions adopted after 2020.

Third, rather than waiting for or satisfying one of the above requirements in order to amend an existing TIF resolution to authorize an up to 30-year extension, as required under prior law, the act allows a subdivision to extend the term of a TIF in the original resolution authorizing the TIF, presumably based on the subdivision's determination that the service payments will meet the \$1.5 million threshold in the future.

The act applies these changes to any pending and completed TIF proceedings.

### **Extension of certain municipal TIFs**

(R.C. 5709.40(L))

The act also allows a municipality that created an incentive district TIF before 2006 to extend that TIF for up to 15 years, provided that certain conditions are met. In general, under continuing law, a subdivision can authorize a TIF for up to 30 years with school board approval or up to ten years without school board approval.

To be eligible for the extension, the municipality must (a) obtain the approval of the school board of each district in which the TIF is located and (b) notify each county in which the

TIF is located. Unlike continuing law generally, if a school board fails to either approve or deny the TIF within the time allocated, the municipality cannot create the TIF. However, similar to continuing law, if the resolution creating the TIF provides for compensation to be paid to a school district, or if a school district has adopted a resolution waiving its right to approve TIFs, the school board's approval is not required.

If the TIF is extended, the percentage of improvements exempted cannot exceed the percentage originally authorized. For example, if 80% of the value of improvements were exempted under the original TIF, the extended TIF cannot allow an exemption of more than 80%.

### **Property tax foreclosure notice publication**

(R.C. 323.25, 323.69, 5721.14, and 5721.18)

The act modifies publication procedures for notices of impending tax foreclosure actions. Specifically, the act allows a tax foreclosure notice to be published online if the notice is first published in a newspaper of general circulation in the county where the property is located. If online notice is used, the notice must begin to appear one week after the initial newspaper publication and continue to appear until one year after the foreclosure proceeding results in a judgment and finding against the property. The county clerk of courts decides which website of the county or court the online notice will appear. Online publication is considered "served" and a foreclosure proceeding action may thus continue two weeks after the clerk first posts the notice.

Under prior law, publication of the notice had to be made three times in a newspaper. Publishing the notice of a foreclosure action, along with other steps taken during the tax foreclosure process, such as title searching and notification by mail or in person, is meant to fulfill the state's obligation under the Due Process Clause to provide notice to property owners and lienholders of an impending action that may result in the property being taken and sold.

The act also specifies that if a property tax foreclosure notice is not published online, then all publications of the notice beyond the first may be made in an abbreviated form in a newspaper pursuant to continuing law's abbreviated newspaper publication procedures for government notices.

### **Qualified energy project tax exemptions (PARTIALLY VETOED)**

(R.C. 5727.75)

The act makes several changes to a real and tangible personal property tax exemption authorized for certain renewable energy projects. In particular, the act extends the sunset date of those exemptions and adjusts the requirements an exempt project must meet to qualify and maintain an exemption. In general, a project seeking exemption must (1) apply to DEV to be certified as a qualifying project, (2) in some cases obtain the approval of a county in which the project will be located, (3) comply with certain deadlines and construction, safety, education, and labor requirements, and (4) make payments in lieu of taxes (PILOTs) to be distributed in the same manner as property taxes.

## **Extend sunset date**

Under prior law, these exemptions for qualifying projects that were in their construction or installation phases were generally scheduled to sunset after 2025. The act extends the sunset date to the later of after 2029 or the year the U.S. Treasury Secretary determines there has been, from 2022, a 75% or greater reduction in annual greenhouse gas emissions from electricity production in the United States. In line with that extension, the act extends other deadlines projects must satisfy to obtain the exemption.

Under continuing law, if a renewable energy project is placed in service by a specific date, the property tax exemption may continue in perpetuity, as long as the project continues to comply with certain certification requirements. The act extends the placed-in-service deadline from December 31, 2025, to the last day of the new sunset year.

## **Certification of qualified energy projects**

The act changes requirements that a solar energy project must comply with to obtain and retain a tax exemption. Under prior law, to be certified as a qualified energy project, a project needed to maintain a ratio of Ohio-domiciled full-time equivalent (FTE) employees employed in the project's construction or installation to the total number of FTE employees employed in the construction or installation of at least 80% for a solar project and 50% for other projects.

The act reduces the ratio to 70% for solar projects but retains the 50% minimum for other renewable energy projects. It also requires all renewable energy projects exceeding 20 megawatts of generating capacity applying for certification after October 3, 2023, to compensate project employees at local prevailing wage rates and ensure that 15% of total project labor is performed by apprentices. (Similar requirements apply to renewable energy projects seeking to qualify for the federal renewable electricity production income tax credit.<sup>172</sup>) If a solar project for which certification was sought before October 3, 2023, agrees to be bound by the same prevailing wage and apprenticeship requirements as new projects, it may take advantage of the reduced Ohio-domiciled employee ratio.

The Governor vetoed a provision that would have expanded, for all renewable energy projects, who may qualify as an Ohio-domiciled employee for the purpose of meeting this threshold. Under continuing law, an employee must actually be domiciled in Ohio, i.e., live in their primary residence in Ohio, in order for their work project hours to count. The vetoed provision would have allowed hours worked by a project employee who lives within 50 miles of Ohio and who is a member of a trade union that has members in Ohio to qualify as Ohio-domiciled employee hours.

The act also limits, for all renewable energy projects, how the number of FTE employees on a project is calculated. The number of project FTE employees was previously calculated by dividing the total number of compensated work hours at the project during the year, by 2,080. The act specifies that only hours worked by employees devoted to site preparation and protection, construction and installation, and material unloading and distribution count as

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<sup>172</sup> 26 U.S.C. 45.

project work hours. Hours worked by management and purely logistical positions are not counted.

## **Joint Committee on Property Tax Review and Reform**

(Section 757.60)

The act creates the Joint Committee on Property Tax Review and Reform, comprised of five Senators (three of the majority party appointed by the Senate President; two of the minority party appointed by the Senate Minority Leader) and five Representatives (three of the majority party appointed by the Speaker; two of the minority party appointed by the House Minority Leader). The Committee, co-chaired by a House and Senate majority party member, is required to review the history and purpose of Ohio's property tax law, including levies, exemptions, and local subdivision budgeting. The Committee may also hold hearings on pending legislation related to property taxation. The act requires the Committee to submit a report to the General Assembly making recommendations on reforms to property tax law by December 31, 2024, and afterwards terminates the Committee.

## **Special improvement districts**

### **Park district property**

(R.C. 1710.01, 1710.02, 1710.03, and 1710.13)

The act prohibits park district property from being included in a special improvement district (SID) unless the park district consents to its inclusion. Under continuing law, SIDs may be created within the boundaries of one or more municipalities or townships to finance public improvements or services via special assessments on most property within a district. The act's exclusion for park district property puts such property in line with the similar continuing exclusion for county, township, municipal, state, and federal property.

## **Tax administration**

### **Delivery of tax notices**

(R.C. 5703.056 and 5703.37; conforming changes in numerous other R.C. sections)

The act expands the means by which TAX may send tax notices. For any tax notice previously required to be sent by certified mail, the act allows TAX to alternatively send the notice by ordinary mail or electronically, including by email or text message. Under continuing law, electronic delivery is only allowed if the taxpayer gives consent.

In addition, the act specifies that electronic notices can be sent to a taxpayer's authorized representative, and requires TAX to establish a system to issue notifications of tax assessments to taxpayers through secure electronic means. Under continuing law, if an electronic notice is not accessed after two attempts, TAX must send it by ordinary mail.

The act also eliminates certain recordkeeping requirements that a delivery service must meet before it can be used by TAX to deliver tax notices. Specifically, it eliminates the requirement that the delivery service record the date on which the document was sent and delivered.

## **Electronic conveyance forms**

(R.C. 319.202)

Under continuing law, whenever real property or a manufactured or mobile home is transferred, the grantee is required to file a statement with the county auditor attesting to the property's value and acknowledging that certain information related to the property's eligibility for the homestead exemption or current agricultural use valuation (CAUV) status has been considered as part of the transfer. The statement must be accompanied by any required property transfer tax.

Prior law required the grantee to file three copies of this statement, but the act alternatively allows a grantee to submit a single copy of the statement electronically.

## **Corporation franchise tax amended filings**

(R.C. 5733.031; Section 757.30)

The act eliminates a requirement that taxpayers file amended corporation franchise tax (CFT) reports. The CFT was fully repealed in 2013, but if an adjustment to a corporation's federal tax return alters the corporation's previous CFT tax liability, the corporation must still file an amended CFT report. Under the act, corporations are no longer required to file amended reports after December 31, 2023. Similarly, no corporation may request a refund after that date.

## **Disclosure of confidential tax information**

(R.C. 5703.21 with conforming changes in R.C. 1346.03, 1509.11, 4301.441, and 5749.17)

The act streamlines the authority of TAX to share confidential tax information with state agencies. Under continuing law, unless an exception applies, tax return information is confidential and cannot be disclosed by an employee of TAX or any other individual. Previously, the law listed several exceptions authorizing the disclosure of information to specific state agencies. The act replaces much of this list, which involves specific state agencies, with a general authorization for TAX to share information with any state or federal agency when disclosure is necessary to ensure compliance with state or federal law. The receiving agency is prohibited from disclosing any of this shared information, except as otherwise authorized by state or federal law.

## **Refunds of tax penalties**

(R.C. 5703.052 and 5703.77)

The act makes conforming changes to a law, recently enacted in H.B. 66 of the 134<sup>th</sup> General Assembly, that allows taxpayers to obtain a refund of tax-related penalties and fees.

Under continuing law, TAX may impose penalties if a taxpayer fails to comply with tax filing and reporting requirements – for example, if a taxpayer fails to file a tax return, pay the full amount due, pay a tax electronically when required to do so, or obtain a required license or registration. H.B. 66 allowed taxpayers who overpaid any such penalty to obtain a refund of that amount, with interest.

The act updates two provisions to reflect this change. Both provisions, which were inadvertently excluded from H.B. 66, previously only referred to refunds of overpaid taxes, rather than both overpaid taxes and penalties.

## **Local Government and Public Library Funds**

### **Permanent increase**

(R.C. 131.51; Section 387.20)

The act permanently increases, beginning in FY 2024, the percentage of state tax revenue that the Local Government Fund (LGF) and Public Library Fund (PLF) each receive per month, to 1.7%.

Under prior law, the LGF and PLF were each allocated 1.66% of the total tax revenue credited to the GRF each month. This percentage has been set in permanent law since FY 2014, following a series of decreases in allocations to both funds. Over the past decade, however, the actual percentage of tax revenue allocated to the LGF and PLF has fluctuated slightly. The General Assembly has repeatedly authorized “temporary” increases to the PLF allocation, ranging from 1.68% to 1.70%. The PLF allocation for FYs 2022 and 2023 is 1.70%. The LGF allocation was temporarily increased once, to 1.68% for FYs 2020 and 2021, but the FYs 2022 and 2023 allocation stands at 1.66%.<sup>173</sup>

Under continuing law, most of the money in the LGF and PLF is distributed monthly to each county’s undivided local government or public library fund, largely based upon that county’s historical share. Each county distributes its share among local governments or libraries, respectively, according to a locally approved formula or, in a few counties, a statutory need-based formula. A smaller portion of the LGF is paid directly to townships, smaller villages, and municipalities.

### **Minimum county distributions**

(R.C. 5747.501; Sections 803.170 and 812.20)

The act also increases the minimum amount distributed from the LGF to counties, beginning in FY 2024.

Under continuing law, LGF funds are distributed to each county in the state. In FY 2013, LGF distributions were reduced by 50% compared to previous levels. At the time, the proportionate share of the reduced LGF received by each county was held at FY 2013 levels, which included a minimum distribution for certain counties: if a county’s LGF was less than \$750,000, that county’s distribution was not reduced; if the 50% reduction reduced a county’s LGF below \$750,000, the county received \$750,000.

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<sup>173</sup> Section 387.20 of H.B. 110 of the 134<sup>th</sup> General Assembly, Section 387.20 of H.B. 166 of the 133<sup>rd</sup> General Assembly, Section 387.20 of H.B. 49 of the 132<sup>nd</sup> General Assembly, and Section 375.10 of H.B. 64 of the 131<sup>st</sup> General Assembly.

The act increases the minimum LGF threshold for all counties to \$850,000. Based on calendar year 2022 LGF data, the change appears to affect six counties who in that year received less than \$850,000: Harrison, Monroe, Morgan, Noble, Paulding, and Vinton counties. Under continuing law, as necessary, the proportionate shares of other counties may be adjusted to produce the funds needed to meet the minimum distribution requirement.

### **Alternative method to apportion county undivided funds**

(R.C. 5747.53)

Under continuing law, a portion of the funds in the state's LGF are deposited in each county's undivided local government fund (CULGF) each year. Those funds are then distributed to the county and townships, municipalities, and park districts in the county according to a statutory formula or by an alternative method of apportionment provided for by the county budget commission.<sup>174</sup>

A budget commission may adopt alternative methods of apportioning CULGF funds through one of two methods. The first, sometimes referred to as the "standard procedure," requires approval of the county commissioners, the city with the largest population residing in the county, and a majority of the county's other municipal corporations and townships. Under continuing law, an alternative method of apportionment adopted under this method continues until it is revised, amended, or repealed. The act requires the county budget commission to review such an alternative method at a public hearing held at least once in 2024 and once in every fifth year thereafter. The budget commission is required to give notice of this hearing to political subdivisions eligible to receive CULGF funding and allow their representatives to testify on the alternative apportionment method. The act does not, however, require any changes based on the review.

A second method for the approval of an alternative method of apportionment, unchanged by the act, allows approval of an alternative apportionment method without consent from a county's largest city if that city and the other political subdivisions meet certain requirements. Such a method is only effective for one year.

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<sup>174</sup> R.C. 5747.51 and 5747.52, not in the act.

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## DEPARTMENT OF TRANSPORTATION

### Transportation Review Advisory Council (VETOED)

- Would have altered the membership of the Transportation Review Advisory Council (TRAC) by doing the following:
  - Reducing the number of members appointed by the Governor from six to five;
  - Increasing the number of members appointed by the Senate President from one to two;
  - Increasing the number of members appointed by the Speaker of the House from one to two; and
  - Making the Director of Transportation a nonvoting member.

### Connect4Ohio Program

- Establishes the Connect4Ohio Program to be administered by the Ohio Department of Transportation (ODOT), for purposes of making it easier for Ohio workers to commute from their homes to employment centers.
- Requires ODOT and TRAC to work together to prioritize the following projects:
  - Completing existing corridor projects, particularly those that benefit rural counties;
  - Eliminating traffic impediments along highways, particularly within rural counties;
  - Providing funding at 100% of the project cost when appropriate; and
  - Providing matching community funds that are required for TRAC approval of a project.
- Requires the ODOT Director to establish any necessary procedures or requirements for purposes of the program.
- Appropriates \$500 million for the program.

### Ohio Wayside Detector System Expansion Program

- Establishes the Ohio Wayside Detector System Expansion Program, administered by the Ohio Rail Commission.
- Allows Class II and Class III railroad companies doing business in Ohio to apply for competitive grants under the program for wayside detector system projects, including projects related to installation, equipment, power sources, and employee training.
- Excludes Class I railroad companies from eligibility for program grants.
- Requires the railroad company to fund a percentage of the wayside detector system project, based on the size of the railroad company, with the Commission providing the remaining portion.
- Requires the Commission to establish any procedures and requirements necessary to administer the program.

## **FlyOhio tethered drones pilot program**

- Requires ODOT's Office of Aviation to conduct a pilot program to field test the use of tethered drones over rural campsite areas and urban or suburban areas.
- Requires the Office to gauge the feasibility and cost-effectiveness of using tethered drones to provide data and information to emergency responders, public safety professionals, and infrastructure security professionals.
- Requires the Office to examine both mobile and permanent tethered drones, including deployment in all weather and hazard conditions through the purchase and use of tethered drones by the Mandel Jewish Community Center in Cleveland at its main campus site and at the Center's Camp Wise in Geauga County.
- Requires the Office of Aviation to issue a report of its findings on July 1, 2024, and July 1, 2025, after which the pilot program is abolished.
- Earmarks up to \$247,500 for the pilot program.

## **Transportation Review Advisory Council (VETOED)**

(R.C. 5512.07; Section 755.20)

The Governor vetoed a provision of the act that would have altered the membership (but not the total of nine voting members) of the Transportation Review Advisory Council by doing the following:

- Reducing the number of members appointed by the Governor from six to five;
- Increasing the number of members appointed by the Senate President from one to two;
- Increasing the number of members appointed by the Speaker of the House from one to two; and
- Making the Ohio Department of Transportation (ODOT) Director a nonvoting member instead of a voting member.

To effectuate the alterations to Council membership, the act would have required the following to occur by December 2, 2023:

- The Governor to remove one person from the Council who was previously appointed;
- The Senate President to appoint one additional person who serves the remaining term of the member removed by the Governor; and
- The Speaker to appoint one additional member to serve a five-year term from the date of appointment.

Under continuing law, the Council reviews the written project selection process for proposed new transportation capacity projects submitted to it by the ODOT Director. The Council may approve the process or make revisions to it.

## **Connect4Ohio Program**

(Sections 411.10, 411.30, 513.10, and 755.30)

The act establishes the Connect4Ohio Program, administered by ODOT. The purpose of the program is to assist in creating seamless transportation connections throughout Ohio and, by doing so, make it easier for Ohio workers to commute from their homes to employment centers. For the program, a rural county means a county that does not contain a municipal corporation with a population exceeding 55,000 residents, according to the most recent federal decennial census.

As part of the program, ODOT and TRAC must work together to provide funding for unfunded projects included in TRAC's Tier 1, 2, and 3 list published March 29, 2023. The provision of funding must prioritize:

1. Completing existing corridor projects, especially those benefiting two or more connected rural counties;
2. Eliminating traffic impediments (e.g., traffic lights and stops) along highways, particularly along highways within rural counties;
3. Funding certain projects at 100% of the project cost, when appropriate, particularly for projects located in a rural county or that extend between two or more connected rural counties; and
4. Providing any necessary matching funds to receive TRAC approval for construction projects that are related to the program and its purpose.

The ODOT Director must establish any procedures and requirements necessary to administer the program. The act appropriates \$500 million for the program.

## **Ohio Wayside Detector System Expansion Program**

(Sections 411.10, 411.11, 513.10, and 749.10)

The act establishes the Ohio Wayside Detector System Expansion Program, administered by the Ohio Rail Commission. Under the program, a Class II or Class III railroad company that does business in Ohio may apply for competitive grant funding to use for wayside detector system projects. Class I railroad companies are not eligible for program grants. Wayside detector systems are the electronic devices or series of connected devices that scan passing trains, rolling stock, on-track equipment, and their competent equipment and parts for defects. Defects include hot wheel bearings, hot wheels, defective bearings, dragging equipment, excessive height or weight, shifting loads, low hoses, rail temperature, and wheel condition. A recipient railroad company must use the program's grant funds to help install, purchase equipment and upgrades for, improve a system's power sources for, and train employees on wayside detector systems.

The act requires a recipient railroad company to fund a percentage of the wayside detector systems project, based on the size of the railroad company. The Commission then provides the remaining portion of the cost. Specifically, a Class II company must fund 40% and a Class III company must fund 15%. The federal Surface Transportation Board makes the Class determinations, which are based on the size of the company.

The Commission must manage the program by establishing any necessary procedures and requirements to administer it. This may include grant application procedures, application evaluation criteria, award processes, and any conditions for expenditure of grant funding awarded under the program. The act appropriates \$10 million for the program.

## **FlyOhio tethered drones pilot program**

(Sections 759.10, 411.10, and 411.60)

The act requires ODOT's Office of Aviation to conduct a pilot program to field test the use of tethered drones. Specifically, the tests must gauge the feasibility and cost-effectiveness of using tethered drones to provide data and information to emergency responders, public safety professionals, and infrastructure security professionals. The tests must occur over rural campsite areas and urban or suburban areas.

Under the program, the Office must examine both mobile and permanent tethered drones, including deployment in all weather and hazard conditions. The purchase and use of tethered drones must occur through the Mandel Jewish Community Center in Cleveland at its main campus site and at the Center's Camp Wise in Geauga County.

The act earmarks up to \$247,500 in FY 2024 for the pilot project, and allows up to 3% of this amount to be used to pay administrative and reporting costs of the pilot project. Any unexpended amount remaining after FY 2024 is reappropriated in FY 2025. The Office of Aviation must issue a report of its findings on July 1, 2024, and July 1, 2025. After submission of the 2025 report, the pilot program is abolished.

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## **TREASURER OF STATE**

### **Pay for Success contracts**

- Eliminates the requirement that at least 75% of Pay for Success contracts include performance targets requiring greater improvement in the targeted area as compared to other areas (based on scientifically valid regional or national data).
- Eliminates the requirement that the Treasurer of State adopt rules establishing a process to determine whether the regional or national data used to determine the performance targets is scientifically valid.

### **State real property**

- Transfers, from the Treasurer to the Department of Administrative Services (DAS), the responsibility to develop and maintain a comprehensive and descriptive database of all real property under the custody and control of the state.
- Requires each state agency to collect and maintain information on the agency's land holdings.
- Removes the Treasurer from the Ohio Geographically Referenced Information Program Council.

### **Authority of the Treasurer of State**

- Specifies that custodial funds do not include items held in safekeeping by the Treasurer, such as collateral pledged to a state agency.
- Allows payment out of custodial funds upon any proper order of the officer authorized to make payment, regardless of whether that order is directed to the Treasurer.
- Provides that the term "warrant" includes an order drawn upon the Treasurer by an authorized person at a state entity holding a custodial account.
- Clarifies that warrants may have multiple payees and may be paid through a variety of instruments, including commercial paper, stored value cards, direct deposit, and drawdown by electronic benefit transfer.
- Requires the Treasurer to provide the Director of Budget and Management electronic records of all paid warrants on a daily basis, rather than monthly, and eliminates the requirement that the Director provide the Treasurer with paper receipts.
- Creates the Treasurer's Information Technology Reserve Fund, consisting of amounts transferred from the Securities Lending Program Fund and an account used to service federal student loans, for the purpose of acquiring or maintaining hardware, software, or contract services for the Treasurer's office.
- Requires bid requests for contracts with financial institutions relating to financial transaction devices to be published on a state agency website instead of a newspaper.

- Authorizes the State Board of Deposit to contract with other financial institutions, in addition to the winning bidders, if the Board determines that the additional contracts are in the best interest of the state.
- Repeals authorization for the Treasurer to contract with financial institutions for the collection of taxes and fees.

## **Uniform Depository Act**

- Changes the timeline of when, and method of how the Treasurer is required to notify the Board of Deposit about the classification of interim moneys.
- Modifies the classification of state moneys for purposes of deposits with public depositories and investments.
- Modifies eligibility of financial institutions to hold warrant clearance accounts with active deposits (i.e., public funds needed to meet current demands), as well as corresponding reporting requirements.
- Expands the purposes of warrant clearance accounts to include funding electronic benefit transfer cards, issuing stored value cards (i.e., prepaid cards), or otherwise facilitating the settlement of state obligations.
- Modifies the timeline and processes for designating public depositories of state funds.
- Expands the ways in which the Treasurer may invest interim moneys.
- Allows the Treasurer, rather than the State Board of Deposit, to select which interim investments or negotiated deposits are sold or redeemed when the amount of active deposits is insufficient to meet anticipated demands.

## **Linked deposit programs**

- Creates the Home Improvement Linked Deposit Program to provide reduced rate loans to homeowners for maintenance of, or improvements to their homes.
- Creates the Homeownership Savings Linked Deposit Program to allow prospective homeowners to save for the down payment and closing costs associated with the purchase of a home in a premium rate savings account.
- Consolidates the administrative requirements in the statutes governing the continuing Adoption Linked Deposit Program, Agricultural Linked Deposit Program, and Small Business Linked Deposit Program.
- Eliminates the SaveNOW Linked Deposit Program, Business Linked Deposit Program, Housing Linked Deposit Program, Assistive Technology Device Linked Deposit Program, and the Short-term Installment Loan Linked Deposit Program.

## **Ohio Pooled Collateral Program**

- Excludes moneys of metropolitan housing authorities from the Ohio Pooled Collateral Program.

## **Investment of Petroleum Underground Storage Tank Release Compensation Board funds**

- Authorizes the Petroleum Underground Storage Tank Release Compensation Board to allow the Treasurer to invest surplus funds.

## **Social Security for political subdivision employees**

- Repeals the ability for certain county-related corporations or cities to opt into Social Security and the Treasurer's involvement in the payment of contributions to the U.S. Treasury.

## **Board of Commissioners of the Sinking Fund**

- Eliminates many of the procedures for payment on bonded debt, but still requires the bonded debt to be paid.

## **Ohio coupon bonds and unclaimed funds**

- Designates certain state bonds issued before 1985, referred to as "Ohio coupon bonds," as unclaimed funds if the bond's principal and interest is not redeemed for three years following maturity.
- Establishes a procedure whereby these coupon bonds, unlike other property subject to Unclaimed Funds Law, may escheat to the state.
- Allows the Director of Commerce discretion to pay out claims for coupon bonds that have already escheated to the state, minus the costs incurred by the state in securing title to the bonds.

## **Trust companies and family trust companies**

- Shifts responsibility for accepting securities from trust companies and family trust companies from the Treasurer to the Superintendent of Financial Institutions.

## **Insurance companies**

- Eliminates the Treasurer's role in accepting securities from certain insurance companies and shifts full responsibility to the Superintendent of Insurance.
- Requires the resident and nonresident surplus lines broker's license renewal fee to be paid to the Superintendent, instead of the Treasurer.

## **Collateral from certain reimbursing employers**

- Eliminates the ability of a nonprofit employer that seeks to be a reimbursing employer under the Unemployment Compensation Law to deposit collateral securities with the Director of Job and Family Services in lieu of a surety bond.

## **Community school closing audit bonds**

- Eliminates all of the following related to community school closing audit bonds:

- The option for a community school to deposit a \$50,000 cash guarantee with the Auditor of State in lieu of a bond.
- A community school governing authority's ability to provide a written guarantee of payment in lieu of posting a bond, but retains that option for a school sponsor or operator.
- The requirement that upon filing a bond, the Auditor deliver it to the Treasurer.
- The Treasurer's responsibility to hold in trust all surety bonds filed or cash deposited for community schools.
- Requires the Attorney General, instead of the Treasurer, to assess a bond to reimburse the Auditor or public accountant for costs incurred in conducting audits of closed community schools that cannot pay.

### **Administration of state taxes**

- Requires the Tax Commissioner, rather than the Treasurer, to collect most taxes required to be paid electronically.
- Provides that, when required, the taxes must be paid "electronically," rather than "by electronic funds transfer."
- Makes various other changes related to the administration of state taxes.

### **Motor vehicle and watercraft**

- Transfers from the Treasurer to the Registrar of Motor Vehicles the responsibility to receive sales and use taxes from the sale of motor vehicles, off-highway motorcycles, and all-purpose vehicles that are collected by each clerk of courts.
- Transfers from the Treasurer to the Registrar the associated requirement to remit those taxes to the Tax Commissioner.
- Transfers from the Treasurer to the Tax Commissioner the responsibility to receive sales and use taxes from the sale of watercraft and outboard motors that are collected by each clerk of courts.
- Transfers from the Treasurer to the Registrar the responsibility for receiving monetary deposits to maintain financial responsibility for a motor vehicle.
- Establishes the Financial Responsibility Custodial Fund in which the money must be deposited.
- Makes conforming changes to allow the Registrar, rather than the Treasurer, to return deposits in certain circumstances, such as when a depositor dies.
- Eliminates the option to deposit government bonds to maintain financial responsibility for a motor vehicle.

## **ODNR surety requirements**

- Creates the Performance Cash Bond Refunds Fund that consists of cash received by the Department of Natural Resources (ODNR) from other entities as performance security.
- Makes other changes related to ODNR’s surety requirements, including:
  - Requiring any cash surety collected by ODNR to be credited to the Performance Cash Bond Refunds Fund; and
  - Eliminating the Treasurer’s involvement in the safekeeping of deposited sureties and instead requiring the relevant ODNR Division Chief to hold the sureties in trust.

## **Technical changes**

- Replaces “standard rating service” throughout the Revised Code with the more commonly used term, “statistical rating organization.”
- Eliminates references to the federal Office of Thrift Supervision and the Ohio Building Authority, which no longer exist.

## **Pay for Success contracts**

(R.C. 113.60)

The Pay for Success Contracting Program allows the Treasurer of State to contract with service intermediaries for delivery of specified services that benefit the state, a political subdivision, or a group of political subdivisions, such as programs addressing education, public health, criminal justice, or natural resource management. Under the contract, the service intermediary receives payment for providing the services only if it meets certain performance targets specified in the contract. If the program operated by the service intermediary is unsuccessful, the government is not required to pay the service intermediary.

Continuing law requires the Treasurer of State to specify performance targets to be met by a service intermediary. If scientifically valid regional or national data is available to compare the targeted area to other areas, the performance targets must require greater improvement within the targeted area.<sup>175</sup> The act eliminates the requirement that at least 75% of Pay for Success contracts include such comparison-based performance targets. Furthermore, the act eliminates the requirement that the Treasurer adopt rules establishing a process to determine whether regional or national data is scientifically valid.

## **State real property**

(R.C. 125.901 and 125.903)

The act transfers, from the Treasurer to the Department of Administrative Services (DAS), the responsibility to develop and maintain a comprehensive and descriptive database of all real

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<sup>175</sup> R.C. 113.61, not in the act.

property under the custody and control of the state. Under continuing law, the database must adequately describe, when known, the location, boundary, and acreage of the property, the use and name of the property, and the contact information and name of the state agency managing the property. Information in the database must be available to the public free of charge through a searchable website. The act removes the requirement for the Treasurer to allow public comment on property owned by the state.

The act requires each state agency to collect and maintain a geographic information systems database of its land holdings, and to provide the database to the Ohio Geographically Referenced Information Program Council. The Council is established by law within DAS to coordinate the property owned by the state. Continuing law requires the Council to collect the information. The act removes the Treasurer from the Council.

## **Authority of the Treasurer of State**

### **Custodial funds**

(R.C. 113.05 and 113.11)

Under continuing law, a custodial account is an account that is in the custody of the Treasurer but that is not part of the state treasury and, therefore, must be kept separate from state treasury assets. The act specifies that custodial funds do not include items held in safekeeping by the Treasurer, such as collateral pledged to a state agency.

Law mostly retained by the act stipulates that no money may be paid out of a custodial fund except on proper order to the Treasurer by the officer authorized to pay money out of the fund. The act removes reference to the Treasurer and, thereby, allows for payment out of custodial funds whenever ordered by the authorized officer, regardless of where that order is directed.

### **Warrants**

(R.C. 113.11, 131.01, and 4749.01)

Under continuing law, a “warrant” is defined as an order drawn upon the Treasurer by the Director of Budget and Management (OBM Director) directing the Treasurer to pay a specified amount. The act expands this definition to include an order drawn by any authorized person at a state entity that has a custodial account in the custody of the Treasurer, and clarifies that warrants may have multiple payees.

Law retained in part by the act includes as examples of warrants: (1) an order to make a lump-sum payment to a financial institution for the transfer of funds by direct deposit or the drawdown of funds by electronic benefit transfer, and (2) the resulting electronic transfer to or by the ultimate payees. The act revises the examples to state that a variety of payment instruments may be used, including paper warrants, stored value cards, direct deposit to the payee’s bank account, or the drawdown of funds by electronic benefit transfer. The act defines a stored value card as a payment card on which money may be loaded and stored, and with which that money may be accessed through automated teller machines, point of sale terminals, or other electronic media. The term does not include any payment card that can access money in a linked external account maintained by a financial institution.

Law generally unchanged by the act prohibits money from being paid out of, or transferred from, the state treasury without a warrant issued by the OBM Director. The act largely retains this prohibition, but specifies that money may be paid out or transferred upon an order of the OBM Director, rather than a warrant.

### **Record of payments**

(R.C. 113.12)

Under prior law, the Treasurer was required to pay all warrants drawn on the Treasurer by the OBM Director. At least once each month, the Treasurer was required to surrender to the Director all warrants the Treasurer had paid, accept the receipt of the Director, and hold that receipt as evidence of payment until an audit of the state treasury and custodial funds was completed.

The act revises that process in three ways. First, it specifies that the warrant must be a “valid warrant,” which the act defines as a warrant that is not stopped, stale dated for age, voided, canceled, altered, or fictitious. Second, instead of providing the OBM Director all warrants paid on a monthly basis, the act requires the Treasurer, on a daily basis, to provide the Director the electronic records of all the warrants paid, adjusted, or returned. Third, the act eliminates the requirement that the Director provide, and the Treasurer retain, paper receipts.

### **Treasurer’s Information Technology Reserve Fund**

(R.C. 113.22, 135.47, and 3366.05)

The act creates the Treasurer’s Information Technology Reserve Fund, to consist of unexpended amounts transferred from either or both of the following: (1) the Securities Lending Program Fund, and (2) the custodial account created under a program, authorized by continuing law, that allows the Treasurer to act as an eligible not-for-profit servicer of student loans owned by the federal government. Moneys credited to the new fund may be spent only to acquire or maintain hardware, software, or contract services for the efficient operation of the Treasurer’s office. Unexpended amounts must be retained in the fund and reserved for future technology needs.

### **Requests for proposals on financial transaction devices**

(R.C. 113.40)

Continuing law allows the State Board of Deposit to adopt a resolution authorizing the acceptance of payment by financial transaction devices (credit, debit, and stored value cards, for example) to pay for state expenses. The Board’s resolution must designate the Treasurer as the administrative agent. In this role, the Treasurer must follow certain statutory procedures whenever the Treasurer plans to contract with financial institutions, issuers of financial transaction devices, or processors of financial transaction devices. Under prior law, one of those procedures required the Treasurer, prior to sending any financial institution, issuer, or processor a copy of a request for proposal, to advertise the Treasurer’s intent to request proposals in a newspaper of general circulation in Ohio once a week for two consecutive weeks. The act instead requires that such advertising be provided by electronic publication on a state agency website

made available to the general public. In addition, the request for proposals must be electronically mailed.

Also, the act authorizes the Board to contract with one or more additional entities subsequent to the award, if the Board determines that doing so is necessary, and in the state's best interest.

### **Contract with financial institutions for collection of taxes**

(Repealed R.C. 113.07; R.C. 113.05)

The act eliminates law authorizing the Treasurer to enter a contract with a financial institution under which the financial institution received and deposited tax and fee payments on behalf of the Treasurer.

### **Uniform Depository Act**

The Uniform Depository Act governs the deposit and investment authority of public moneys of the state and Ohio's political subdivisions, including active deposits (i.e., public funds needed to meet current demands) and inactive or interim deposits (i.e., public funds not needed to meet current demands). The act makes various changes to the Uniform Depository Act.

#### **Classification of interim moneys**

(R.C. 135.02 and 135.143)

Former law required the Treasurer to notify the State Board of Deposit within 30 days of classifying public moneys as interim moneys during a period of designation. The act instead requires the Treasurer to notify the Board, on or before the tenth day of each month, that the following reports pertaining to the preceding month have been posted to the Treasurer's website:

- The daily ledger report of state funds;
- The monthly portfolio report detailing the current inventory of all investments and deposits held within the classification of interim moneys;
- The monthly activity report within the classification of interim moneys summarized by type of investment or deposit.

Prior law required the chairperson of the Board to provide a monthly report to the Board on classification of public moneys as interim moneys, and to post that report monthly to a website maintained by the Treasurer. The act instead requires that the chairperson provide a notification to the Board that the reports described above have been posted on the website.

#### **State money classifications**

(R.C. 135.01, 135.04, 135.05, and 135.06)

The act expands the definition of "interim deposit" in the context of the state treasury. It specifies that, in the case of the state treasury, interim moneys are public moneys that are not active deposits and may be invested in accordance with the provisions of the Uniform Depository Act pertaining to the investment of interim funds. It also eliminates references to inactive

deposits in the context of state moneys throughout the Uniform Depository Act. For example, under former law, public depositories, i.e., financial institutions authorized to hold public deposits, were permitted to hold active deposits, inactive deposits, and interim deposits of public moneys of the state. The act eliminates the eligibility of public depositories to hold inactive deposits of the state. In other words, under the act, state money has only two classifications: active deposits and interim deposits. The subdivisions of the state retain three classifications: active, inactive, and interim deposits.

### **Active deposits and warrant clearing accounts**

(R.C. 131.01, 135.01, and 135.04)

Under law largely retained by the act, to facilitate payments from the state treasury, the Treasurer may establish warrant clearance accounts in public depositories that are located in areas where the volume of warrant clearances justifies the establishment of an account. The act eliminates the qualifier and, therefore, allows the Treasurer to establish warrant clearance accounts in any public depository regardless of the volume of clearances in the area.

Under prior law, any financial institution in Ohio that had a warrant clearance account established by the Treasurer was required, not more than ten days after the close of each quarter, to prepare and transmit to the Treasurer an analysis statement of the account for the quarter. The statement had to contain information required by the State Board of Deposit and had to be used by the Treasurer in determining the level of balances to be maintained in the account. The act instead requires such financial institutions to provide the statement on a monthly basis, 15 days after the close of each month. The act also eliminates the requirement that the Treasurer use the information in the statement to determine the level of balances in each account.

The act also expands the purposes of the warrant clearance accounts to include both: (1) funding electronic benefit transfer cards, issuing stored value cards (i.e., prepaid cards), or otherwise facilitating the settlement of state obligations, and (2) for the deposit of custodial moneys from an account held in the custody of the Treasurer to facilitate settlement of obligations of the custodial fund.

### **Designating public depositories**

(R.C. 135.05, 135.06, 135.08, 135.10, and 135.12; Section 130.113)

The act changes the timeline and processes for designating public depositories of state funds but does not make corresponding changes to the timeline and processes for the funds of local governments, school districts, and other subdivisions. Continuing law requires that, at least three weeks prior to the statutory deadline for designating public depositories, the State Board of Deposit and all other governing boards, by resolution, estimate the aggregate maximum amount of public money subject to its control to be awarded and be on deposit as inactive deposits. Law retained in part by the act requires the resolution and notice of the date of the meeting to designate the depository to be published in a newspaper once a week for two consecutive weeks. The act exempts the State Board of Deposit from the newspaper publication requirement but retains the requirement for other governing boards.

Also, under prior law, each eligible institution desiring to be a public depository of inactive deposits of the public moneys of the state or a subdivision was required to, not more than 30 days before the deadline, to apply to the proper governing board. The act limits application of this provision to inactive public moneys of a subdivision. The act allows eligible institutions to apply to the State Board of Deposit earlier; not more than 120 days prior to the selection date.

Formerly, the State Board of Deposit met on the third Monday of March in every even-numbered year to designate public depositories for the public moneys of the state. Public depositories that were selected held that designation for two years. The act changes the state timeline for designating public depositories to a four-year cycle, starting in 2025. The act specifies that public depositories of state funds designated in 2022 retain that designation for three years, instead of two, until the act's new timeline is implemented. The act retains the five-year cycle for governing boards other than the state.

The act adds that, during the designation period, whenever a statute authorizes a new custodial fund to be created, the State Board of Deposit must meet to award the public moneys associated with the new custodial fund to a designated public depository. During a designation period, whenever a state agency requests to change its public depository, the State Board of Deposit must meet to consider the request.

### **Investment of interim funds**

(R.C. 135.143)

Continuing law authorizes the Treasurer to invest interim moneys of the state in specified investments. One permissible investment is in written repurchase agreements, i.e., a form of short-term borrowing through which a dealer sells government securities to investors and then buys them back (usually the next day) at a slightly higher price. The Treasurer may invest in repurchase agreements with any eligible Ohio financial institution that is a member of the Federal Reserve System or federal home loan bank, or any registered U.S. government securities dealer.

The act adds that the Treasurer may invest in repurchase agreements with any counterparty rated in one of the three highest categories by at least one nationally recognized statistical rating organization, or otherwise determined by the Treasurer to have adequate capital and liquidity. The act specifies that, for purposes of repurchase agreement investments: (1) the Treasurer may only buy or sell securities that consist of debt interests currently authorized by law, (2) the securities must be issued by domestically organized entities, and (3) the investment is subject to the continuing law cap of 25% of the state's portfolio which may be invested in debt interests other than commercial paper.

Another category of permissible investment under continuing law is certificates of deposit in eligible institutions applying for interim moneys. This category includes linked deposits. The act expands this category to include savings accounts and deposit accounts and revises references of the eligible institutions applying for interim money in the form of linked deposits to conform to the changes made to the linked deposit programs under the act and to include all linked deposit programs administered by the Treasurer except the Homeownership Savings Linked Deposit Program created by the act (see "**Linked deposit programs**," below).

A third type of permissible investment under continuing law is in obligations issued by the state, a political subdivision, or certain nonprofit corporations or associations. To qualify, the nonprofit corporation or association must do business in Ohio, be rated in the four highest categories by at least one nationally recognized statistical rating organization, and be identified in an agreement that provides for both of the following: (1) the purchase of the obligations by the Treasurer, and (2) payment of a fee as consideration for the Treasurer's agreement to purchase the obligations. Under prior law, such an agreement was permissible only if the obligations had a demand feature, by which the purchaser could require the Treasurer to purchase the obligations at par value plus accrued interest. The act instead requires the obligation to include a conditional liquidity requirement.

### **Transferring funds from one classification to another**

(R.C. 135.15)

Under continuing law, changed in part by the act, whenever a governing board is of the opinion that the actual amount of active deposits is insufficient to meet anticipated demands, it must direct the Treasurer to sell interim money investments or transfer inactive deposits to active deposits in an amount sufficient to meet those demands. The governing board must designate the depositories from which the withdrawals will be made and the amount to be withdrawn from each such depository.

The act modifies this process when state funds are involved. First, it allows the State Board of Deposit and the Treasurer to generate the needed funds by redeeming negotiated deposits. Second, the act gives the Treasurer, rather than the Board, discretion in selecting the instruments to be sold or redeemed.

### **Linked deposit programs**

(R.C. 135.61 to 135.65, 135.70 to 135.71, 1733.04, and 1733.24; Repeals R.C. 135.101 to 135.106 and 135.61 to 135.97)

The act makes several changes to the linked deposit programs administered by the Treasurer. In a linked deposit program, the Treasurer invests state funds in certificates of deposit or other financial institution instruments at an eligible lending institution. The Treasurer agrees to accept a reduced rate of return on the investment and, in turn, the lending institution agrees to pass the savings on to approved borrowers in the form of an interest-rate reduction.

The act eliminates the SaveNOW Linked Deposit Program, the Short-term Installment Loan Linked Deposit Program, Business Linked Deposit Program, Housing Linked Deposit Program, and Assistive Technology Device Linked Deposit Program. It also consolidates the administrative requirements in the statutes governing the continuing Adoption Linked Deposit Program, Agricultural Linked Deposit Program, and Small Business Linked Deposit Program. The Treasurer continues to administer the remaining linked deposit programs and the associated eligibility requirements remain the same for borrowers.

The act also creates two new linked deposit programs: (1) the Home Improvement Linked Deposit Program, to provide reduced rate loans to homeowners seeking to improve, maintain, or restore their current home, and (2) the Homeownership Savings Linked Deposit Program,

which allows eligible participants to save for the down payment and closing costs for a new home in a special savings account that receives above-market interest rates.

### **Home Improvement Linked Deposit Program**

To be eligible for the new Home Improvement Linked Deposit Program, the borrower must be an individual who is a resident of Ohio and owns an existing homestead in Ohio. The loan must be used to improve or maintain that homestead. Homestead is defined as a dwelling owned and occupied in Ohio as a single-family residence by an individual, including a house, condo, unit in multi-unit dwelling, a manufactured home, or any other building with a residential classification, as allowed by the Treasurer. The eligible borrower must certify on the loan application that the reduced rate loan will be used exclusively to improve, maintain, or restore the eligible borrower's existing homestead and the borrower must include official estimates or receipts for the total amount of the loan.

### **Homeownership Savings Linked Deposit Program**

The act creates the Homeownership Savings Linked Deposit Program to make available "premium savings rate" accounts at "eligible savings institutions" for "eligible participants" to be used for "eligible home costs" associated with the future purchase of a home. An "eligible participant" means an individual Ohio resident who agrees to use amounts deposited to the savings account for the down payment and closing costs associated with the purchase of a home. Account holders may also transfer funds from one homeownership savings linked deposit account to another homeownership savings linked deposit account at a different eligible savings institution.

The Treasurer must establish the program and adopt rules for its administration. Under the program, the Treasurer is authorized to invest state funds in certificates of deposit or other financial instruments with an eligible savings institution and, in doing so, agree to receive a reduced rate of return on the investment. The savings institution then must agree to pass on its interest rate savings to eligible participants in the form of a higher interest rate, which the act terms a "premium savings rate," on the homeownership savings accounts established by the eligible participants.

### **Eligible savings institutions and eligible participants**

The act defines "eligible savings institution" as a financial institution that is eligible to offer accounts to Ohio residents for the purpose of saving for eligible home costs, agrees to participate in the program, and is either a public depository eligible to accept state funds under the Uniform Depository Act (i.e., banks, federal savings associations, savings and loan associations, or savings banks) or an eligible credit union. The savings institution must comply with Ohio's Uniform Depository Act. Once the savings institution is eligible for the program, it may accept and review applications for homeownership savings linked deposit accounts from eligible participants.

An eligible participant must certify on the application that they reside in Ohio, that the funds in the account will be used exclusively for eligible home costs, and that they agree to hold only one account under the program per program period. The program period is five years from

the date the participant opens an account with the savings institution. A person who makes a false statement on the application is guilty of falsification, a first degree misdemeanor.<sup>176</sup>

The savings institution may then forward to the Treasurer a homeownership savings linked deposit package, which includes a certification by the savings institution that each applicant included in the package is eligible to participate in the program. The act prohibits any fees charged to any party for the preparation, processing, or reporting of any application to a savings institution related to participation in the program.

### **Accepting a linked deposit package**

The Treasurer may accept or reject a homeownership savings linked deposit package, or any portion of it, based on the Treasurer's evaluation of the amount of state funds to be deposited with the savings institution. Under continuing law, the Treasurer may invest in linked deposits provided that, at the time of placement, the combined amount of the investments in all the linked deposit programs is not more than 12% of the state's total average investment portfolio. If the Treasurer accepts the homeownership savings linked deposit package, or any portion of it, the Treasurer may place, purchase, or designate a linked deposit with the savings institution at the discount interest rate, and in accordance with the deposit agreement and any additional procedures established by the Treasurer.

### **Deposit agreement**

The savings institution and the Treasurer must enter into a deposit agreement, which includes the requirements necessary to carry out the program's purposes, such as details relating to the maturity period of the linked deposit (which cannot exceed five years), the times the interest must be paid, and any other information, terms, or conditions the Treasurer requires.

### **Premium savings rate account**

Upon the Treasurer's placement, purchase, or designation of the linked deposit, the savings institution must offer and place the premium savings rate on the participant's account. Unless otherwise specified in the deposit agreement, the premium savings rate must equal or exceed the present savings rate applicable to each specific participant in the accepted package, plus the difference between the prevailing interest rate and the discount interest rate at which the linked deposits were placed, made, or designated. The rate applies to the account only during the program period as designated in the agreement. After that, the savings account is no longer a part of the program and the savings institution may apply a market interest rate to the savings account. The act does not prohibit participants from reapplying for the program at the same savings institution or another savings institution, so long as the participant has only one account enrolled in the program at any time.

At the conclusion of the program period and at the time of maturity, the savings institution must provide a certificate of compliance to the Treasurer in the form and manner

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<sup>176</sup> R.C. 2921.13, not in the act.

prescribed by the Treasurer and must return the amount of the corresponding linked deposit to the Treasurer in a timely manner.

### **Early withdrawal**

If a savings institution changes the terms of a participant's account, the amount of the linked deposit associated with the account plus applicable interest must be returned to the Treasurer in a timely manner, and without early withdrawal penalties.

### **Legal immunity**

The act specifies that neither the state nor the Treasurer are liable to any savings institution or eligible participant for the terms associated with a homeownership savings linked deposit account. Any misuse or misconduct on the part of a savings institution or an eligible participant does not affect the deposit agreement between the savings institution and the Treasurer.

### **Report**

The Treasurer and the Tax Commissioner must issue a report regarding the efficacy of the Homeownership Savings Linked Deposit Program by January 31, 2027. The report must contain information on the number of accounts created, the number of participating savings institutions, the total amount contributed into the accounts, the average yield on the accounts, and any other information the Treasurer and Commissioner deem relevant. The report must be delivered to the Governor, the Speaker of the House, and the Senate President.

### **Eligible lending institutions**

Under continuing law, a financial institution that would like to participate in a link deposit program must be a public depository or otherwise meet eligibility criteria under the program. The act expands eligibility by authorizing credit unions to be eligible lending institutions under all continuing linked deposit programs and the new Home Improvement and Homeownership Savings linked deposit programs. Under prior law, credit unions were eligible financial institutions under the Adoption Linked Deposit Program and the Agricultural Linked Deposit Program, but not the Small Business Linked Deposit Program.

### **Eliminated reporting requirements**

The act eliminates several reporting requirements under the continued linked deposit programs, including:

- The requirement, under the Small Business Linked Deposit Program, that the Treasurer and the Department of Development notify each other at least quarterly of the names of the businesses receiving financial assistance from their respective programs.
- The requirement, under the Small Business Linked Deposit Program, that the Treasurer annually report on the program for the preceding calendar year to the Governor, the Speaker of the House, and the Senate President.
- A similar annual report required for the Adoption Linked Deposit Program.

## Ohio Pooled Collateral Program

(R.C. 135.182)

The act specifies that metropolitan housing authority moneys are not considered public deposits and, therefore, are not eligible for the Ohio Pooled Collateral Program. Under continuing law, the Ohio Pooled Collateral Program allows a public depository to secure all of its public deposits collectively by pledging a single pool of collateral to the Treasurer. Otherwise the depository must secure each public deposit separately, at 105% of par value.

## Investment of the Petroleum Underground Storage Tank Release Compensation Board funds

(R.C. 3737.945)

The Ohio Petroleum Underground Storage Tank Release Compensation Board consists of government and industry representatives and has the primary responsibility of administering the Petroleum Underground Storage Tank Financial Assurance Fund. The fund provides a mechanism for all underground storage owners and operators to meet U.S. Environmental Protection Agency regulations requiring them to demonstrate financial capability to pay for potential damages caused by releases from their underground storage tanks. Continuing law allows moneys in the funds of the Board, in excess of current needs, to be invested by the Board in notes, bonds, or other obligations of the U.S., or of Ohio, or any political subdivision. The act adds that investments can be made with the investment pool managed and administered by the Treasurer.

## Social Security for political subdivision employees

(Repealed R.C. Chapter 144)

With few exceptions, Ohio public employees do not participate in Social Security for their government service. The federal Social Security Act did not allow for coverage of state and local government employees until 1950, when Congress amended it to allow a state to elect coverage for its government employees through an agreement with the federal government. Ohio's agreement exempts members of the state's retirement systems and the Cincinnati Retirement System from contributing to Social Security for government service covered by those system.<sup>177</sup> This agreement is known as Ohio's "Section 218 Agreement."

The act repeals the ability for certain political subdivisions to elect Social Security coverage. The following subdivisions may make this election:

- A city that has its own retirement system and includes any municipal university belonging to the city (currently, only Cincinnati has its own retirement system); or

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<sup>177</sup> 42 U.S.C. 418 and [Social Security and Government Employers \(PDF\)](#), which may be accessed by conducting a keyword "Publication 963" search on the Internal Revenue Service (IRS) website: [irs.gov](https://www.irs.gov).

- A county-related corporation (i.e., a nonprofit corporation that carries out county-related recreational functions).

Ohio's Section 218 Agreement provides Social Security coverage for three groups of local employees: certain Cincinnati employees who are members of the Teachers Insurance and Annuity Association, Lucas County Recreation Inc., and Toledo Mud Hens Baseball Club, Inc.<sup>178</sup> It appears these groups are covered by the process eliminated by the act to obtain Social Security coverage, but it is not clear whether any of these groups were using the process.<sup>179</sup>

## **Board of Commissioners of the Sinking Fund**

(R.C. 126.06, 127.14, 129.06, and 129.09; repealed R.C. 129.02, 129.03, 129.08, 129.10 to 129.16, 129.18 to 129.20, and 129.72 to 129.76)

The act repeals various procedures and requirements related to the administration of state-issued bonds by the Board of Commissioners of the Sinking Fund. It also eliminates the public improvements bond retirement fund and corresponding procedures for the payment of principal and interest on constitutionally authorized bonds for capital improvements. Furthermore, the act eliminates many procedures addressing the payment of principal and interest on bonded debt, but retains the requirement to pay the bonded debt. For example, the act eliminates the requirement that, when paid, the bonds or certificates of the bonded debt must (1) be canceled, (2) marked with the word "paid" on the face of the certificates and with the date and signature of the Board, and (3) filed in the office of the Board. The act also eliminates the requirement that, when interest was paid on the bonded debt to the owner or the owner's agent, attorney, or legal representative, written proof of the authority of the agent, attorney, or legal representative must be presented and filed with the Board.

The act repeals the following requirements:

- That the Board's office be located in Columbus and be equipped with fireproof vaults and safes;
- That the secretary of the Board keep a journal of proceedings, orders, and requisitions of the Board, a register of the certificates and bonded debt of the state and transfers of such certificates, and all papers issued by the Board;
- That the Board apply surplus funds to other state debt on terms the Board deems to be in the best interests of the state or, alternatively, invest the funds in debt certificates;
- That the Board arrange with a bank to pay annual interest on bonded debt and that the Board publish notice of the place of payment in a newspaper of general circulation in Columbus;
- That the Board keep stock ledgers for the accounts of bonded debt;

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<sup>178</sup> Ohio Section 218 agreement.

<sup>179</sup> See Ohio Attorney General Opinions No. 72-019.

- That the Board keep accounts of the amount to the credit of each class or portion of the irredeemable state debt;
- That transfers of certificates of bonded debt be made in the Board's office by the owner of the debt;
- Procedures for renewal of certificates of lost or destroyed certificates of bonded debt;
- Procedures for keeping transfer books and payroll and for making payment of interest on state debt;
- That the Board must cover the payment of bonded debt and report a detailed statement of such payments to the Governor;
- Sale or disposal requirements for new certificates, including the minimum sale or disposal price, the maximum interest rate, and the apportionment of certificates among multiple winner bidders;
- Modification of tax levies for public improvement and other obligations.

## **Ohio coupon bond and unclaimed funds**

(R.C. 169.053)

The act deems certain Ohio coupon bonds held by a person, business, or the government as abandoned and as unclaimed funds subject to Ohio's Unclaimed Funds Law in a manner parallel to U.S. savings bonds. Under Ohio's Unclaimed Funds Law, the Division of Unclaimed Funds within the Department of Commerce is responsible for the safekeeping and return of moneys designated as unclaimed.

The act defines a "state of Ohio coupon bond" as tangible or intangible property, in the form of a coupon bond and its related interest coupons, issued by the state prior to 1985, and to which all of the following apply:

- It has matured, been called and defeased, or otherwise become due and payable.
- Either the Treasurer or the trustee bank is the paying agent.
- The owner has neither registered the bond or interest coupon nor claimed the bond's principal or interest.

In order for the coupon bond or interest coupon to qualify as unclaimed funds, the owner must be unknown to the Treasurer and that the coupon bond's principal or interest remains unclaimed and unredeemed for three years after final maturity, call date, interest payment date, or other payment date. The act specifies that, after being deemed abandoned and considered unclaimed funds for a period of three years, coupon bonds escheat to the state. Most other unclaimed funds are held for safekeeping with the Division of Unclaimed Funds indefinitely until an owner comes forward to claim them. However, a similar escheating process applies to U.S. savings bonds.

The act establishes procedures that must be taken by the Director of Commerce prior to escheatment of coupon bonds. If no claim is filed on the bond within three years, plus 180 days

after abandonment, the Director must commence a civil action for a determination that the bond escheats to the state. However, the Director may postpone the action until a sufficient number of bonds have accumulated to justify the expense of the proceedings. Prior to the civil action, notice must be provided to bond holders by publication. If no person files a claim or appears at the hearing to substantiate a claim, or if the court determines that a claimant is not entitled to the property, and if the court is satisfied by the evidence that the Director has substantially complied with Ohio law, the court must enter a judgment that the bonds have escheated to the state.

After redeeming a coupon bond that escheats to the state, the Director must pay all costs incident to the collection and recovery from the proceeds and disburse the remainder in the manner provided under the Unclaimed Funds Law. After a coupon bond escheats to the state, a person may still claim the bond or the proceeds from the bond by filing a claim with the Director. The Director has discretion as to whether to pay the claim, less any expenses and costs incurred by the state in securing full title and ownership of the bond. If payment is made to a claimant, no action thereafter may be maintained by any other claimant against the state or any officer of the state, for or on account of the payment of the claim.

## **Trust companies and family trust companies**

(R.C. 1111.04 and 1112.12)

Law largely unchanged by the act requires that prior to soliciting, engaging, or transacting in trust business in Ohio, a trust company or a family trust company must pledge to the Treasurer authorized interest-bearing securities valued at \$100,000. The act instead requires that the securities be pledged to the Superintendent of Financial Institutions who is required, under continuing law, to review and approve the securities.

Former law required the Treasurer to permit the trust company or family trust company, with approval of the Superintendent of Financial Institutions, to substitute securities pledged or to withdraw securities. Similarly the Treasurer was required to permit the trust company or family trust company to collect interest on paid securities. The act eliminates the Treasurer's role in these processes and instead requires the Superintendent to permit substitution, withdrawal, and collection of interest on such securities.

## **Insurance companies**

### **Title guarantee and trust companies**

(R.C. 1735.03)

Under continuing law, a title guarantee and trust company is prohibited from doing business until it has deposited \$50,000 in permitted securities. Under prior law, the securities had to be deposited with the Treasurer. The Treasurer was required to hold the securities to ensure the faithful performance of all guarantees entered into and all trusts accepted by the company, and as long as the company was solvent, the Treasurer was required to allow it to collect the interest on the securities. In addition, the Treasurer was required to surrender any securities pledged in excess of what is required. The act transfers this responsibility of managing

the securities deposited by the title guarantee and trust company to the Superintendent of Insurance.

### **Insurance company securities**

(R.C. 3903.73 and 3925.26)

Similarly, under prior law, all securities deposited by insurance companies with the Superintendent of Insurance had to be deposited by the Superintendent with the Treasurer, and the Treasurer could not deliver the securities or coupons, except with the written order of the Superintendent. The act removes the Treasurer's obligations and gives the Superintendent full responsibility to take and hold the security deposits.

Also, under prior law when an accident insurance company wanted to do business in another state, it had to make a deposit of securities with the Treasurer, and the Treasurer was required to issue a certificate to the Superintendent. The act removes the Treasurer's role and instead requires the securities to be placed with the Superintendent of Insurance.

### **License fees for resident and nonresident surplus lines brokers**

(R.C. 3905.32)

Continuing law requires that each license fee for the initial license of a resident or nonresident surplus line broker be paid to the Superintendent of Insurance. Prior law required that renewal fees be paid to the Treasurer. The act instead requires that the renewal fee also be paid to the Superintendent.

### **Collateral from certain reimbursing employers**

(R.C. 4141.241)

Continuing law requires a nonprofit employer wishing to be a reimbursing employer under the Unemployment Compensation Law to submit collateral to the Director of Job and Family Services. Prior law allowed this collateral to be a surety bond approved by the Director or other forms of collateral security approved by the Director. The act eliminates the option to deposit collateral securities in lieu of a surety bond.

Ohio's unemployment system has two types of employers: contributory employers and reimbursing employers. Employers who are assigned a contribution rate and make contributions to the Unemployment Compensation Fund are contributory employers. Most private sector employers are contributory employers. Certain employers are allowed to reimburse the fund after benefits are paid; they are known as "reimbursing employers."<sup>180</sup>

### **Community school closing audit bonds and guarantees**

(R.C. 3314.50)

The act revises several aspects of the law related to the bond, cash deposit, or written guarantee required for a community school closing audit. The law prohibits a community school

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<sup>180</sup> R.C. 4141.01(L), in the act but unchanged by this provision.

from opening for operation in any school year unless the school's governing authority has posted a bond of \$50,000 with the Auditor of State. This must be used in the event the school closes to pay the Auditor for the costs of any audits conducted by the Auditor or a public accountant.

In lieu of the school's governing authority posting a bond, prior law authorized the governing authority, or the school's sponsor or operator, to deposit \$50,000 cash as a guarantee of payment. As an additional option, a community school's sponsor or operator may provide a written guarantee to pay for the costs of the audit, instead of posting either a bond or cash.

First, the act removes the option for a community school's governing authority, sponsor, or operator to deposit \$50,000 cash instead of posting a bond. But it retains the option of the school's sponsor or operator posting a written guarantee of payment instead of a bond.

Further, the act removes the requirement that after a bond is filed, (1) the Auditor deliver the bond to the Treasurer, and (2) the Treasurer must hold it in trust. The act also removes the Treasurer's responsibility to hold all surety bonds filed or cash deposited.

Finally, the act requires the Attorney General, instead of the Treasurer, to assess the bond of the costs of a closing audit. Under continuing law, when the Auditor finds that a community school has closed and cannot pay for the costs of audits, the Auditor must declare the surety bond or cash deposit forfeited. The Auditor must certify the amount of forfeiture to the Treasurer, who must pay money from the named surety or from the school's cash deposit as needed to reimburse the Auditor or public accountant for costs incurred in conducting audits of the school.

## **Administration of state taxes**

### **Electronic tax payments**

(R.C. 131.01, 5727.25, 5727.31, 5727.311, 5727.42, 5727.47, 5727.53, 5727.81, 5727.811, 5727.82, 5727.83, 5733.022, 5735.062, 5739.031, 5739.032, 5739.07, 5743.05, 5743.051, 5745.03, 5745.04, 5745.041, 5747.059, 5747.07, 5747.072, 5747.42, 5747.44, and 5747.451)

Many state taxpayers are either allowed or required to pay their taxes electronically. Under prior law, electronic payments for certain taxes were sent to the Treasurer, while payments for other taxes were sent to the Tax Commissioner. The act modifies this protocol, so that nearly all state tax payments – electronic and nonelectronic – will be made to the Tax Commissioner.

Prior law also generally required that, when a taxpayer is required to pay a state tax electronically, the payment be sent by "electronic funds transfer." The act instead requires that taxpayers make such payments "electronically." One statute generally applicable to the Treasurer defines an electronic funds transfer as the electronic movement of funds via automated clearing house or wire transfer. The term "electronically" is not defined, but likely encompasses a broader range of payments.

## **Related tax changes**

(R.C. 125.30, 718.01, 5725.17, 5725.22, 5727.25, 5727.311, 5727.47, 5727.81, 5727.811, 5727.82, 5727.83, 5733.022, 5735.03, 5739.032, 5743.15, 5745.01, 5747.07, 5747.072, 5747.42, and 5747.44)

The act also makes the following changes to the administration of state taxes:

- Removes a requirement that the Tax Commissioner maintain a list of taxpayers that are required to pay certain taxes electronically to the Treasurer.
- Requires that, after county auditors collect cigarette license application fees from retail and wholesale dealers, the portion of those fees that is dedicated to the Cigarette Tax Enforcement Fund should be sent to the Tax Commissioner, rather than the Treasurer of State.
- Provides that, when a motor fuel dealer makes a cash deposit to secure their payment of motor fuel taxes, the dealer must send the payment to the Tax Commissioner, rather than the Treasurer of State. Under continuing law, motor fuel dealers are required to either file a surety bond or make a cash deposit that will be held in trust by the state for the payment of taxes due.
- Makes changes to the administration of the domestic insurance company premiums tax.
- Repeals obsolete provisions.

## **Motor vehicles and watercraft**

### **Certificate of title taxes**

(R.C. 1548.06 and 4505.06)

The act transfers from the Treasurer to the Registrar of Motor Vehicles the responsibility to receive sales and use taxes from the sale of motor vehicles, off-highway motorcycles, and all-purpose vehicles that are collected by each clerk of courts. For purposes of receipt of the taxes, the Registrar must date stamp the tax remittance report and may require clerks to submit the taxes and remittance reports electronically. After receiving the taxes and date stamping the report, the Registrar must forward the taxes to the Tax Commissioner. Under prior law, the Treasurer received those tax collections and performs all duties related to their remittance.

The act makes similar changes with respect to sales and use tax collections for watercraft and outboard motors. However, it transfers the responsibilities from the Treasurer to the Tax Commissioner, thus eliminating the need to date stamp and forward a tax remittance report. It also allows the Commissioner to receive the taxes and reports electronically.

### **Cash in lieu of proof of financial responsibility**

(R.C. 4509.62, 4509.63, 4509.65, and 4509.67)

The act transfers the responsibility for receiving monetary deposits to maintain financial responsibility for a motor vehicle from the Treasurer to the Registrar. Under former law, a person could deposit \$30,000 (in lieu of obtaining auto insurance) with the Treasurer, in the form of cash

or government bonds (U.S., Ohio, or local government), for the purpose of maintaining proof of financial responsibility for their motor vehicle. The Treasurer then would issue the depositor a certificate of deposit that the Registrar accepted in lieu of the requirement to maintain auto insurance. However, the Treasurer could not accept a deposit unless the depositor also presented evidence that there are no outstanding judgments against the depositor in the depositor's county of residence.

The act retains the option for a person to deposit cash, but eliminates the option to deposit government bonds for purposes of maintaining proof of financial responsibility. Additionally, it eliminates the requirement that a certificate for the deposit be issued to the depositor. The Registrar, like the Treasurer under the former law, is prohibited from accepting the deposit unless it is accompanied by evidence that the depositor has no outstanding judgments. The act also establishes the Financial Responsibility Custodial Fund in which the money received by the Registrar must be deposited. The Registrar must hold the money to satisfy any execution of a judgment against the depositor.

Finally, the act makes conforming changes to allow the Registrar, rather than the Treasurer, to return the deposit in certain circumstances (such as when the depositor has obtained auto insurance or has died). Under prior law, the Registrar was required to direct the Treasurer to return the money (or bond).

## ODNR surety requirements

(R.C. 1501.04, 1501.10, 1503.05, 1509.07, 1509.225, 1514.04, 1514.05, and 1521.061)

The act creates the Performance Cash Bond Refunds Fund that consists of money received by the Department of Natural Resources (ODNR) from other entities as performance security. Once an entity completes work or satisfies the terms for which the performance cash bond was required, the money is refunded to the entity. However, if the performance cash bond is forfeited, the money must be transferred to the appropriate fund within the state treasury.

The act also makes various changes related to ODNR's surety requirements, most notably eliminating the Treasurer of State's involvement in the safekeeping of deposited sureties. Those changes are described below in the table.

ODNR surety changes		
Person or entity to deposit surety	Surety allowed under prior law in lieu of bond	Surety changes under the act
A lessee that enters into a lease of a public service facility in a state park must furnish surety to ensure that the lessee performs fully all terms of the lease.	Irrevocable letter of credit to the state, cash, or negotiable certificates of deposit of any bank or savings and loan association organized or transacting business in the U.S., all deposited with the Treasurer.	Requires any cash surety to be credited to the Performance Cash Bond Refunds Fund. Also requires the ODNR Director to receive deposits of cash or certificates of deposits from those lessees instead of the Treasurer.

ODNR surety changes		
Person or entity to deposit surety	Surety allowed under prior law in lieu of bond	Surety changes under the act
A person that bids on a timber sale agreement must file surety in accordance with the terms of a timber sale agreement entered into with the Chief of the Division of Forestry.	Cash, U.S. government securities, negotiable certificates of deposit, or irrevocable letters of credit issued by any bank or organized or transacting business in Ohio, all held by the Treasurer for safekeeping.	Eliminates the option for a bidder to use U.S. government securities as surety.  Requires any cash surety to be credited to the Performance Cash Bond Refunds Fund.  Requires the Chief to receive all other surety from those bidders for safekeeping instead of the Treasurer.
An oil or gas well owner must file surety with the Chief of Oil and Gas Resources Management prior to obtaining a permit to operate or produce from a well.	Cash, negotiable certificates of deposit, or irrevocable letters of credit, issued by any bank organized or transacting business in Ohio, all of which are given to the Chief who delivers them to the Treasurer to hold in trust.	Requires any cash surety to be credited to the Performance Cash Bond Refunds Fund.  Requires the Chief to hold the surety in trust instead of the Treasurer.
A brine transporter must file surety with the Chief of Oil and Gas Resources Management prior to obtaining a registration certificate to provide compensation for damage and injury resulting from transporters' violations of transporter regulations.	Cash or negotiable certificates of deposit issued by any bank organized or transacting business in Ohio, both of which are given to the Chief who delivers them to the Treasurer to hold in trust.	Requires any cash surety to be credited to the Performance Cash Bond Refunds Fund.  Requires the Chief to hold the surety in trust instead of the Treasurer.
An applicant for a surface or in-stream mining permit must file surety with the Chief of the Division of Mineral Resources Management.	Cash, irrevocable letter of credit, or certificates of deposit, all of which are given to the Chief who delivers them to the Treasurer to hold in trust.	Requires any cash surety to be credited to the Performance Cash Bond Refunds Fund.  Requires the Chief to hold the surety in trust instead of the Treasurer.  Accordingly, requires the Chief, instead of the Treasurer, to release the surety when mining reclamation is completed.

ODNR surety changes		
Person or entity to deposit surety	Surety allowed under prior law in lieu of bond	Surety changes under the act
An applicant for a permit to construct a dam or levee must file surety with the Chief of the Division of Water Resources.	Cash, U.S. government securities, negotiable certificates of deposit issued by any bank organized or transacting business in Ohio, all of which are given to the Chief who delivers them to the Treasurer to hold in trust.	Eliminates the option for an applicant to use U.S. government securities as surety.  Requires any cash surety to be credited to the Performance Cash Bond Refunds Fund.  Requires the Chief to hold the surety in trust instead of the Treasurer.

## Technical changes

(R.C. 135.01, 135.08, 135.14, 135.142, 135.143, 135.31, 135.35, 135.45, 135.46, 1112.12, 1315.54, 1345.01, 2109.37, 2109.372, 2109.44, 3916.01, 4710.03, and 4763.13)

The act replaces the term “standard rating service” throughout the Revised Code to the more commonly used term, “statistical rating organization.”

The act removes all references to the federal “Office of Thrift Supervision,” which no longer exists, and likewise removes a reference to the Ohio Building Authority, which no longer exists.

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## **BUREAU OF WORKERS COMPENSATION**

### **Workers' compensation coverage for certain prison laborers**

- Eliminates a requirement that inmates participating in the Federal Prison Industries Enhancement Certification Program must be covered by a disability insurance policy to provide benefits for loss of earning capacity due to an injury and for medical treatment of the injury following the inmate's release from prison.
- Allows inmates participating in the program to be covered as employees of the Department of Rehabilitation and Correction (DRC), or a private party participating in the program under certain circumstances, under the Workers' Compensation Law.
- Prohibits a private party from participating in an employer model enterprise under the program unless the private party meets certain requirements and is approved by the DRC Director.
- Requires an inmate to voluntarily consent to participate in the program before participating.
- Suspends an award of compensation or benefits under Workers' Compensation while a claimant is imprisoned, similar to continuing law workers' compensation claims.
- Requires an inmate who is injured or contracts an occupational disease arising out of participation in authorized work activity in the program to receive medical treatment and medical determinations for purposes of Workers' Compensation from DRC's medical providers while in DRC custody.
- Limits medical determinations made by DRC's providers to initial claim allowances and requests for additional conditions.

### **Employers providing work-based learning programs**

- Makes permanent a pilot program originally set to expire March 23, 2024, prohibiting the Administrator from charging an employer's experience for a workers' compensation claim if the employer provides work-based learning experiences for career-technical education program students and the claim is based on a student's injury, occupational disease, or death.
- Exempts the program's rules from review by the Joint Committee on Agency Rule Review, similar to other rules related to ratemaking under continuing law.

### **Workers' compensation coverage for certain prison laborers**

(R.C. 5145.163)

The act eliminates the requirement that inmates participating in the Federal Prison Industries Enhancement Certification Program must be covered by a disability insurance policy to provide benefits for loss of earning capacity due to an injury and for medical treatment of the

injury following the inmate's release from prison. Instead, these inmates may be covered as employees under the Workers' Compensation Law. The Federal Prison Industries Enhancement Certification Program is a federal program that allows prison industry enterprises to be exempt from federal restrictions on prisoner-made goods in interstate commerce. Federal law prohibits program participants from denying workers' compensation coverage to inmates who work under the program.<sup>181</sup>

Under continuing law, there are two enterprise models under the program: (1) customer model enterprises and (2) employer model enterprises. In a customer model enterprise, a private party participates in the enterprise only as a purchaser of goods. In an employer model enterprise, a private party participates in the enterprise as an operator of the enterprise.

If an inmate works in a customer model enterprise under the program, the act allows DRC to be the inmate's employer for workers' compensation purposes. If the inmate works in an employer model enterprise under the program, the act allows the private participant to be the inmate's employer for workers' compensation purposes. The act specifies that inmates are not employees of DRC or a private participant under the program for any other purpose.

Under the Workers' Compensation Law, every employee who is injured or who contracts an occupational disease arising out of employment, and the employee's dependents, if the employee dies as a result of such an injury or occupational disease, is generally entitled to receive compensation (lost wages, generally), and benefits (medical and death benefits, generally).<sup>182</sup> Compensation and benefits are paid either directly from the employee's self-insuring employer or from the State Insurance Fund in the case of an employer who pays premiums into the fund.

### **Administration of the program**

Under the act, to participate in an employer model enterprise under the program a private party must be approved by the DRC Director. The Director may approve a private party to participate in an employer model enterprise only if the private party meets the following requirements:

- The private party provides proof of workers' compensation coverage;
- The private party carries liability insurance in an amount the DRC Director determines to be sufficient;
- The private party does not have an unresolved finding for recovery by the Auditor of State.

The act requires an inmate to voluntarily consent to participate in the program before participating. This consent disclaims the inmate's ability to choose a medical provider while the inmate is imprisoned and subjects the inmate to the act's requirements related to workers' compensation coverage and the program.

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<sup>181</sup> 18 U.S.C. 1761.

<sup>182</sup> R.C. 4123.54, not in the act.

## **Workers' compensation while imprisoned**

If an inmate is injured or contracts an occupational disease arising out of participation in authorized work activity in the program, the act allows the inmate to file a workers' compensation claim while the inmate is in DRC custody. Consistent with continuing law prohibiting payment of compensation or benefits while a claimant is confined in correctional institution or county jail in lieu of a correctional institution, compensation or benefits under the Workers' Compensation Law cannot be paid during the period of a claimant's confinement in any correctional institution or county jail.<sup>183</sup> The act requires any remaining amount of an award of compensation or benefits to be paid to a claimant after the claimant is released from imprisonment. However, compensation and benefits are suspended if a claimant is reimprisoned and resume on the claimant's release.

If an inmate is killed or dies as the result of an occupational disease contracted in the course of participation in authorized work activity in the program, the inmate's dependents may file a claim.

## **Medical treatment and determinations**

If an inmate in DRC custody files a claim, the act requires the inmate to receive medical treatment and medical determinations for purposes of the Workers' Compensation Law from DRC's medical providers. The act limits medical determinations made by DRC's providers to initial claim allowances and requests for additional conditions.

An inmate may request a review by DRC's chief medical officer, and in the event of an appeal, a medical evaluation from a medical practitioner affiliated within DRC's network of third-party medical contractors or a medical practitioner in a managed care organization located in Franklin County. A managed care organization manages the medical portion of a workers' compensation claim for claimants who are not imprisoned under continuing law.<sup>184</sup>

## **Employers providing work-based learning program**

(R.C. 111.15 and 119.01; Sections 107.10 and 107.11, codifying Section 3 of S.B. 166 of the 134<sup>th</sup> G.A. as R.C. 4123.345)

The act makes the Employers Providing Work-Based Learning Pilot Program a permanent program. Formerly, it was a two-year pilot program set to expire March 23, 2024. The program requires the Administrator, subject to the approval of the Bureau of Workers' Compensation Board of Directors, to adopt a rule prohibiting the Administrator from charging any amount with respect to a claim for compensation or benefits under the Workers' Compensation Law to an employer's experience if both of the following apply:

- The employer provides a work-based learning experience for students enrolled in an approved career-technical education program;

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<sup>183</sup> R.C. 4123.54, not in the act.

<sup>184</sup> R.C. 4121.44, not in the act.

- The claim is based on a student's injury, occupational disease, or death sustained in the course of and arising out of the student's participation in the employer's work-based learning experience.

Under continuing law, Ohio's Minor Labor Law requirements (concerning minor work hours and activities in which a minor may engage) does not apply to a student participating in the program.

An employer's experience in being responsible for its employees' workers' compensation claims may be used in calculating the employer's workers' compensation premiums. Thus, not charging a claim to the employer's experience may result in a mitigation of an increase in the employer's premiums as a result of the claim.<sup>185</sup>

The act exempts the program's rules from legislative review by the Joint Committee on Agency Rule Review (JCARR).

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<sup>185</sup> See R.C. 4123.29, 4123.34, and 4123.39, not in the act, and O.A.C. 4123-17-03.

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## LOCAL GOVERNMENT

### Local competitive bidding thresholds

- Increases statutory competitive bidding thresholds to \$75,000 for counties, townships, municipal corporations, libraries, fire and ambulance districts, regional airport authorities, and regional water and sewer districts, and subsequently increases the amount annually by 3%.
- Prohibits subdividing projects or purchases to avoid competitive bidding requirements.

### County road and public improvement projects

- Increases (from 10% to 20%) the allowable difference between a county road improvement project's estimate and the project's contract price.
- Increases (from 10% to 20%) the allowable difference between a local public improvement project's estimate and the project's contract price.

### County credit cards

- Requires each county to adopt a policy regarding the use of its credit cards.
- Requires purchases on a county credit card to be for work-related expenses that serve a public purpose.
- Disallows use of a county credit card for finance charges, late fees, or sales tax unless approved by the board of county commissioners.

### County recorder

- Allows a county recorder to extend current approved funding requests for the county recorder's technology fund beyond those formerly allowed, and requires a board of county commissioners to approve the extension.

### Jail commissary profits

- Allows a sheriff to use profits from a jail commissary fund to pay for construction or renovation of a jail facility to provide medical or mental health services.

### Drainage Assessment Fund

- Abolishes the Drainage Assessment Fund, which was funded by the General Assembly and was used to pay each state agency's share of local drainage assessments made under the county ditch laws.
- Eliminates an associated requirement that state agencies include the cost of the state's share of drainage assessments billed by county auditors in budget requests from the fund.

## **Township deputy fiscal officer**

- Clarifies that a board of township trustees may appoint a deputy fiscal officer to act as a fiscal officer, when the office is vacant, until a successor fiscal officer is appointed or elected, rather than until a successor fiscal officer is elected.

## **Township cemetery deeds**

- Allows a township to record cemetery lot/right deeds with the county recorder as an alternative to the township maintaining a book of the deeds.

## **Referendum on township zoning plan**

- Increases the number of signatures required to place a question of whether to repeal a township zoning plan on the ballot from not less than 8% of the total vote cast in that township for all candidates for Governor at the most recent general election at which a Governor was elected to 15%.

## **New community authorities (NCAs)**

- Allows inclusion of township-owned property in a new community district.
- Allows a board of township trustees to approve creation of a new community authority (NCA) or a change to the territory of an existing new community district, if the territory of the district (or the territory added or removed) is located entirely in the township and meets certain population criteria.
- Specifies that property subject to an NCA development charge may not also be exempted from taxation by a downtown redevelopment district (DRD) or transportation finance district (TFD).

## **Municipal notices**

- Allows a municipal corporation to publish certain items either via newspaper, on the state's public notice website, or on the municipal corporation's website and social media account.

## **Free assistance dog registration**

- Expands the types of assistance dogs that qualify for free dog registration from the county auditor to include those trained by for-profit special agencies, in addition to those trained by nonprofit special agencies as in continuing law.
- Eliminates an ambiguity in the law related to the training of assistance dogs.

## **Notify land banks of foreclosure sales**

- Requires the levying officer to notify land banks when residential property is to be sold at public auction.

## **Regional transportation improvement projects (RTIPs)**

- Authorizes an existing RTIP to enter into a memorandum of understanding with the Department of Transportation concerning improvements within 2,500 feet of the RTIP's right-of-way.
- Allows such an RTIP to exercise certain powers pursuant to that memorandum related to project funding, economic development, the operations of businesses, public-private partnerships, and the acquisition of property by appropriation or otherwise.
- Makes several changes to the procedures and requirements for the creation of a transportation financing district by an RTIP.

## **Public meetings of economic development entities**

- Authorizes a board of directors of a community improvement corporation, a board of directors of a joint economic development zone, and a joint economic development review council, to hold public meetings by interactive video conference or by teleconference, provided that certain criteria are met.

## **Local regulation of tobacco and alternative nicotine products (VETO OVERRIDDEN)**

- Prohibits local regulation of tobacco products and alternative nicotine products as well as fees, taxes, assessments, and charges on the products, other than those expressly authorized by state law (VETO OVERRIDDEN).

## **Local government bidding thresholds**

(R.C. 9.17, 307.86, 307.861, 308.13, 505.08, 505.37, 505.376, 511.01, 511.12, 515.01, 715.18, 731.141, 735.05, 737.03, 3375.41, 5549.21, and 6119.10)

The act increases statutory competitive bidding thresholds from \$50,000 to \$75,000 for counties, townships, municipal corporations, libraries, fire and ambulance districts, regional airport authorities, and regional water and sewer districts.<sup>186</sup> Starting in 2025, the act increases the threshold amount by 3% each year. The Director of Commerce must calculate and publish the new amount each year.

The increase from \$50,000 to \$75,000 also applies when a town hall is being built in a township. Under continuing law, to build, improve, enlarge, or remove a town hall at a cost exceeding that threshold, the trustees must get the approval of the voters.

The county competitive bidding requirement formerly allowed the commissioners to exempt an expenditure from the requirement if an emergency existed and the cost was less than \$100,000. The act increases this amount to \$125,000.

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<sup>186</sup> One threshold applicable to municipal corporations was formerly \$10,000. See R.C. 715.18.

Finally, throughout the competitive bidding laws applicable to each type of political subdivision, the act prohibits subdividing a purchase, lease, project, or other expenditure into components or separate parts in an effort to avoid a competitive bidding requirement.

## **County road improvements and public improvement projects**

(R.C. 153.12 and 5555.61)

Formerly, the contract price of a county road improvement project or a public improvement project could exceed the estimate by only 10%. The act increases this to 20%. The act does not impact state public improvement projects.

## **County credit cards**

(R.C. 301.27)

Counties, under prior law, had authority to use credit cards, but only for certain expenses set forth in the Revised Code (e.g., food, transportation, and lodging). The act requires each county to adopt a policy regarding the county's use of credit cards. The board of county commissioners adopts the policy in consultation with the county auditor. The policy must include a procedure for submitting itemized receipts for purchases, which the act requires be submitted for each purchase, and any other provision the commissioners determine is necessary. The act eliminates the list of allowable uses, and instead specifies that a credit card be used only for purchases that are work-related and serve a public purpose. The purchase must be payable with available money from an appropriate line item. A credit card cannot be used to pay finance charges, late fees, or sales tax unless the commissioners approve. The act retains many provisions, including for instance the requirement to reimburse the county for inappropriate charges.

## **County recorder**

(R.C. 317.321)

The act allows a county recorder to extend current approved funding requests for the county recorder's technology fund beyond those formerly allowed, and requires a board of county commissioners to approve these extensions, notwithstanding continuing statutory limitations. Under continuing law, a county recorder's funding request for technology fund purposes generally is limited to a five-year period. However, in 2013 and again in 2019,<sup>187</sup> the General Assembly enacted language that allowed, temporarily, for extensions of funding beyond the five-year period and a mandatory bump of up to \$3 of recoding fees to be directed to the county recorder's technology fund from the county general fund. Absent the extensions, it appears the law would resort to discretionary county commissioner approval, rejection, or modification with a mandatory bump of up to \$3, for a period of up to five years, provided the total of such allocations could not exceed \$8. Essentially, the General Assembly has

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<sup>187</sup> H.B. 59 of the 130<sup>th</sup> General Assembly and H.B. 166 of the 133<sup>rd</sup> General Assembly.

“grandfathered” allocation of recorder’s fees to the technology fund since 2013, notwithstanding the approved proposal agreement provided for the term of the funding.

The act similarly extends any proposal that was approved by the board of county commissioners before, and is in effect on October 3, 2023, to continue to January 1, 2030, notwithstanding the number of years of funding specified in the approved proposal. The act also provides that a proposal submitted between October 1, 2019, and October 1, 2028, for the mandatory bump of up to \$3 be credited to the technology fund, in addition to the other funding allocation; if the total of those two amounts does not exceed \$8, the board must approve the proposal.

## **Jail commissary profits**

(R.C. 341.25)

Continuing law allows a sheriff to establish a commissary for county jails. If a commissary is established, the sheriff also must establish a commissary fund, which is strictly controlled in accordance with procedures adopted by the Auditor of State. The sheriff currently may use profits from a jail commissary fund only for certain expenditures, including sheriff and employee salaries and for purchasing equipment. Under the act, the sheriff additionally may use these profits to pay for construction or renovation of a jail facility to provide medical or mental health services.

## **Drainage Assessment Fund**

(R.C. 6131.43; repealed R.C. 6133.15)

The act abolishes the Drainage Assessment Fund. The fund was established in the state treasury and funded by the General Assembly. It was used to pay each state agency’s share of local drainage assessments made under the county ditch laws. Correspondingly, the act eliminates an associated requirement that state agencies include the cost of the state’s share of drainage assessments billed by county auditors in budget requests from the fund.

## **Township deputy fiscal officer appointments**

(R.C. 507.02)

The act clarifies that a township deputy fiscal officer temporarily acting as a fiscal officer serves until a new fiscal officer is elected or appointed, rather than only elected as under former law.

Under continuing law, when a township fiscal officer’s office becomes vacant, or the officer is incapacitated, the board of township trustees must appoint a deputy fiscal officer to exercise the full power to discharge the duties of the office. Appointing the deputy fiscal officer is temporary, and not the same as filling a vacancy in the office. To fill a vacancy, the township board of trustees must appoint a person with the qualifications of an elector for the unexpired term, or until a successor is elected.<sup>188</sup>

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<sup>188</sup> R.C. 503.24, not in the act.

Continuing law specifies that, until a successor is elected, a deputy fiscal officer must fill the position. Because a vacancy can be filled by election or appointment under continuing law, the act clarifies that a deputy fiscal officer must fill the position until a successor is elected or appointed, rather than only elected.

## **Township cemetery deeds**

(R.C. 317.08, 517.07, and 517.271)

The act provides townships an alternative means of maintaining a record of cemetery lot/right deeds. Prior law gave townships only one option: each township fiscal officer must record the deeds in a book kept by the township. Alternatively under the act, a township may record the deeds with the county recorder.

## **Referendum on township zoning plan**

(R.C. 519.12 and 519.25)

The act increases the number of signatures required to place a question of whether to repeal a township zoning plan on the ballot, from not less than 8% of the total vote cast in that township for all candidates for Governor at the most recent general election at which a Governor was elected to 15%. Under continuing law, a township zoning plan may be repealed if the board of township trustees receives a petition to submit to the electors the question of whether or not the zoning plan in effect in the township must be repealed. If the petition is signed by the required number of qualified electors residing in the unincorporated area of a township included in the zoning plan which seeks to be repealed, the board will adopt the resolution presented in the petition. The resolution is then certified to the board of elections not later than 90 days before the day of an election at which the question is to be voted on. If a majority of the vote cast is in favor of repealing the zoning plan, the zoning plan will no longer be in effect. Additionally, a board of township trustees can adopt its own resolution to repeal a zoning plan that does not need to be submitted to the electors for a vote.

## **New community authorities**

(R.C. 349.01, 349.03, 349.04, and 349.14)

### **Background**

Continuing law allows for the creation and implementation of “new community development programs,” which aim to develop new properties in relation to existing communities while incorporating planning concepts that promote utility, open space, and supportive facilities for industrial, commercial, residential, cultural, educational, and recreational activities. The resulting “new community districts,” each of which is governed by a body referred to as a new community authority (NCA), are intended to be characterized by well-balanced and diversified land-use patterns.

### **Township developers**

Under Ohio law, changed in part by the act, a developer that controls or owns land and would like to form a new community district must file a petition with the clerk of the appropriate organizational board of commissioners to create an NCA. A “developer,” under continuing law,

includes a person, municipal corporation, county, or port authority. The act adds a township to that definition and, thereby, explicitly authorizes townships to petition to form a new NCA, or add or delete territory from an existing new community district.

### **New NCAs**

Under prior law, the board of county commissioners or sometimes, depending on the location of the new community district, the legislative authority of a municipal corporation, is the organizational board of commissioners with the authority to approve the district and create an NCA. Additionally, depending on the location of the proposed district, the petition must also be approved by the most populous municipal corporation of the county or the most populous municipal corporation of a neighboring county. If more than half of the proposed NCA is located within the most populous municipal corporation of a county, the legislative authority of that municipal corporation, and not the board of county commissioners of the county, must approve the petition.

The act specifies that if a proposed new community district is comprised entirely of unincorporated territory within the boundaries of a township with a population of at least 5,000, and it is also located in a county with a population of at least 200,000 and not more than 400,000 (i.e., Butler, Stark, Lorain, Warren, Lake, Mahoning, Delaware, Clermont, or Trumbull county), then the organizational board of commissioners may be either the board of county commissioners or the board of township trustees of the township. Furthermore, if the petition to create an NCA for such a district is submitted to the board of county commissioners, and not to the board of township trustees, the act allows the board of township trustees to intervene and disallow the NCA.

### **Existing NCAs**

Under Ohio law, changed in part by the act, a developer that wishes to add or delete territory from an existing new community district may file an application with the clerk of the organizational board of commissioners that originally approved creation of the NCA. If the territory proposed to be added or deleted from the district is (1) located entirely within a municipal corporation, (2) mostly located in the most populous municipal corporation in the county, or (3) located in the unincorporated area of a township described above, the act requires the developer to submit the petition to both the original organizational board of commissioners and the legislative authority of the municipal corporation or board of trustees of the township, as applicable. The act specifies that the legislative authority of the municipal corporation or board of trustees of the township is the “acting organizational board of commissioners” for the purposes of the petition and, therefore, has the authority to approve or disapprove the proposed territory changes.

### **Community development charge**

Under continuing law, an NCA may levy a “community development charge” within its boundaries to pay for its community development programs. If an NCA imposes a community development charge determined on the basis of rentals received from leases of real property, that real property cannot be exempted from taxation under a tax increment financing (TIF) arrangement. The act also prohibits exemption of such property under a downtown

redevelopment district (DRD) or transportation finance district (TFD) arrangement. Under continuing law, a DRD and TFD generate revenue for economic development projects in the same manner as a TIF – by exempting improvements to real property and requiring the property owner to make service payments in lieu of taxes.

## **Municipal notices**

(R.C. 125.182, 731.21 to 731.25; related changes in R.C. 504.12, 504.121, 504.122, 504.123, 504.124, 504.125, 504.126, 715.691, 715.70, 755.13, and 1545.09)

Continuing law requires a municipal corporation to publish a succinct summary of each municipal ordinance or resolution. Rather than require publication via newspaper as under prior law, the act allows a municipal corporation to select one (or more) of three methods: (1) newspaper, (2) the state’s public notice website, or (3) the municipal corporation’s website and social media account. Continuing law specifically requires some items to be published via newspaper. For other items (statements, orders, proclamations, notices, and reports) that require publication but not specifically via newspaper, the municipal corporation may select one of the three methods under the act, rather than use newspaper publication as previously required.

Many provisions related to other types of political subdivisions (e.g., limited home rule townships and park districts) tie their requirements to the municipal requirements. The act only changes requirements for municipal corporations, so in order to maintain the status quo with respect to the other political subdivisions, the act makes numerous changes to their provisions. While it may appear to be modifying the requirements, the changes effectively keep those requirements as they currently stand.

## **Free assistance dog registration**

(R.C. 955.011)

The act expands the types of assistance dogs that qualify for free dog registration issued by the county auditor. Under continuing law, an assistance dog is a guide dog, hearing dog, or dog that has been trained to assist a person with a mobility impairment (service dog). An assistance dog owner is exempt from county dog registration fees if the owner shows proof that the dog is, in fact, an assistance dog. Previously, to qualify for free registration, the dog must have been trained by a nonprofit special agency. The act allows an assistance dog to be trained by a for-profit special agency, in addition to a nonprofit, to qualify for free dog registration.

In addition, the act eliminates an ambiguity in the law related to the training of assistance dogs. Under prior law, it was unclear what qualifies as “training” because the phrase “by a nonprofit special agency” appeared to apply only to the training of a service dog under a legal interpretation known as the doctrine of the last antecedent. R.C. 1.42 provides that statutory words and phrases must be read in context and construed according to the rules of grammar and common usage. The rules of grammar provide that absent of legislative intent to the contrary,

qualifying words and phrases must be applied only to their immediate or last antecedent, and not to the other remote or preceding words.<sup>189</sup>

Prior law defined “assistance dog” to mean “a guide dog, hearing dog, or service dog that has been trained by a nonprofit special agency.” Therefore, when applying the doctrine of the last antecedent, the phrase “that has been trained by a nonprofit special agency” may have only applied to a service dog. The act eliminates this ambiguity by removing the last antecedent and clarifying that the training applies to each type of assistance dog, not just service dogs.

## **Notify land banks of foreclosure sales**

(R.C. 2329.261 and 2329.27)

Under continuing law, when a court orders the sale of real property due to the owner’s failure to pay a debt (a writ of execution), the property must be sold at a public auction. Under the act, if the sale is of “qualifying residential property” located in an area that has a land reutilization program, then the officer selling the property must notify the electing subdivision or county land reutilization corporation (both commonly referred to as “land banks”) of the sale to give the land bank a chance to purchase the property. “Qualifying residential property” is defined in the act as a single-family residential property, including a single unit in a multi-unit property containing not more than ten units but excluding manufactured homes, that has at least 1,000 square feet of habitable space per unit.

The act requires the officer selling the property at the foreclosure sale to maintain a website and phone number to provide information on applicable properties, which may be an existing website it uses for other information, including the official public sheriff sale website used to conduct online auctions.

## **Regional transportation improvement projects (RTIPs)**

Continuing law authorizes the boards of county commissioners of two or more counties to enter into a cooperative agreement creating a regional transportation improvement project (RTIP). The purpose of an RTIP is to undertake transportation improvements within the participating counties. The agreement governs the scope of the project and includes a comprehensive plan for its completion. The only existing RTIP encompasses Carroll, Columbiana, and Stark counties.

The act makes several changes to RTIPs and the special financing districts that counties participating in an RTIP may create to generate funding for projects.

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<sup>189</sup> See *Ohio Neighborhood Fin., Inc. v. Scott*, 139 Ohio St.3d 536, 2014-Ohio-2440, 13 N.E.3d 1115 and *Hedges v. Nationwide Mut. Ins. Co.*, 109 Ohio St.3d 70, 2006-Ohio-1926, 846 N.E.2d 16.

## Memorandum of understanding with ODOT

(R.C. 4504.22, 5595.01, 5595.03, 5595.04, 5595.041, 5595.042, 5595.05, 5595.06, 5709.481, and 5709.50)

The act allows the governing board of an RTIP formed before October 3, 2023 (“qualified RTIP”), to negotiate and enter into a memorandum of understanding with the Department of Transportation (ODOT) concerning infrastructure improvements and economic development activities that are at least partially funded by private sources and are in close proximity to the RTIP right-of-way (“opportunity corridor improvements”).

A qualified RTIP that enters into a memorandum of understanding with ODOT, in addition to all current authority an RTIP possesses, may do any or all of the following:

- Purchase property located within the RTIP “development area,” i.e., the area within 2,500 feet of RTIP right-of-way and in which opportunity corridor improvements may be undertaken, except by eminent domain, for use by the RTIP board for transportation or opportunity corridor improvements.
- Appropriate property, through eminent domain, within the RTIP right-of-way exclusively for a transportation improvement, i.e., transportation infrastructure, described in the memorandum of understanding, provided the appropriation authority would be within ODOT’s existing authority if ODOT undertook the appropriation and the authority is described in the memorandum. Previously, Ohio law explicitly prohibited all RTIP boards from appropriating property.
- Receive and reinvest funds from the development area.
- Contract for the use of digitalized procurement planning and permitting systems.
- Request and receive grants and private contributions.
- Establish, acquire, own, control, manage, sell, or transfer businesses.
- Form and manage public-private enterprises, i.e., private corporations, jointly owned by the RTIP board and a private party, to manage opportunity corridor improvements, subject to the approval of ODOT.
- Enter into an agreement with the Ohio Academic Resource Network for the purpose of establishing, expanding, or improving broadband or other digital services in the development area.

While not specifically intertwined with a memorandum of understanding, the act also allows revenue sources of a qualified RTIP authorized under continuing law to be used for opportunity corridor improvements and clarifies that land within the RTIP development may be exempted from property taxation and subject to payments in lieu of taxes (PILOTs) by a municipal corporation, township, or county under continuing tax increment financing (TIF) law.

## **Transportation financing districts (TFDs)**

(R.C. 5709.48, 5709.49, 5709.50, and 5709.83; Section 803.260)

Counties participating in an RTIP may create a transportation financing district (TFD) that, similar to a TIF incentive district, generates funding for projects by exempting the increase in assessed value of property in the district from taxation and collecting service payments from property owners. Service payments may be used in furtherance of the RTIP and in accordance with the cooperative agreement and, as authorized by the act, any memorandum of understanding.

The act makes several changes to TFDs. First, the act requires that a TFD must generally include all of the territory of the counties participating in the RTIP. Under prior law, a TFD could, but was not required to, include territory from all of the participating counties. Under continuing law, which the act retains, a TFD may not include residential property or property that is already exempt under a TIF arrangement.

Second, the act requires that the RTIP governing board enter into an agreement with each property owner whose property will be included in the TFD. Previously, the board was required to get the approval of all property owners, but was not required to enter into a formal agreement with each owner. Under the act, each agreement must specify the projects and purposes for which the owner's service payments will be used. If an owner refuses to enter into an agreement, the owner's property must be excluded from the TFD.

Third, the act aligns the notice and approval requirements for creating TFD with those that apply to a TIF arrangement. Specifically, the act eliminates a requirement that all taxing districts within the territory of a proposed TFD approve its creation. Instead, similar to the creation of a TIF, only the approval of school districts within the territory is required, and only if the proposed exemption is greater than 75% or longer than ten years. In lieu of seeking school district approval, the RTIP may agree to fully compensate school districts for their resulting revenue loss or, similar to prior law, a district may negotiate a compensation agreement in exchange for its approval. A school district may also waive its right to approve TFDs.

The act's TFD changes apply to any resolution granting a TFD tax exemption adopted on or after October 3, 2023.

## **Public meetings of economic development entities**

(R.C. 715.693 and 1724.11)

The act authorizes a board of directors of a community improvement corporation, a board of directors of a joint economic development zone, and a joint economic development review council to hold public meetings by interactive video conference or by teleconference. The meetings must comply with the following requirements:

1. The board or council establishes a primary meeting location that is open and accessible to the public.
2. Meeting-related materials that are available before the meeting are sent via electronic mail, facsimile, hand-delivery, or U.S. postal service to each member.

3. In the case of an interactive video conference, the board or council causes a clear video and audio connection to be established that enables all meeting participants at the primary meeting location to see and hear each member.

4. In the case of a teleconference, the board or the council causes a clear audio connection to be established that enables all meeting participants at the primary meeting location to hear each member.

5. All board or council members have the capability to receive meeting-related materials that are distributed during a meeting.

6. A roll call voice vote is recorded for each vote taken.

7. The minutes of the board or council meeting identify which members remotely attended the meeting by interactive video conference or teleconference.

The act requires a board or council that wishes to exercise its authority to meet by interactive video conference or by teleconference to adopt rules necessary to implement that authority. At a minimum, the rules must do all of the following:

1. Authorize board members to remotely attend a meeting by interactive video conference or teleconference, or by a combination thereof, in lieu of attending the meeting in person;

2. Establish a minimum number of members that must be physically present in person at the primary meeting location;

3. Require that not more than one member remotely attending a meeting by teleconference is permitted to be physically present at the same remote location;

4. Establish geographic restrictions for participation in meetings by interactive video conference and by teleconference;

5. Establish a policy for distributing and circulating meeting-related materials to members, the public, and the media in advance of or during a meeting at which members are permitted to attend by interactive video conference or teleconference;

6. Establish a method for verifying the identity of a member who remotely attends a meeting by teleconference.

## **Local regulation of tobacco and alternative nicotine products (VETO OVERRIDDEN)**

(R.C. 9.681)

The act prohibits local governments from adopting regulations related to tobacco and alternative nicotine products. The General Assembly overrode the Governor's veto of this item.

The act states that the regulation of tobacco products and alternative nicotine products is a matter of general statewide concern that requires statewide regulation, and that the state has adopted a comprehensive plan with respect to all aspects of the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of

these products. Accordingly, political subdivisions are prohibited from enacting, adopting, renewing, maintaining, enforcing, or continuing in existence any charter provision, ordinance, resolution, rule, or other measure that conflicts with or preempts any policy of the state, including any of the following:

- Setting standards, requirements, taxes, fees, assessments, or charges that are the same as or similar to, that conflict with, that differ from, or add to, any standard, requirement, tax, fee, assessment, or other charge established or authorized by state law;
- Lowering or raising an age requirement regarding the giveaway, sale, purchase, distribution, manufacture, use, possession, licensing, taxation, inspection, and marketing of tobacco or alternative nicotine products;
- Prohibiting an employee age 18 or older of a manufacturer, producer, distributor, wholesaler, or retailer of tobacco products or alternative nicotine products from selling or handling the products.

The act requires courts, in addition to any other relief provided, to award costs and reasonable attorney fees to any party that prevails in a challenge to an ordinance, resolution, regulation, local law, or other action as being in conflict with state law. It specifies that these provisions are not to be interpreted as prohibiting a political subdivision from levying a tax expressly authorized by state law.

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## **9-1-1 EMERGENCY TELEPHONE SERVICE LAW**

### **9-1-1 Steering Committee**

- Renames the “Emergency Services Internet Protocol Network Steering Committee” as the “9-1-1 Steering Committee” and does the following:
  - Requires the Steering Committee to advise and recommend policies or procedures to effectively govern a statewide next generation 9-1-1 (NG 9-1-1) system.
  - Requires each entity operating a public safety answering point (PSAP) to cooperate with the Steering Committee and provide them with certain data.
  - Requires the Steering Committee to meet at least once a quarter.
- Allows for the Steering Committee’s permanent subcommittees to meet either in person or utilize telecommunication-conferencing technology.
- Establishes that a majority of the voting members of a subcommittee constitutes a quorum.
- Adds to the PSAP Operations subcommittee one member representing the Division of Emergency Medical Services of the Department of Public Safety.
- Requires all PSAPs that answer 9-1-1 calls for service to be subject to the PSAP operation rules, with a two-year compliance window for PSAPs not originally subject to the rules to become compliant.
- Requires the Steering Committee to establish guidelines for the Tax Commissioner regarding disbursing and using funds from the 9-1-1 Government Assistance Fund and to periodically review and adjust those guidelines as well as those for the NG 9-1-1 Fund.
- Requires the Steering Committee to report any adjustments to the Department of Taxation and delays the adjustments from taking effect until six months after the Department has been notified.

### **Countywide 9-1-1 systems**

- Requires a countywide 9-1-1 system to include all of the territory of the townships and municipal corporations, including any portions of a municipal corporation that extend into an adjacent county.
- Allows a countywide 9-1-1 system to be either an enhanced or NG 9-1-1 system, or some combination of the two, and must be designed to provide access to emergency services from all connected communications sources.
- Allows for a countywide 9-1-1 system to be provided directly by the county, by a regional council of governments (RCOG), or by connecting directly to the statewide NG 9-1-1 system for call routing and core services.

- Requires each county to appoint a county 9-1-1 coordinator to serve as the administrative coordinator for all PSAPs participating in a countywide 9-1-1 system final plan, and to serve as liaison with other county coordinators and the 9-1-1 Program Office.
- Requires each county to maintain a county 9-1-1 Program Review Committee consisting of six voting members.
- Changes the provisions governing who may be members of the Review Committee.
- Requires the Review Committee to consist of five members in counties with fewer than five townships, a population in excess of 750,000, and more than one PSAP.
- Requires the Review Committee to consist of three members in counties that contain only one PSAP, or if the PSAP is operated by the board of county commissioners, then the board will serve as the Committee.
- Requires each Review Committee to maintain and amend a final plan for implementing and operating a countywide 9-1-1 system.
- Requires each Review Committee to convene at least once annually for the purposes of maintaining or amending a final plan and requires any amendment to the final plan to receive a two-thirds vote of the Committee.
- Requires, not later than March 1 each year, for each Review Committee to submit a report to the political subdivisions within the county and to the 9-1-1 Program Office detailing the sources and amounts of revenue expended to support, and all costs incurred to operate, the countywide 9-1-1 system.
- Makes various changes regarding countywide final plan, including the following changes to what should be specified in the final plan:
  - Specifies how the PSAPs will be connected to a county's preferred NG 9-1-1 system;
  - Requires either enhanced 9-1-1 or NG 9-1-1 service, repealing the ability to allow basic 9-1-1 service to be provided;
  - Details how originating service providers must connect to the core 9-1-1 system identified by the final plan, and what methods will be used by the providers to communicate with the system;
  - Describes the capability of transferring or otherwise relaying information to the entity that directly dispatches emergency services should a PSAP not properly dispatch the needed services;
  - Explains how each emergency service provider (ESP) will respond to a misdirected call or a false caller location, or if the call fails to meet FCC or accepted national standards.
- Requires, not later than April 3, 2024, each county Review Committee to file a copy of its current final plan with the 9-1-1 Program Office and requires any revisions or amendments to be filed no later than 90 days after adoption.

- Requires an amended final plan whenever there is any upgrade to the countywide 9-1-1 system, and whenever there is a change or removal of a 9-1-1 system service provider as a participant in the countywide 9-1-1 system.
- Repeals the requirement that an entity wishing to be added as a participant in a 9-1-1 system file a letter of intent to the board of county commissioners.

### **Statewide NG 9-1-1 core services system**

- Requires the 9-1-1 Program Office to coordinate and manage a statewide NG 9-1-1 core services system, which must be capable of providing service for the entire state.
- Repeals the requirement that the 9-1-1 Program Office Administrator report directly to the State Chief Information Officer.
- Requires, not later than April 3, 2024, the program Office to draft, submit, or update an Ohio 9-1-1 plan to the Steering Committee, which must include the following:
  - A plan to address amendments made by the act;
  - Specific details regarding interoperability among counties, the states bordering Ohio, and Canada;
  - A progression plan for the system for sustainability within the funding method provided by the act.
- Requires the Steering Committee to review and permits it to make a determination on approval of the plan within six months after it was submitted.
- Requires any Ohio entity operating a 9-1-1 system, ESINET, or PSAP that seeks a state or federal 9-1-1 grant to present a letter of coordination, containing certain information required by the act, from the 9-1-1 Program Office.
- Allows the 9-1-1 Program Office to do the following:
  - Expend funds from the 9-1-1 Program Fund for 9-1-1 public education purposes;
  - Ensure an effective statewide interconnected 9-1-1 system through proper coordination, adoption, and communication of all necessary technical and operational standards and requirements;
  - Collect and distribute data from, and to, PSAPs, service providers, and ESPs regarding both the status and operation of the statewide 9-1-1 system, and certain location information;
  - Ensure that data collection and distribution meets legal privacy and confidentiality requirements;
  - With advice from the 9-1-1 Steering Committee, enter into interlocal, interstate, intrastate, and federal contracts to implement statewide 9-1-1 services.
- Protects all data described above in accordance with relevant Ohio law and grants the Steering Committee jurisdiction over the use of that data for purposes of 9-1-1.

- Allows for data and information that contributes to more effective 9-1-1 services and emergency response to be accessed and shared among 9-1-1 and emergency response functions.
- Requires every telecommunication service provider able to generate 9-1-1 traffic to do the following:
  - Register with the 9-1-1 Program Office and provide the Program Office a single point of contact who has authority to assist in location-data discrepancies;
  - Provide accurate and valid location data for all 9-1-1 traffic to ensure proper routing to the most appropriate PSAP or local NG 9-1-1 system.
- Requires service providers to correct any discrepancy in location data within 72 hours after notification by the Program Office.
- Subjects all the data described above to all applicable privacy laws and exempts it from being a public record under Ohio's Public Record Law.
- Requires each operator of a multiline telephone system (MTS) that was installed or substantially renovated on or after October 3, 2023 to do the following:
  - Provide the end user the same level of 9-1-1 service that is provided to other in-state end users of 9-1-1, which includes the provision of certain services and data;
  - Provide an emergency-response-location identifier as part of the location transmission to the PSAP using certain technologies;
  - Identify the caller's specific location using an emergency response location that includes the public street address of the building from which the call originated and other specific location data.
- Provide locations that are either master-street-address-guide valid or next-generation-9-1-1-location-validation-function valid.
- Exempts from the above requirements MTS in a workplace of less than 7,000 square feet in a single building, on a single level of a structure, and having a single public street address.
- Requires, not later than October 3, 2024, a business service user (BSU) that provides residential or business facilities, owns or controls a MTS or voice over internet protocol (VOIP) system in those facilities, and provides outbound dialing capacity from those facilities, to ensure the following:
  - For a MTS that can initiate a 9-1-1 call, that the system is connected so a caller using 9-1-1 is connected to the PSAP without requiring the user to dial any additional digit or code;
  - The system is configured to provide notification of any 9-1-1 call made through it to a centralized location on the same site as the system and the BSU is not required to have a person available at the location to receive a notification.

- Exempts a BSU, until after October 3, 2025, from those requirements if all of the following apply:
  - The requirements would be unduly and unreasonably burdensome;
  - The MTS or VOIP needs to be reprogrammed or replaced;
  - The BSU made a good-faith attempt to reprogram or replace the system;
  - The BSU agrees to place an instructional sticker next to the telephones that explains how to access 9-1-1 and other information.
- Requires the BSU to submit an affidavit affirming that the conditions described above apply to the BSU and must include the manufacturer and model number of the system the BSU uses.
- Specifies that the provisions described above regarding MTS and BSU do not to apply if they are preempted by, or in conflict with, federal law.
- Requires the following regarding participation in statewide 9-1-1:
  - Counties must provide a single point of contact to the 9-1-1 Program Office that can assist in location-data discrepancies, 9-1-1 traffic misroutes, and boundary disputes between PSAPs;
  - Requires, not later than five years after operational availability of the statewide NG 9-1-1 core services system to all counties, each county, or RCOG, if applicable, to provide NG 9-1-1 service for all areas to be covered as set forth in the county's final plan or the RCOG's agreement.
- Requires a service provider operating within a county, or an area served by a RCOG, that is participating in the statewide NG 9-1-1 core services system to deliver the 9-1-1 traffic that originates in that geographic area to the NG 9-1-1 core for that area.
- Requires such service providers and counties participating in the statewide NG 9-1-1 core services system to adhere to the standards of the 9-1-1 Program Office, including standards created by the National Emergency Number Association and the Internet Engineering Task Force.

## **Monthly charges**

### **Wireless 9-1-1 charges**

- Terminates, after January 1, 2024, the wireless 9-1-1 charges imposed on both wireless service subscribers and customers for the retail sale of prepaid wireless calling services under prior law.
- Exempts subscribers of wireless lifeline service and providers of such service from these charges prior to termination.

## **NG 9-1-1 access fee for subscribers**

- Replaces the wireless 9-1-1 charge on subscribers (being terminated as described above) with a NG 9-1-1 access fee of 40¢ that is imposed on certain communications services as follows:
  - For wireless telephone service, the fee is imposed on each wireless telephone number that is assigned to the subscriber for which the subscriber is billed;
  - For VOIP, the subscriber must pay a separate fee for each voice channel provided to the subscriber, up to 100 channels per network;
  - For MTS, the fee must be paid with a separate fee per line, with a maximum of 100 separate fees per building for a single subscriber.
- Beginning October 1, 2025, the NG 9-1-1 is reduced to 25¢, but is imposed in the same manner as described immediately above.
- Exempts the following from the NG 9-1-1 access fee for subscribers:
  - A subscriber of wireless lifeline service;
  - Wholesale transactions between telecommunications service providers where the service is a component of a service provided to an end user, as well as network access and interconnection charges paid to a local exchange carrier.
- Specifies that a wireless service that is priced lower than \$5 per month is not subject to the NG 9-1-1 access fee.
- Requires service providers and resellers to collect the NG 9-1-1 access fee as a specific line item on each subscriber's monthly bill or point of sale invoice.
- Requires, by February 1, 2025, the Auditor of State to conduct an audit and deliver a report to the General Assembly detailing any legislative recommendations concerning the collection of the monthly NG 9-1-1 access fees and to make a determination regarding the amount of the monthly NG 9-1-1 access fee.

## **NG 9-1-1 access fee for prepaid wireless retail sales**

- Imposes after January 1, 2024, a separate NG 9-1-1 access fee of .005% of the sale price of a prepaid wireless calling service for retail sales that occur in Ohio.
- Requires the seller of the prepaid calling service to collect the NG 9-1-1 access fee from the customer, and disclose the amount of the fee at the time of the retail sale.
- Provides that the NG 9-1-1 access fee generally applies to the entire nonitemized price when a prepaid calling service is sold alongside other products or services for a single, nonitemized price.
- Provides that a prepaid wireless calling service priced below a single fee of \$10 does not constitute a retail sale for purposes of the NG 9-1-1 access fee for such services.

## **Tax exemption**

- Exempts the NG 9-1-1 access fees for subscribers and for prepaid wireless service from state and local taxation.

## **Administration of charges or fees**

- Instructs each entity required to collect the wireless 9-1-1 charge (being terminated as described above) or NG 9-1-1 access fees to keep complete and accurate records relating to sales with respect to the charges and fees.
- Requires all records kept by entities regarding wireless 9-1-1 charges (being terminated as described above) and NG 9-1-1 access fees be open to inspection by the Tax Commissioner during business hours, and generally retained for four years.

## **Collection of charges or fees**

- Provides that NG 9-1-1 access fees are subject to the same collection processes and are subject to the same procedures as wireless 9-1-1 charges under continuing law.
- Removes the option of filing the required return using the Ohio Telefile system for the wireless 9-1-1 charges (being terminated as described above) or NG 9-1-1 access fees.
- Changes to “Special Judgments for 9-1-1 Charges and Fees” the name of the loose-leaf book that an appropriate court of common pleas clerk may enter judgment in following a final assessment against an entity regarding 9-1-1 charges and fees.

## **9-1-1 funds and distribution of wireless 9-1-1 charges and fees**

- Removes “wireless” from the names of three of the four funds established to receive the 9-1-1 charges and fees to be the 9-1-1 Government Assistance Fund, 9-1-1 Administrative Fund, and the 9-1-1 Program Fund.
- Changes deposits into the 9-1-1 Government Assistance Fund to be 72% of the 9-1-1 charges and fees instead of the current 97% and retains, as ongoing law, the provision that all interest earned on the fund must be credited to the fund.
- Changes deposits into the NG 9-1-1 Fund to be 25% of the 9-1-1 charges, but retains as ongoing law, the provision that all interest earned on the fund must be credited to the fund and regarding transfers made to the fund.
- Allows the Department of Administrative Services to move funds between the NG 9-1-1 Fund and the 9-1-1 Government Assistance Fund to ensure funding remains sustainable for both.
- Specifies that disbursements from the 9-1-1 Government Assistance Fund to each county treasurer must be made not later than the tenth day of the month succeeding the month in which the 9-1-1 charges and fees are remitted.

- Requires the Department of Administrative Services to administer the NG 9-1-1 Fund, which fund must be used exclusively to pay costs of installing, maintaining, and operating the call routing and core services statewide NG 9-1-1 system.
- Extends existing allowable costs of designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining the necessary data, hardware, software, and trunking required for PSAPs of the 9-1-1 system to the allowable costs for the provision of NG 9-1-1.
- Adds, as allowable costs, the costs for:
  - Processing 9-1-1 emergency calls from point of origin to include expenses for interoperable bidirectional computer aided dispatch data transfers with other PSAPs or emergency services organizations, exclusive of mobile radio service costs; and
  - Transferring and receiving law enforcement, fire, and emergency medical service data transfers via wireless or internet connections from PSAPs or emergency services organizations to all applicable emergency responders.
- Repeals certain statutory limitations on allowable costs for wireless enhanced 9-1-1 and repeals the requirement that a RCOG operating a PSAP must consider the technical and operational standards before incurring the designing, upgrading, purchasing, leasing, and other costs listed in ongoing law.
- Requires all funds from the NG 9-1-1 access fees to be used only for 9-1-1 related expenses.
- Specifies that, after January 1, 2024, sellers of a prepaid wireless access calling service that collect a NG 9-1-1 access fees are subject to the state sales tax, as those provisions apply to the audit, assessment, appeals, enforcement, liability, and penalty provisions of the sales tax law.

## **Tax Refund Fund**

- Includes NG 9-1-1 access fees among the fees and charges that may be refunded from the state's Tax Refund Fund if illegally or erroneously assessed, collected, or overpaid.

## **Commercial Activity Tax**

- Specifies that receipts from NG 9-1-1 access fees imposed under the 9-1-1 provisions are not included as "gross receipts" under the commercial activity tax law.

## **Civil liability**

- Extends protection from civil liability, with some exception, to 9-1-1 system service providers and their officers, directors, employees, agents, and suppliers for damages resulting from their 9-1-1 systems work, or compliance with emergency-related information requests from state or local government officials.

## MTS penalties

- Imposes penalties ranging from \$1,000 to \$5,000 for a violation of, or a failure to meet, certain requirements regarding a MTS, unless preempted or in conflict with federal law.

## Laws repealed by the act

- Repeals provisions of law, including the law that:
  - Allows a municipal corporation or township that contains at least 30% of the county's population, or a group of contiguous municipal corporations or townships, to establish, within their boundaries, a 9-1-1 system and to enter into an agreement with one or more telephone companies and repeals related provisions.
  - Requires wireline service providers designated in a final 9-1-1 plan to install the wireline telephone network portion of the system within three years from the date the initial final plan and repeals the provisions regarding the placement, maintenance, and design of county 9-1-1 system highway and road signs.
  - With one exception, limits to three the number of PSAPs within a 9-1-1 system that may use disbursements from the Wireless 9-1-1 Government Assistance Fund.
  - Requires the amounts of the wireless 9-1-1 charges to be prescribed by the General Assembly.
  - Establishes provisions governing emergency service telecommunicators (ESTs) for training, curriculum, certification, and continuing education and certain training for ESTs, who are PSAP employees, handling 9-1-1 calls about an apparent drug overdose.

## Definition changes

(R.C. 128.01)

The act makes a number of changes to universal definitions governing emergency service communications (other definitional changes made by the act are explained throughout this analysis). These changes are as follows:

- "Basic 9-1-1" is defined to mean an emergency telephone system to which all of the following apply: (1) it automatically connects to a designated public safety answering point (PSAP), (2) call routing is determined by a central office only, and (3) automatic number identification (ANI) and automatic location information (ALI) may or may not need to be supported.
- "Enhanced 9-1-1" is defined to mean an emergency telephone system that includes both (1) network switching, and (2) database and PSAP premise elements capable of providing ALI data, selective routing, selective transfer, fixed transfer, and a call back number.
- Adds to the definition of "wireless service" that paging or any service that cannot be used to call, *or contact* 9-1-1 is not subject to the 9-1-1 Emergency Telephone Service Law.

- “Wireless service provider” is defined to mean any of the following that provides wireless service to one or more end users in Ohio: a facilities-based provider, mobile virtual network, or mobile other licensed operator.
- A PSAP is defined to mean an entity responsible for receiving requests for emergency services sent by dialing 9-1-1 within a specified territory and processing those requests for emergency services according to a specific operational policy that includes directly dispatching the appropriate emergency service provider, relaying a message to the appropriate emergency service provider, or transferring the request for emergency services to the appropriate emergency services provider. Under the definition, a PSAP may be either of the following: (1) located in a specific facility, or (2) virtual, if telecommunicators are geographically dispersed and do not work from the same facility. The virtual workplace may be a logical combination of physical facilities, an alternate work environment such as a satellite facility, or a combination of the two. Workers may be connected and interoperate via internet-protocol connectivity.

## **9-1-1 Steering Committee**

(R.C. 128.01, 128.02, 128.021, and 128.022)

The act renames the “Emergency Services Internet Protocol Network Steering Committee” to the “9-1-1 Steering Committee” and makes various other changes to the operation of the Committee as follows.

### **Duties**

The act makes changes to the Steering Committee’s duties, as well as makes a variety of technical changes to remove dates and deadlines that have passed.

### **Advising the state**

The act requires the Steering Committee to generally advise the state on the implementation, operation, and maintenance of (1) a statewide emergency services internet protocol network (ESINET), (2) a statewide Next Generation 9-1-1 core-services system, and (3) the dispatch of emergency services providers.

The act defines “ESINET” to mean a managed internet-protocol network that is used for emergency services communications and provides the internet-protocol transport infrastructure upon which independent application platforms and core services can be deployed, including those necessary for providing next generation 9-1-1 services. The term designates the network and not the services that ride on the network. “Next generation 9-1-1 (NG 9-1-1)” is defined by the act as an internet-protocol based system comprised of managed emergency services internet-protocol networks, functional elements, and databases that replicate traditional enhanced 9-1-1 features and functions and provide additional capabilities. “Core services” means the base set of services needed to process a 9-1-1 call on an emergency services internet protocol network. It includes all of the following: (1) emergency services routing proxy, (2) emergency call routing function, (3) location validation function, (4) border control function, (5) bridge, policy-store, and logging services, and (6) typical internet-protocol services such as domain name

system and dynamic host configuration protocol. The term includes the services and not the network on which they operate.

### **PSAP consolidation and operation recommendations**

The act changes the requirement for the Steering Committee to make recommendations for consolidation of PSAP operations to accommodate NG 9-1-1 technology and to facilitate a more efficient and effective emergency services system. The act only requires the recommendations to be made “where feasible.” The act also requires the Steering Committee to recommend policies, procedures, and statutory or regulatory authority to effectively govern a statewide NG 9-1-1 system.

### **Steering Committee meetings**

The act requires the Steering Committee to meet at least once a quarter, rather than at least once a month as prior law required.

### **Subcommittees**

The act makes changes to the operation and composition of the Steering Committee’s subcommittees as follows:

- Requires the permanent Technical-Standards Subcommittee and Public-Safety-Answering-Point-Operations Subcommittee to meet either in person or utilizing telecommunication-conferencing technology.
- Requires a majority of the voting members to be present to constitute a quorum.
- Adds an additional member to the Public-Safety-Answering-Point-Operations Subcommittee who represents the Division of Emergency Medical Services of the Department of Public Safety.

### **PSAPs subject to operating rules**

The act requires all PSAPs that answer 9-1-1 calls from wireless services to be subject to the PSAP Operation Rules developed by the Steering Committee as of October 3, 2023. Under the act, PSAPs that were not originally required to be compliant must comply with the standards not later than October 3, 2025.

### **Guidelines for distribution of funds**

The act requires the Steering Committee to develop guidelines for the Tax Commissioner to use when distributing money from the 9-1-1 Government Assistance Fund. This new requirement is in addition to the continuing law requirement that the Steering Committee develop guidelines for the distribution of money from the NG 9-1-1 Fund.

Under the act, the Steering Committee must also periodically review and adjust those new guidelines, as well as the NG 9-1-1 Fund guidelines, as needed. The act further requires the Steering Committee to report any adjustments to the guidelines to the Department of Taxation. The adjustments take effect six months from the date the Department is notified of the adjustments.

## **Countywide 9-1-1 systems**

(R.C. 128.02, 128.03, 128.05, 128.06, 128.07, and 128.12)

The act makes a number of changes regarding countywide 9-1-1 systems.

### **Repeal of territorial exclusion**

The act repeals all of the prior law that requires exclusion of territory served by a wireline service provider (which is a facilities-based provider of Basic Local Exchange Service transmitted by interconnected wires or cables) that is not capable of reasonably meeting the technical and economic requirements of providing the wireline telephone network portion of the countywide system or enhanced 9-1-1 for that territory. As a result of these repeals, a countywide 9-1-1 system must include all of the territory of the townships and municipal corporations in the county and any portion of such a municipal corporation that extends into an adjacent county.

### **Enhanced, NG 9-1-1, or combination system**

The act allows a countywide 9-1-1 system to be either an enhanced or NG 9-1-1 system, or some combination of the two, and must be designed to provide access to emergency services from all connected communications sources. Basic 9-1-1 may not be utilized in the countywide system.

### **Providing the system**

The act allows a countywide 9-1-1 system to be provided directly by the county, a regional council of governments (RCOG), or by connecting directly to the statewide NG 9-1-1 system for call routing and core services.

### **County 9-1-1 coordinator**

The act requires each county to appoint a county 9-1-1 coordinator to serve as the administrative coordinator for all PSAPs participating in the countywide 9-1-1 final plan. The coordinator must also serve as a liaison with other county coordinators and the 9-1-1 Program Office.

### **Geographic location and population**

The act requires the entity operating a PSAP to provide the Steering Committee the geographic location and population of the area for which the entity is responsible.

### **County 9-1-1 Program Review Committee**

The act requires every county to maintain a county 9-1-1 Program Review Committee. Prior law allowed a board of county commissioners or the legislative authority of any municipal corporation in the county that contains at least 30% of the county's population, to adopt a resolution to convene a 9-1-1 planning committee. The act replaces the option for a planning committee with the Review Committee and repeals provisions governing planning committees that are not incorporated in the act's scheme for Review Committees.

### **Review Committee composition – generally**

Under the act, the Review Committee must be composed of six voting members (rather than three voting members under prior law) as follows:

- A member of the board of county commissioners, or a designee (prior law required the president or other presiding officer of the board);
- The chief executive officer (CEO) of the most populous municipal corporation in the county (unchanged from continuing law, including the requirement that population residing outside the county be excluded when calculating population);
- A member of the board of township trustees of the most populous township in the county as selected by majority vote of the board (The act, eliminates the option for the CEO of the second most populous municipal corporation in the county to be selected instead of the township trustee member if the municipal corporation is more populous. In addition, the requirement that counties with a population of 175,000 or more had to have two more voting members than the primary three – a township trustee and municipal chief executive officer – is being eliminated. Finally, the requirement to exclude population outside the county is being removed from the most populous township calculation.);
- A member of a board of township trustees selected by the majority of boards of township trustees in the county pursuant to resolutions they adopt;
- A member of the legislative authority of a municipal corporation in the county selected by a majority of the legislative authorities of municipal corporations in the county pursuant to resolutions they adopt;
- An elected official from within the county appointed by the board of county commissioners.

### **Review Committee composition for large counties**

The act requires counties with fewer than five townships, a population exceeding 750,000, and containing more than one PSAP, to have five members for their Review Committee composed of the following:

- A member of the board of county commissioners, or a designee, to serve as chairperson;
- The CEO of the most populous municipal corporation in the county (population residing outside the county is excluded from the count);
- A member from one of the following, whichever is more populous:
  - The CEO of the second most populous municipal corporation in the county;
  - A member of the board of township trustees of the most populous township in the county as selected by majority vote of the board;
- The CEO of a municipal corporation in the county selected by the majority of the legislative authorities of municipal corporations in the county pursuant to resolutions they adopt;

- A member of a board of township trustees selected by the majority of boards of township trustees in the county pursuant to resolutions they adopt.

### **Review Committee composition for counties with one PSAP**

The act requires counties that contain only one PSAP to have three members for their Review Committee composed of the following, provided the county's PSAP is not operated by a board of county commissioners:

- A member of the board of county commissioners, or a designee, who will serve as chairperson of the Committee;
- One of the following:
  - If the PSAP is operated by a township, then a member of the board of township trustees;
  - If the PSAP is operated by a municipal corporation, the CEO of the municipal corporation;
  - If the PSAP is operated by a subdivision that is not a township or municipal corporation or is operated by a RCOG, then an elected official of that subdivision or RCOG.
- A member who is an elected official of the most populous township or municipal corporation in the county that does not operate a PSAP (population residing outside the county is excluded for purposes of determining population).

The act further requires that if the single PSAP in a county is operated by the board of county commissioners, then that board is to serve as the Review Committee instead.

### **Final plan for countywide 9-1-1**

The act requires each Review Committee to maintain and amend a final plan for implementing and operating a countywide 9-1-1 system. Any amendment to the final plan requires a two-thirds vote of the Review Committee, and each Review Committee must meet at least once annually for maintaining or amending the plan.

The act further requires each Review Committee, not later than March 1 of each year, to submit a report to the political subdivisions within the county and to the 9-1-1 Program Office detailing the sources and amounts of revenue expended to support, and all costs to operate, the countywide 9-1-1 system and the PSAPs that are a part of that system for the previous calendar year. The act also requires each county to provide its Review Committee with any clerical, legal, and other necessary staff. Prior law required the county to provide such support to just develop the final plan, as well as paying for copying, mailing, and any other such expenses incurred in developing the final plan.

### **County 9-1-1 Technical Advisory Committee terminated**

The act repeals in its entirety the requirements for each county to have a 9-1-1 technical advisory committee. Under prior law, the advisory committee assisted the 9-1-1 planning committee in planning the countywide 9-1-1 system.

## **Final plan specifics**

The act makes several technical and substantive changes to what the final plan for each countywide system must include. The act makes substantive changes regarding what must be specified in the final plan as follows:

- Does not permit the plan to use “basic 9-1-1” since the act does not allow countywide 9-1-1 systems to include that type of service;
- Specifies how PSAPs will be connected to the county’s preferred NG 9-1-1 system;
- Details how originating service providers must connect to the core 9-1-1 system identified by the final plan and what methods will be utilized by such providers to provide 9-1-1 voice, text, other forms of messaging media, and caller location to the core 9-1-1 system;
- Requires, in instances where a PSAP does not directly dispatch the appropriate emergency service, how that request will be transferred, or the information electronically relayed, to the entity that directly dispatches the potentially needed emergency services;
- Describe how emergency service providers (ESPs, which is the Ohio Highway Patrol and an emergency service department or unit of a subdivision) will respond to a misdirected call or the provision of a caller location that is either misrepresented, or does not meet federal requirements or accepted national standards.

The act further requires each county Review Committee to file a copy of its current final plan with the 9-1-1 Program Office not later than April 3, 2024. Any revisions or amendments are to be filed not later than 90 days after adoption.

## **Amending the final plan**

The act alters some of the scenarios in which an amended final plan is required under continuing law. Under the act, upgrading any part or all of the countywide 9-1-1 system requires an amendment. Additionally, under the act, adding, changing or removing a 9-1-1 system service provider as a participant in the countywide 9-1-1 system would require an amendment. Under the act, “9-1-1 system service provider” means a company or entity engaged in the business of providing all or part of the emergency services internet-protocol network, software applications, hardware, databases, customer premises equipment components and operations, and management procedures required to support basic 9-1-1, enhanced 9-1-1, enhanced wireline 9-1-1, wireless enhanced 9-1-1, or next generation 9-1-1 systems. Prior law did not require an amendment for changing or removing a provider – only if a telephone company is added as a system participant.

The act further repeals the requirement for an entity wishing to participate in a 9-1-1 system to file a written letter of intent with the board of county commissioners.

## Statewide NG 9-1-1 core services system

(R.C. 128.01 and 128.20 to 128.28)

### Administrator of 9-1-1 Program Office

The 9-1-1 Program Office is headed by an administrator, who is appointed by and serves at the pleasure of the Department of Administrative Services (DAS) Director. The act eliminates the requirement of prior law that the administrator report directly to the State Chief Information Officer.

### Core services

The act requires the state 9-1-1 Program Office to coordinate and manage a statewide NG 9-1-1 core services system, which must interoperate with Canada and the states bordering Ohio. The Office must also manage the vendors supplying the equipment and services for the system to DAS.

Under the act, the NG 9-1-1 core services system must be capable of the following:

- Providing 9-1-1 core services for all Ohio counties, over land and water;
- Routing all 9-1-1 traffic using location and policy-based routing to legacy enhanced 9-1-1 PSAPs, NG 9-1-1 PSAPs, and local NG 9-1-1 systems;
- Providing access to emergency services from all connected communications sources and provide multimedia data capabilities for PSAPs and other emergency service organizations.

The act further requires the ESINET that supports the statewide NG 9-1-1 core services system to be capable of being shared by all public safety agencies. The ESINET may be constructed from a mix of dedicated and shared facilities, and may be interconnected with a local, regional, state, federal, or international system to form an internet-protocol-based inter-network, or network of networks.

### Ohio 9-1-1 plan

The act requires, not later than April 3, 2024, the 9-1-1 Program Office to draft, submit, or update an Ohio 9-1-1 plan to the Steering Committee, which must include the following:

- A plan to address amendments made by the act regarding Ohio's Emergency Telephone Number System Law;
- Specific system details describing interoperability amongst counties, the states bordering Ohio, and Canada;
- A progression plan for the system and sustainability within the funding method encompassed by the act (described below under "**Monthly charges**").

The act requires the Steering Committee to review and permits it to make a decision on approval within six months of the plan's submission.

## Letter of coordination

The act requires any Ohio entity operating a 9-1-1 system, ESINET, or PSAP and that pursues a state or federal 9-1-1 grant to present a letter of coordination from the 9-1-1 Program Office, which must state all of the following:

- Who the entity is based on the type of system it operates (described above);
- The specific grantor identification;
- The dollar amount of the grant;
- The intended use of the grant;
- The system, equipment, software, or any component to be procured with the grant;
- The purpose of the grant does not inhibit, conflict, or reduce interoperability with the NG 9-1-1 core services system and ESINET and is consistent with the Ohio 9-1-1 plan.

## 9-1-1 Program Office powers

The act allows the Program Office to do the following:

- Expend funds from the 9-1-1 Program Fund for the purposes of 9-1-1 public education;
- Coordinate, adopt, and communicate all necessary technical and operational standards and requirements to ensure an effective model for a statewide interconnected 9-1-1 system;
- Collect and distribute data from, and to, PSAPs, service providers, and ESPs for both:
  - The status and operation of the components of the statewide 9-1-1 system, including the aggregate number of access lines the provider maintains in Ohio, aggregate costs and cost recovery associated with providing 9-1-1 service, and any other information the Steering Committee requests and deemed necessary (presumably deemed by the Committee) to support NG 9-1-1 transition;
  - Location information necessary for the reconciliation and synchronization of NG 9-1-1 location information, including all of the following: address location information, master street address guide, service order inputs, geographic information system files, street center lines, response boundaries, administrative boundaries, and address points.
- Require, coordinate, oversee, and limit data collection and distribution to ensure that legal privacy and confidentiality requirements are met;
- Enter into interlocal, interstate, intrastate, and federal contracts to implement statewide 9-1-1 services, with advice from the Steering Committee.

## Protection of data

The act provides that all data described above is protected by all applicable provisions of Ohio law. Charges, terms, and conditions for the disclosure or use of that data provided by PSAPs,

service providers, and ESPs for the purpose of 9-1-1 are subject to the Steering Committee's jurisdiction.

The act does allow, notwithstanding the above data protection limitation, data and information that contributes to more effective 9-1-1 services and emergency response to be accessed and shared among 9-1-1 and emergency response functions to ensure effective emergency response, while also ensuring the overall privacy and confidentiality of the data and information involved.

### **Telecommunication service providers**

The act requires telecommunication service providers able to generate 9-1-1 traffic within Ohio to do the following:

- Register with the 9-1-1 Program Office;
- Provide a single point of contact to the Program Office who has the authority to assist in location-data discrepancies, including 9-1-1 traffic misroutes and no-record-found errors;
- Provide location data for all 9-1-1 traffic with the accuracy and validity necessary to ensure proper routing to the most appropriate PSAP or local NG 9-1-1 system, which may include:
  - Preprovisioning of location data into a state-operated database utilizing industry standard protocols;
  - Providing a routable location with the 9-1-1 traffic at call time utilizing approved standards for both legacy and NG 9-1-1.
- Correct any location discrepancies within 72 hours, after notification by the program Office.

The act further declares all data described above to be private and subjects the data to all applicable privacy laws and excludes it from being a public record under Ohio's Public Records Law.

### **Multiline telephone system requirements**

The act requires each operator of a multiline telephone system (MTS) that was installed, or substantially renovated, on or after October 3, 2023, to provide the end user the same level of 9-1-1 service that is provided to other in-state end users of 9-1-1. The act defines "MTS" as a system that (1) consists of common control units, telephone sets, control hardware and software, and adjunct systems, including network and premises-based systems, and (2) is designed to aggregate more than one incoming voice communication channel for use by more than one telephone and "operator of a MTS" as an entity to which both of the following apply: (1) the entity manages or operates a MTS through which an end user may initiate 9-1-1 system communication, and (2) the entity owns, leases, or rents a MTS through which an end user may initiate 9-1-1 system communication.

The service described above must include the following:

- Either legacy ANI and ALI or NG 9-1-1 location data;

- An emergency-response-location identifier as part of the location transmission to the PSAP, using either legacy private-switch ALI or NG 9-1-1 methodologies;
- Identify the specific location of a caller using an emergency response location that includes the public street address of the building where the call originated, a suite or room number, the building floor, and a building identifier, if applicable. The act also defines “emergency response location” to mean an additional location identification that provides a specific location that may include information regarding a specific location within a building, structure, complex, or campus, including a building name, floor number, wing name or number, unit name or number, room name or number, or office or cubicle name or number.
- The provision of locations that are either master-street-address-guide valid or NG 9-1-1-location-validation-function valid.

### **Exemption**

The act exempts any MTS in a workplace of less than 7,000 square feet in a single building, on a single level of a structure, and having a single public street address from the requirements stated above.

### **Business service user**

The act requires, not later than October 3, 2024, a BSU that provides residential or business facilities, owns or controls a MTS or VOIP system in those facilities, and provides outbound dialing capacity from those facilities to ensure the following:

- For a MTS that can initiate a 9-1-1 call, the system is connected to the public switched telephone network so that an individual using the system can dial 9-1-1, and the call connects to the PSAP without requiring the user to dial any additional digit or code;
- The system is configured to provide notification of any 9-1-1 call made through the system to a centralized location on the same site as the system. The BSU does not have to have a person available at the location to receive a notification.

Under the act, a BSU is a user of business service that provides telecommunications service, including 9-1-1 service, to end users through a publicly or privately owned or controlled telephone switch. VOIP means technologies for the delivery of voice communications and multimedia sessions over internet-protocol networks, including private networks or the internet.

### **Exemption**

The act exempts a BSU from the requirements described above, until October 3, 2025, if all of the following apply:

- The requirements would be unduly and unreasonably burdensome;
- The MTS or VOIP system needs to be reprogrammed or replaced;
- The BSU made a good-faith attempt to reprogram or replace the system;

- The business service agrees to place an instructional sticker next to the telephone that explains how to access 9-1-1, provides the specific location where the device is installed, and reminds the caller to give the location information to the 9-1-1 call taker (the instructions must be printed in at least 16-point boldface type in a contrasting color using an easily readable font);
- The BSU affirms in an affidavit that the above conditions apply (an affidavit must include the manufacturer and model number of the system the BSU uses).

## Preemption

The act specifies that the provisions described above (“**Multiline telephone system requirements**” and “**Business service user**”) do not to apply if they are preempted by, or in conflict with, federal law.

## Other requirements for 9-1-1 operation

The act requires the following:

- Counties must provide a single point of contact to the 9-1-1 Program Office who has the authority to assist in location-data discrepancies, 9-1-1 traffic misroutes, and boundary disputes between PSAPs;
- Requires counties and, if applicable, RCOGs, not later than five years after the statewide NG 9-1-1 core services system is operationally available to all counties in the state, to provide NG 9-1-1 service for all areas to be covered in the county’s final plan or the RCOG’s agreement;
- Requires service providers operating within a county that participates in the statewide NG 9-1-1 core services system or within the area served by a RCOG that participates in that system to deliver the 9-1-1 traffic that originates in that geographic area to the NG -1-1 core for that geographic area;
- Adherence to the standards of the 9-1-1 Program Office, including standards created by the National Emergency Number Association and the Internet Engineering Task Force, if the service provider or county participates in the statewide NG 9-1-1 core services system.

## Monthly charges

(R.C. 128.01, 128.40, and 128.41 to 128.43; Section 130.63)<sup>190</sup>

The act alters the law regarding monthly charges for 9-1-1 service, as well as adds new provisions, as described in the following discussion.

### Wireless 9-1-1 charge

The act terminates, as of January 1, 2024, the wireless 9-1-1 charge in favor of the new NG 9-1-1 access fees (discussed below). The wireless 9-1-1 charge being terminated is imposed

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<sup>190</sup> R.C. 5739.033 and 5739.034, not in the act.

on each wireless telephone number (25¢/billed number) of a subscriber (person with a contract for monthly service) whose billing address is in the state, and on each retail sale (0.005% of the sale price) to a purchaser of prepaid wireless calling service (person who purchases services periodically, such as month-to-month, by appearing in person at a seller's business, or if the sale is sourced to the state under continuing law) occurring in state.

The act adds that the wireless 9-1-1 charges described above that are scheduled to terminate cannot be imposed on subscribers of wireless lifeline service or providers of such a service.

### **NG 9-1-1 access fee for subscribers**

The act replaces the wireless 9-1-1 charge being terminated as described above with a NG 9-1-1 access fee of 40¢ imposed on each communications service, which is wireless service, MTS, and VOIP where: (1) the service or system is registered to the subscriber's address in Ohio or the subscriber's primary place of using the service is in Ohio, and (2) the system or service is capable of initiating a direct connection to 9-1-1. The fee is to be imposed as follows:

- For wireless telephone service, a subscriber will pay a separate NG 9-1-1 access fee for each wireless telephone number assigned to the subscriber.
- For VOIP, a subscriber will pay a separate fee for each voice channel provided to the subscriber through the system, with the number of voice channels being equal to the number of outbound calls the subscriber can maintain at the same time using the system, but excludes a direct inward dialing number that merely routes an inbound call. The act limits the number of separate fees for VOIP to a maximum of 100 per network.
- For MTS, the subscriber has to pay a separate fee for each line, with the maximum number of separate fees imposed on a single subscriber to not exceed 100 per building with a unique street address or physically identifiable location.
- The act further states that if more than one communications service shares the same telephone number, the NG 9-1-1 access fee cannot exceed 40¢ per month.

### **NG 9-1-1 access fee to be reduced**

The act reduces, beginning October 1, 2025, the monthly NG 9-1-1 fee to 25¢ and imposes it in the same manner as described immediately above.

### **Exemptions from the fee**

The act exempts the following from the NG 9-1-1 access fee for subscribers:

- A subscriber of wireless lifeline service;
- Wholesale transactions between telecommunication service providers where the service is a component of a service provided to an end user. This exemption also includes network access charges and interconnection charges paid to a local exchange carrier.

### **Collection of NG 9-1-1 access fee**

The act requires each service provider and reseller to collect the NG 9-1-1 access fee as a specific line item on each subscriber's monthly bill or point of sale invoice. The line item must state in some manner "Ohio Next Generation 9-1-1 Access Fee ([amount]/ service/month)." Should a provider bill a subscriber for any other 9-1-1 cost, that charge or amount may appear in the same line item as the NG 9-1-1 access fee line item. Separate charges must be designated "[Name of Provider] [Description of charge or amount]."

### **Audit and reporting requirements**

The act requires, not later than February 1, 2025, the Auditor of State to conduct an audit and issue a report to the General Assembly regarding the collection of the monthly NG 9-1-1 access fees for subscribers. The audit must also determine whether the obligations of the 9-1-1 Government Assistance Fund and the NG 9-1-1 Fund can be met with a lower monthly NG 9-1-1 access fee for subscribers or if the monthly fee should be increased or remain unchanged.

### **Communications services priced under \$5 exempt**

The act provides that wireless service priced lower than \$5 is not subject to the subscriber NG 9-1-1 access fee.

### **NG 9-1-1 access fee for prepaid wireless retail sales**

The act imposes, after January 1, 2024, an NG 9-1-1 access fee of 0.005% of the sale price of a prepaid wireless calling service retail sale that occurs in Ohio. A retail sale occurs in Ohio if one of the following applies in the priority order provided:

1. The sale is effected by the consumer (the end user provided, given, charged for, or granted admission to, the prepaid service) appearing in person at a seller's business location within Ohio;
2. Delivery is made to a location in Ohio designated by the consumer;
3. An Ohio address for the customer found in the vendor's business records maintained in the ordinary course of business and the address is not used in bad faith;
4. An Ohio address for the customer is obtained during the sale, including the address associated with the consumer's payment instrument, if no other address is available, and the address is not used in bad faith;
5. If none of the above apply, then the seller may elect to source the sale to the location associated with the mobile telephone number.

The act exempts a prepaid wireless calling service priced below a single fee of less than \$10 from being considered a retail sale for purposes of imposing the fee.

### **Collection of the fee**

Under the act, the seller of the prepaid calling service must collect the NG 9-1-1 access fee from the customer in the same manner as the collection of the subscriber NG 9-1-1 access fee described above. However, if a minimal amount (either ten minutes or less) of a prepaid

calling service is sold with a prepaid wireless calling device for a single, nonitemized price, then the seller may choose not to collect the fee.

### **Sale of prepaid calling service with other products**

The act provides that, when a prepaid calling service is sold alongside other products or services for a single, nonitemized price, the NG 9-1-1 access fee applies to the entire nonitemized price except:

- If the dollar amount of the service is disclosed to the consumer, the seller can apply the fee to that dollar amount;
- If the seller can identify, through reasonable and verifiable standards from the seller's records, the portion of the nonitemized price that is attributable to the service, the seller can apply the fee to that portion; or
- If a minimal amount of prepaid calling service is sold with a prepaid wireless calling device for a single, nonitemized price, the seller may elect not to collect the fee.

### **Tax exemption**

The act exempts the NG 9-1-1 access fees imposed under the act (see "**NG 9-1-1 access fee for subscribers**" and "**NG 9-1-1 access fee for prepaid wireless retail sales**" above) from both state and local taxation.

### **Administration of charges and fees**

(R.C. 128.44, 128.45, and 128.451)

#### **Notice**

The act requires the Tax Commissioner to provide notice to all known wireless service providers, resellers, and sellers of prepaid wireless calling services of any increase or decrease in either the subscriber or prepaid NG 9-1-1 access fee. Each notice must be provided at least 30 days before the effective date of the increase or decrease.

#### **Recordkeeping**

The act directs each entity required to bill and collect a wireless 9-1-1 charge (being terminated as described above) or NG 9-1-1 access fee, and each seller of prepaid wireless calling services required to do the same, to keep the following:

- Complete and accurate records, as applicable, of bills that include charges or fees or complete and accurate records of retail sales of prepaid wireless calling service;
- A record of the charges and fees collected;
- All related invoices and other pertinent documents.

Continuing law requires the records described above to be open to the inspection of the Tax Commissioner during business hours, and are to be retained for four years unless the Tax Commissioner consents to their destruction in writing, or by order, requires that the records be kept for longer.

## Collection of charges or fees

(R.C. 128.46, 128.461, 128.462, and 128.47)

The act applies the law regarding the collection, filing, and remittance of wireless 9-1-1 charges to NG 9-1-1 access fees. The act also makes various other changes to that law as discussed next.

### Electronic filing

The act repeals the option of filing the return using the Ohio Telefile system. Continuing law allows for the return to be filed electronically using the Ohio business gateway, or any other electronic means prescribed by the Tax Commissioner. Nonelectronic means of filing may also be approved by the Tax Commissioner for good cause shown.

### Liability

The act imposes on an entity required to collect charges or fees liability to the state for any amount that was required to be collected, but was not remitted, regardless of whether the amount was collected. Prior law imposed liability for any charge amount not billed or collected or any amount not remitted, regardless of whether it was collected.

### Filing judgment

The act retitles the loose-leaf book used by clerks to enter a judgment for the state against the assessed entity to “Special Judgments for 9-1-1 Charges and Fees.” Prior law named it “Special Judgments for Wireless 9-1-1 Charges.”

### Miscellaneous changes

The act makes various other changes regarding collection, filing, and remittance of the charges and fees that include the following:

- Replaces “Seller of a prepaid wireless calling service, wireless service provider, and reseller” and “Wireless service provider, reseller, or seller,” with “entity” throughout the collection provisions;
- Removes inoperative provisions, such as, for example, law applying only to requirements applicable before January 1, 2014;
- Adds the NG 9-1-1 access fees alongside the wireless 9-1-1 charges in every provision the charge is mentioned, which has the effect of applying all continuing law, including, for example, filing returns and remitting the required amount, consumer liability, refunds, auditing procedures, filing judgments, and accrual of interest to the NG 9-1-1 access fees.

## NG 9-1-1 access fees subject to sales tax administration laws

(R.C. 128.52)

As described above (“**NG 9-1-1 access fee for prepaid wireless retail sales**”), the act requires each seller of a prepaid wireless access calling service to collect NG 9-1-1 access fees equal to 0.005% of the sale price after January 1, 2024. Those sellers are subject to the state sales tax on retail sales, as those provisions apply to audits, assessments, appeals, enforcement,

liability, and penalties. Previously, such sellers were required to collect only a *wireless 9-1-1 charge* of 0.005% of the sale price and are subject to these sales tax provisions ending January 1, 2024.

## 9-1-1 funds and distribution of wireless 9-1-1 charges

(R.C. 128.40, 128.42, and 128.54 to 128.63)

The act renames three of the four funds established to receive and distribute the wireless 9-1-1 charges imposed for wireless service and specifies that amounts received from NG 9-1-1 access fees also are to be deposited in these funds as follows:

Fund name and deposit % under H.B. 33		Fund name and deposit % under former law	
Fund name	% of charges and fees to be deposited in fund	Fund name	% of charges to be deposited in fund
9-1-1 Government Assistance Fund	72% plus interest earned on the fund	Wireless 9-1-1 Government Assistance Fund	97%, plus interest earned on the fund
9-1-1 Administrative Fund	1%	Wireless 9-1-1 Administrative Fund	1%
9-1-1 Program Fund	2%	Wireless 9-1-1 Program Fund	2%
NG 9-1-1 Fund	25%, plus interest earned on the NG 9-1-1 Fund; At the direction of the Tax Commissioner, any excess remaining in the 9-1-1 Administrative Fund after paying administrative costs; At the direction of the Steering Committee, funds remaining in the 9-1-1 Government Assistance Fund.	NG 9-1-1 Fund	Interest earned on the NG 9-1-1 Fund; At the direction of the Tax Commissioner, any excess remaining in the Wireless 9-1-1 Administrative Fund after paying administrative costs; At the direction of the Steering Committee, funds remaining in the Wireless 9-1-1 Government Assistance Fund.

### Moving funds

The act permits the Department of Administrative Services (DAS) to move funds between the NG 9-1-1 Fund and the 9-1-1 Government Assistance Fund to ensure funding remains sustainable for both funds.

## **Disbursements from the 9-1-1 funds**

The act repeals the requirement that the Tax Commissioner disburse moneys and accrued interest from the 9-1-1 Government Assistance Fund (currently the Wireless 9-1-1 Government Assistance Fund) to each county treasurer not later than the last day of each month. Instead the act specifies that disbursements must be made not later than the tenth day of the month succeeding the month in which the charges or fees imposed under the act are remitted.

The act requires the Department of Administrative Services to administer the NG 9-1-1 Fund and requires it to be used exclusively to pay costs of installing, maintaining, and operating the call routing and core services statewide NG 9-1-1 system.

## **Allowable uses of disbursements**

The act modifies the types of costs for which disbursements for a countywide wireless enhanced 9-1-1 system may be used. It allows, for the provision of wireless 9-1-1 service, enhanced 9-1-1 service, and NG 9-1-1 service, the costs of designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining the necessary data, hardware, software, and trunking required for PSAPs of the 9-1-1 system. Under former law, these costs were allowed for just wireless enhanced 9-1-1 service.

The act also adds the following as costs, exclusive of mobile radio service costs, for which disbursements may be expended for a countywide 9-1-1 system:

- Processing 9-1-1 emergency calls from the point of origin to include any expense for interoperable bidirectional computer aided dispatch data transfers with other PSAPs or emergency services organizations;
- Transferring and receiving law enforcement, fire, and emergency medical service data via wireless or internet connections from PSAPs or emergency services organizations to all applicable emergency responders.

The act repeals law that limited the allowable costs for wireless enhanced 9-1-1 to costs that are over and above any 9-1-1 system costs incurred to provide wireline 9-1-1 or to otherwise provide wireless enhanced 9-1-1. It also repeals law that permitted up to \$25,000 of the disbursements received each year on and after January 1, 2009, to be applied to data, hardware, and software that automatically alerts personnel receiving a 9-1-1 call that a person at the subscriber's address or telephone number may have a mental or physical disability, of which that personnel must inform the appropriate service provider. It also repeals the requirement that a RCOG operating a PSAP must consider the technical and operational standards before incurring the designing, upgrading, purchasing, leasing, programming, installing, testing, or maintaining the necessary data, hardware, software, and trunking required for PSAPs of the 9-1-1 system.

## **Excess NG 9-1-1 access fee**

The act requires that all funds generated from the NG 9-1-1 access fees to be used only for 9-1-1 related expenses.

## **Information for Steering Committee and Tax Commissioner**

Continuing law requires telephone companies, the State Highway Patrol, and each subdivision or RCOG operating one or more PSAPs for a countywide system providing wireless 9-1-1 to provide the Steering Committee and Tax Commissioner with information that the Steering Committee and Tax Commissioner request to carry out their duties under the Emergency Telephone Number System Law, including duties regarding collection of wireless 9-1-1 charges. The act adds to the information that may be requested, information related to their duties regarding the collection of NG 9-1-1 access fees.

The act retains the authority for the Tax Commissioner to adopt rules needed to account for the collection fees retained by wireless service providers, resellers, and sellers. Under law that the act keeps in effect up to January 1, 2024, wireless service providers, resellers, and sellers may each retain as a collection fee 3% of the wireless 9-1-1 charges collected. After that date, they may retain 3% of the NG 9-1-1 access fees.

## **Tax Refund Fund**

(R.C. 5703.052)

The act includes NG 9-1-1 access fees among the fees and charges that may be refunded from the Tax Refund Fund if illegally or erroneously assessed, collected, or overpaid. After a wireless 9-1-1 charge refund or, as added by the act, an NG 9-1-1 access fee refund is certified by the Tax Commissioner, the Treasurer credits the fund in the amount of the refund. The certified amount is derived from 9-1-1 charges and fees. The Tax Commissioner recovers the refund amounts from the next distribution of the charges and fees to the counties.

## **Commercial Activity Tax (CAT)**

(R.C. 5751.01)

The act specifies that receipts from NG 9-1-1 access fees imposed are not included as “gross receipts” under the commercial activity tax (CAT) law. The CAT is the tax levied on persons with taxable gross receipts for the privilege of doing business in Ohio to fund state and local government needs.<sup>191</sup>

## **Civil liability**

(R.C. 128.96)

The act extends protection from civil liability to 9-1-1 system service providers, except for willful or wanton misconduct. Specifically, it extends protection to a “9-1-1 system service provider and the provider’s respective officers, directors, employees, agents, and suppliers.” Under the act they are protected from liability for “any damages in a civil action for injuries, death, or loss to persons or property incurred by any person resulting from developing, adopting,

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<sup>191</sup> R.C. 5751.02.

implementing, maintaining, or operating a 9-1-1 system, or from complying with emergency-related information requests from state or local government officials.”

## **MTS penalties**

(R.C. 128.99)

### **Failure to provide ANI and ALI**

Under the act, an operator of a MTS may be assessed a fine of up to \$5,000 per offense, if the operator fails to comply with the MTS location requirements imposed under the act (see, “**Multiline telephone system requirements**,” above). The act does not specify who assesses or collects the fine.

### **Failure of BSU to ensure 9-1-1**

The act also allows the Steering Committee to request the Attorney General to bring an action to recover amounts from \$1,000 to up to \$5,000 for a BSU’s failure to meet specific requirements regarding 9-1-1 calls placed using MTS or VOIP provided by the BSU under the act. The Steering Committee may request recovery of \$1,000 for an initial failure and up to \$5,000 for each subsequent failure within each continuing six-month period of the BSU’s noncompliance. Funds recovered must be deposited into the NG 9-1-1 Fund.

### **Federal law preemption or conflict**

The act specifies that no fine may be assessed, or action for recovery may occur, against a BSU, if they are preempted or in conflict with federal law.

## **Laws repealed**

(R.C. 128.63; repealed R.C. 128.04, 128.09, 128.15, 128.571, and 4742.01 to 4742.07; conforming changes in numerous other R.C. sections)

### **Municipal or township 9-1-1 systems**

The act repeals law that allowed the legislative authority of a municipal corporation or township that contain at least 30% of the county’s population, or a group of contiguous municipal corporations or townships, to establish, within their own boundaries, a 9-1-1 system and enter into an agreement, and the contiguous municipal corporations or townships jointly enter into an agreement with one or more telephone companies. The act also repeals law related to such agreements regarding, for example, the use of authorized revenue to provide basic or enhanced 9-1-1.

### **9-1-1 system installation deadline and 9-1-1 signs**

The act repeals the law that required wireline service providers designated in a final 9-1-1 plan to install the wireline telephone network portion of the system within three years from the date the initial final plan becomes effective. Also repealed are the provisions that (1) upon installation of a countywide 9-1-1 system, the board of county commissioners may direct the county engineer to erect and maintain, at county expense, signs indicating the availability of a countywide 9-1-1 system at county boundaries on highways and county roads and (2) the

Director of Transportation develop sign specifications for the signs and standards for their erection and specify where signs cannot be erected.

### **Limitation on PSAPs using disbursements**

The act repeals the law that limited to three the number of PSAPs within a 9-1-1 system that may use disbursements from the Wireless 9-1-1 Government Assistance Fund to pay allowable costs except in the case of a municipal corporation with a population of over 175,000. In this case, the county may use disbursements for a fourth PSAP.

The act also repeals the law requiring that if a county exceeds the maximum number, disbursements to the county from the Wireless 9-1-1 Government Assistance Fund and the NG 9-1-1 Fund must be reduced by 50% until the county complies with the limitations.

### **Wireless 9-1-1 charges prescribed by the General Assembly**

The act repeals the law requiring the amounts of the wireless 9-1-1 charges to be prescribed by the General Assembly.

### **Emergency service telecommunicator law**

The act repeals law regarding emergency service telecommunicators (ESTs). Repealed provisions include, for example, an EST training program and curriculum developed by the State Board of Education in conjunction with emergency service providers; the Emergency Service Telecommunicator Training Fund for the development of the program and the costs of running it; requirements for EST certification and continuing education; and EST certification by the Board, an emergency service provider, or a career school. In a conforming change, the act repeals the requirement that those entities that certify ESTs (the Board, emergency service providers, and career schools) must comply with the law regarding the suspensions of certificates upon a conviction of, or plea of guilty to, a trafficking in persons violation.

The act retains the provision in the public records law that designates an EST as a designated public service worker for whom a residential address and familial information is not a public record. The act incorporates without changes the definition of an EST in R.C. 4742.01 into the Public Records Law in R.C. 149.43. An EST is “an individual employed by an emergency service provider, whose primary responsibility is to be an operator for the receipt or processing of calls for emergency services made by telephone, radio, or other electronic means.”

### **Requirements for providing drug offense immunity information**

To conform to the repeal of the EST law, the act repeals the law that requires PSAP personnel who are certified ESTs to receive certain training when someone calls 9-1-1 about an apparent drug overdose.

The act also repeals the requirement that PSAP personnel who receive a call about an apparent drug overdose to make reasonable efforts, upon the caller’s inquiry, to inform the caller about the law regarding immunity from prosecution for a minor drug possession offense.

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## ADMINISTRATIVE PROCEDURE ACT ADJUDICATIONS

- Allows, unless another law applies, an agency conducting an adjudication under the Administrative Procedure Act (APA) to serve a document on a party to the adjudication through email, facsimile, traceable delivery service, or personal service.
- Specifies the date on which service of a document is complete when using one of the methods listed above.
- Requires certain notices and orders that must be served on a party in an APA adjudication to be provided to the party's attorney or other representative rather than requiring the notices be mailed as under former law.
- Specifies that an agency's rejection of an application for registration or renewal of a license is not effective until the 15<sup>th</sup> day after notice of the rejection is mailed to the licensee.

### Administrative Procedure Act adjudications

(R.C. 119.05, 119.06, and 119.07 with conforming changes in numerous other R.C. sections)

#### Service of adjudication documents

The act allows, unless another law applies, an agency conducting an adjudication under the Administrative Procedure Act (APA) – R.C. Chapter 119 – to serve a document on a party to the adjudication through any of the following methods:

- Email at the party's last known email address;
- Facsimile transmission at the party's facsimile number appearing in the agency's official records;
- Traceable delivery service at the party's last known physical address;
- Personal service.

Service of a document using a method listed above is complete on the following dates:

- For email, the date receipt of the document is relayed electronically to the agency either by a direct reply from the recipient or through electronic tracking software demonstrating that the recipient accessed the document.
- For facsimile transmission, the date indicated on the facsimile transmission confirmation page.
- For traceable delivery service, the delivery date indicated on the notice of completed delivery provided to the agency by the delivery service.
- For personal service, the date indicated on a document confirming physical delivery signed by either the intended recipient, an adult located at the intended recipient's address, or delivery personnel.

One's "last known address" is the mailing address or email address in an agency's official records. "Traceable delivery service" is any delivery services provided by the U.S. Postal Service or a domestic commercial delivery service that allows the sender to track a sent item's progress and provides notice of a completed delivery to the sender.

If an agency fails to complete service using a party's last known address or facsimile number, the agency may complete service using an alternative address or number. The agency must verify the alternative address or number as current before attempting service.

When an agency is unable to complete service using a method described above, the agency must publish a summary of the notice's substantive provisions in a newspaper of general circulation in the county where the party's last known address is located. Notice by publication is complete on the date of publication. An agency that completes service by publication must send a proof of publication affidavit to the party by ordinary mail at the party's last known address. The affidavit must include a copy of the publication.

An agency that accomplishes services by email, facsimile transmission, traceable delivery or personal service at an alternative address or facsimile number is not required to complete service by publication.

Formerly, unless another law applied, the APA required an agency to attempt service through registered or certified mail. When registered or certified mail was returned because the recipient failed to claim it, the agency had to attempt service through ordinary mail and obtain a certificate of mailing. If registered, certified, or ordinary mail was returned for failure of delivery, the agency was required to either make personal delivery or attempt service by publication in the manner described above. Former law did not allow service through email, facsimile, or domestic commercial delivery service.

### **Providing notices to attorneys**

The act requires an agency to provide copies of APA notices and orders to an affected party's attorney or other representative. Former law required the notices and orders be mailed to the attorney or representative.

### **Rejection of registration or renewal**

The act specifies that an agency's rejection of an application for registration or renewal of a license is not effective until the 15<sup>th</sup> day after notice of the rejection is mailed to the licensee. Former law set 15 days as a minimum number of days before the rejection was effective. Under continuing law, an agency that rejects an application for registration or renewal of a license generally must afford the rejected applicant a hearing when the applicant requests one. However, the following agencies are not required to grant a hearing to an applicant to whom a new license was refused because the applicant failed a licensing examination:

- The State Medical Board;
- State Chiropractic Board;
- The Architects Board;

- Ohio Landscape Architects Board;
- The Occupational Therapy, Physical Therapy, and Athletic Trainers Board.

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## **ELECTRONIC NOTIFICATION AND MEETINGS**

### **Casino Control Commission**

- Requires an applicant for casino-related licenses, including for casino operator, management company, holding company, gaming-related vendor, and casino gaming employee to certify that the information provided in the application is true.

### **Department of Commerce**

#### **Board of Building Standards**

- Removes telegraph facilities as one of the “workshops or factories” that the Board of Building Standards has control over regarding required alternations or repairs.

#### **Division of Liquor Control**

- Specifies that, if the initial required certified notice of unpaid permit fees to a liquor permit applicant is returned because of failure or refusal of delivery, the Division of Liquor Control must send a second notice by regular mail.

#### **Division of Securities**

- Eliminates the requirement that copies of process or pleadings served by the Division of Securities on the Secretary of State, acting as agent for the person to be served, be delivered in duplicate and eliminates the requirement that the Secretary use certified mail to forward the documents.
- Eliminates the requirement that securities sold in violation of the securities law be tendered to the seller either in person or in open court to trigger a refund requirement, instead only requiring a tender without specifying method.

#### **Division of Finance Institutions**

- Changes, in the list of approved delivery methods, “any other means of communication authorized by the director” to whom the notice is sent to any means authorized by the board of directors acting together.

### **Department of Developmental Disabilities**

- Removes obsolete law requiring the Director of Developmental Disabilities to submit a report to the General Assembly with certain data regarding residential facility licenses issued by the Department of Developmental Disabilities.

### **Department of Education and Workforce**

- Eliminates the following laws that became obsolete on June 30, 2008:
  - Requirement that school districts or school buildings in academic emergency or academic watch, under former law, submit required information to the Department of Education before approval of a three-year continuous improvement plan;

- Requirements for site evaluations conducted for school districts or schools in academic emergency or academic watch.

## **Environmental Protection Agency**

- Authorizes the Director to provide notice of a hearing on the Environmental Protection Agency's website in circumstances where continuing law requires public notice by newspaper publication.
- Authorizes the Director to deliver documents or notice by any method capable of documenting the intended recipient's receipt of the document or notice rather than requiring a document or public notice be provided by certified mail.
- Specifies that the holder of the first mortgage on a regulated facility may contact the mortgagor to determine if the facility is abandoned by any method capable of documenting the intended recipient's receipt of the document or notice, rather than by mail, telegram, telefax, or similar communication only, as in former law.

## **Department of Insurance**

- Replaces the requirement that individuals seeking access to personal information held by certain insurance organizations be allowed to see and copy that information in person or obtain a copy by mail with a requirement that the individual be able to obtain in a manner agreed upon by the individual and the insurance organization.

## **Department of Job and Family Services**

- Removes references to unemployment compensation warrants drawn by the Director of Job and Family services bearing the Director's facsimile signature (but maintains the authority to have the signatures printed on the warrants).

## **Department of Public Safety**

- Eliminates several procedural requirements regarding the submission of a physician's statement accompanying an application for an unrestricted driver's license.
- Allows driver training schools to use specified electronic formats to convey information about anatomical gifts to driver training students, rather than a video cassette tape, CD-ROM, interactive videodisc, or other format.
- Eliminates a reference to the personal delivery of a motor vehicle registration or driver's license if a person is required to surrender the registration or license because of a failure to maintain motor vehicle insurance.
- Eliminates the requirement that an arresting officer remove the license plates on a vehicle seized as part of an arrest for: (1) driving under an OVI suspension or (2) wrongful entrustment of a vehicle and, instead, requires the license plates to remain on the vehicle unless ordered by a court.

## **Public Utilities Commission of Ohio**

- Eliminates items buried or placed below ground or submerged in water for telegraphic communications as a form of “underground utility facility” for purposes of continuing law regarding the protection of such facilities.
- Removes the requirement that an excavator must provide any fax numbers they may have in the excavator’s notification to a protection service before an emergency excavation required under continuing law.

## **Department of Taxation**

- Removes a requirement that certain tax-related documents be open for public inspection.

## **Department of Transportation**

- Makes advertising for bids for Ohio Department of Transportation (ODOT) contracts in a newspaper of general circulation optional rather than required.
- Requires, rather than authorizes, the ODOT Director to publish notice for bids in other publications as the Director considers advisable.

## **Bureau of Workers’ Compensation**

- Specifies that electronic documents have the same evidentiary effect as originals in a workers’ compensation-related proceeding.

## **Notice and submission requirements**

- Makes changes throughout the Revised Code related to:
  - Notice requirements related to certain events or services; and
  - Electronic submission to receive certain public services.

## **Electronic meetings for public entities**

- Makes changes throughout the Revised Code to permit certain public entities to meet via electronic means.

## **Maintenance of stenographic records**

- Makes changes throughout the Revised Code related to the maintenance of stenographic records.

## **Casino Control Commission**

(R.C. 3772.11, 3772.12, and 3772.131)

Under former law, casino-related license applications, including those for a casino operator, management company, holding company, gaming-related vendor, and casino gaming employee must be made under oath. The act removes the requirement that an oath be administered and instead requires that the applications must be certified as true.

## **Department of Commerce**

### **Board of Building Standards**

(R.C. 3781.11(A)(6) and (D)(2))

The act removes telegraph offices as a “workshop or factory” for purposes of Board rules and standards. Under former law, the Board could not require alterations or repairs to any part of a workshop or factory meeting certain criteria under continuing law.

### **Division of Liquor Control**

(R.C. 4303.24)

The act specifies that, if the initial required certified notice of unpaid permit fees to a liquor permit applicant is returned because of failure or refusal of delivery, the Division of Liquor Control must send a second notice by regular mail. It retains the requirement that the Division cancel the permit application if the permit applicant does not remit the unpaid permit fees to the Division within 30 days of the first notice.

### **Division of Securities**

#### **Service through the Secretary of State**

(R.C. 1707.11)

Under continuing law, certain people must appoint the Secretary of State as their agent to receive service of process and pleadings on their behalf. The act eliminates a requirement that copies of process or pleadings served by the Division of Securities on the Secretary, acting as agent for the person to be served, be delivered in duplicate. It also eliminates the requirement that the Secretary use certified mail to forward the documents.

#### **Tender for refund**

(R.C. 1707.43)

Under continuing law, a buyer who is sold securities in violation of the Securities Law may receive a refund by tendering the securities back to the seller. The act eliminates the requirement that the securities be tendered either in person or in open court to trigger a refund requirement. It instead requires tender without specifying a method.

### **Division of Financial Institutions**

(R.C. 1733.16)

Continuing law requires that notice of credit union board of directors meetings must be given to each director. The act modifies the use of alternative delivery methods by removing the law that allows a director receiving the notice to specify another means of communication, and instead allows alternative methods approved by the board of directors acting together.

## Department of Developmental Disabilities

(Repealed R.C. 5123.195)

The act removes obsolete law requiring the Director of Developmental Disabilities to submit a report to the General Assembly after calendar years 2003, 2004, and 2005. The report was to summarize rules regarding residential facility licensure; the number of licenses issued, renewed, or denied; how long those licenses were issued; sanctions imposed on licenses, and any other information the Director deemed important.

## Department of Education and Workforce

(R.C. 3302.04(D)(3) and (4))

The act eliminates the obsolete requirement that school districts or school buildings in academic emergency or academic watch submit information to the Department of Education before approval of a three-year continuous improvement plan. It also eliminates the obsolete requirements for site evaluations for districts or buildings in academic emergency or academic watch. The requirements expired on June 30, 2008.

## Environmental Protection Agency

### General authorizations

(R.C. 3745.019)

The act provides general authorization to the Director of the Ohio Environmental Protection Agency (OEPA) as follows:

- Authorizes the Director to provide public notice of a hearing on the OEPA website in circumstances in which the Director formerly was required to provide notice only by newspaper publication;
- Authorizes the Director to deliver documents or notice by any method capable of documenting the intended recipient's receipt of the document or notice in circumstances in which the Director formerly was required to provide the document or public notice by only certified mail.

It is unclear why, given these broad authorizations, the act also amends other notice provisions that provide for newspaper publication or certified mail.<sup>192</sup>

### Regulated facilities

(R.C. 3752.11)

The act specifies that the holder of the first mortgage on a regulated facility may contact the mortgagor to determine if the facility is abandoned by any method capable of documenting the intended recipient's receipt of the document or notice. Former law required contact be made by mail, telegram, telefax, or similar communication only.

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<sup>192</sup> See for example, R.C. 3704.03, 3734.02, and 3734.021.

## Department of Insurance

(R.C. 3904.08)

Continuing law allows individuals to request access to their personal information held by insurance institutions, agents, and insurance support organizations. Formerly, individuals must be allowed to see and copy the information in person or allowed to obtain a copy by mail. The act changes this requirement, instead mandating that individuals be able to obtain a copy of the information in a manner agreed upon by the individual and the insurance institution, agent, or support organization.

## Department of Job and Family Services

(R.C. 4141.09 and 4141.47)

Continuing law specifies that the Treasurer of State must make disbursements from the state Unemployment Compensation Fund and the Auxiliary Services Personnel Unemployment Compensation Fund on warrants drawn by the Director of Job and Family Services. Formerly, the warrants could include the facsimile signatures of the Director and the employee responsible for accounting for the funds printed on the warrants. The act removes the reference to “facsimile” and maintains the authority to have signatures printed on the warrants. Because neither former law nor the act require the Director or employee to directly sign the warrants, it is unclear whether removing “facsimile” has any substantive effect.

## Department of Public Safety

### Restricted driver’s license: subsequent annual license

(R.C. 4507.081)

Under continuing law, a restricted license is issued to a person who has certain medical conditions that inhibit safe driving, but only if the person’s conditions are under effective control. The holder of a restricted license may subsequently apply for an unrestricted annual license when the restricted license expires. Obtaining the annual license is contingent upon submission of a licensed physician’s statement attesting that the condition is dormant or under medical control (for a period of one year before application). The act eliminates the following regarding this annual license:

- The stipulation that the applicant submit the physician’s statement to the Registrar of Motor Vehicles by certified mail;
- A requirement that the license holder obtain a physical validation sticker for use in conjunction with the license;
- A requirement that the physician’s statement be made in duplicate; and
- A provision allowing an annual license applicant to maintain a physical duplicate copy of the physician’s statement authorizing the applicant to operate a motor vehicle for no more than 30 days following the date of submission of the statement.

## **Driver training school anatomical gift instruction**

(R.C. 4508.021)

The act allows driver training schools to use a website, email communication, compact disc media, or other electronic format to provide information about anatomical gifts to driver training students. Former law specified the schools must use a video cassette tape, CD-ROM, interactive videodisc, or other electronic format.

## **Failure to maintain motor vehicle insurance**

(R.C. 4509.101)

The act allows an administrative hearing regarding a person's failure to maintain motor vehicle insurance to be held remotely upon the person's request. Under continuing law, a person adversely affected by an administrative driver's license suspension associated with this offense may request a hearing within ten days of the issuance of the order imposing the suspension.

The act eliminates a reference to the personal delivery of an impounded or suspended driver's license or registration if a person is required to surrender a license or registration because of a failure to maintain motor vehicle insurance. Thus, under the act, a person may deliver those items (if impounded or suspended) to the Registrar by any means.

## **Seizure of license plates after offense**

(R.C. 4510.41)

The act eliminates the requirement that an arresting officer remove the license plates on a vehicle seized as part of an arrest for either of the following violations:

- Driving under an OVI suspension; or
- Wrongful entrustment of a vehicle.

Instead, the act requires the license plates to remain on the vehicle unless otherwise ordered by a court.

## **Public Utilities Commission of Ohio**

### **Underground utility facilities – classification**

(R.C. 3781.25(B) and 3781.29(C)(1))

The act removes only "telegraphic communications" from being classified as an "underground utility facility" for purposes of the law regarding utility protection services. Under former law, any item buried or placed below ground or submerged under water for use in connection with the storage or conveyance of telephonic or telegraphic communications was considered an "underground utility facility" subject to continuing law regarding utilities registering the location of, and protecting through marking, these facilities.

## **Excavator contact information**

(R.C. 3781.29(E)(1)(b))

The act removes the requirement that an excavator, before performing an emergency excavation, provide any fax numbers they may have to a protection service. Under continuing law, notification must be provided to an underground utility protection service before commencing an emergency excavation, and it must include the excavator's name, address, email addresses, and telephone number.

## **Department of Taxation**

(R.C. 5751.40 and 5736.041)

The act removes two requirements that certain tax-related documents be open for public inspection. Instead, the following documents need only to be made available on the Department of Taxation's (TAX's) website:

- Certificates issued to qualified distribution centers (QDCs) under the commercial activity tax (CAT). Under continuing law, suppliers that ship goods to a QDC can exclude a portion of their receipts from the CAT. Continuing law requires TAX to "publish" QDC certificates, but does not specifically require online publication. The act specifies that these certificates must be available online for at least four years from the date they were issued.
- A list of motor fuel suppliers who are subject to the state's petroleum activity tax. This list is already authorized, but not required, to be published on TAX's website.

## **Department of Transportation**

(R.C. 5525.01)

The act makes advertising for bids for Ohio Department of Transportation (ODOT) contracts in a newspaper of general circulation optional and requires the ODOT Director to publish notice for bids in other publications, as the Director considers advisable. Former law specified the opposite – it requires newspaper publication and makes other publications optional.

## **Bureau of Workers' Compensation**

(R.C. 4123.52)

The act specifies that electronically stored records have the same evidentiary effect as originals in a workers' compensation proceeding before the Industrial Commission, a Commission hearing officer, or a court. Under continuing law, records preserved using photographs, microphotographs, microfilm, films, or other direct forms of retention media also have the evidentiary effect of originals in the same proceedings.

## **Changes to notice requirements**

The act also modifies the type of communication media through which public entities or others may make required notice of events or services. The table below describes the type of

notice and the change made to the permitted form of communication. The table indicates these changes as follows:

Table 1: Notification changes

A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act

Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
<b>Controlling Board</b>									
Notice to G.A. members regarding changes to capital appropriations	C		A						127.15
<b>Ohio Casino Control Commission</b>									
Notices of intent to include a person on an exclusion list	C	A						C	3772.031
Notices of including a person on an exclusion list via emergency order	C	A	A						3772.04
Notice of termination of employment of a "key employee"	C	A	A					A	3772.13

Table 1: Notification changes

A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act

Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
<b>Department of Commerce – Division of Liquor Control</b>									
Notice of entering into an agency store contract or relocation of a store <sup>193</sup>	R							R	4301.17
Notice of distribution of liquor permit fees	C		A						4301.30
<b>Department of Commerce – Division of Securities</b>									
Notice of hearing to revoke approval of securities exchange or system	R		A						1707.02
Notice of hearing to suspend the exemption of a security	R		A						1707.02
Notice of hearing to determine fairness of issuance and exchange of securities through plan of	A		A					C	1707.04

<sup>193</sup> The act eliminates the reference to mailed notice in R.C. 4301.17, but it does not specify the means by which notice must be given.

Table 1: Notification changes									
A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act									
Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
reorganization, recapitalization, or refinancing									
Notice of process served upon Secretary of State as presumed agent for person making or opposing control bid	R						R		1707.042
Notice to Division of registration by coordination						C	R		1707.091
Notice by Division of stop order in response to failed registration by coordination	C					C	R		1707.091
Notice by Division to issuer as to whether all conditions for registration by coordination are met						C	R		1707.091

Table 1: Notification changes

A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act

Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
<b>Department of Commerce – Division of Financial Institutions</b>									
Credit unions notice to directors of board meetings							R		1733.16
<b>Department of Commerce – Division of Real Estate &amp; Professional Licensing</b>									
Notice of license renewal	R		A						4735.14
Requirement to send license of each real estate salesperson to the real estate broker associated with salesperson	R		A						4735.13
Requirement that real estate broker return license to Division of Real Estate and Professional Licensing when real estate salesperson no longer associated with broker	R		A						4735.13

Table 1: Notification changes									
A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act									
Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
<b>Department of Education and Workforce</b>									
State Board of Education – Record and attestation of meetings			<b>A</b>					<b>C</b>	3301.05
Department of Education and Workforce – Report regarding implementation and effectiveness of the program under which higher-poverty public schools must offer breakfast to all students			<b>A</b>						3313.818
School districts not subject to Civil Service Law – Termination of nonteaching employee contracts <sup>194</sup>	<b>C</b>		<b>A</b>						3319.081

<sup>194</sup> Continuing law requires that employees whose contracts are terminated be served by certified mail; the act adds additional mailing options.

Table 1: Notification changes									
A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act									
Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
School district boards of education – Notices of nonrenewal of teachers' contracts <sup>195</sup>	C		A					C	3319.11
Superintendent of Public Instruction – Notices of failure to submit fingerprints as a requirement of licensure	C		A						3319.291
State Board of Education or Superintendent of Public Instruction – Issuance of subpoenas in investigations or hearings regarding teacher misconduct <sup>196</sup>	C		A					C	3319.311

<sup>195</sup> Continuing law requires that notices of nonrenewal be sent to teachers via certified mail; the act adds additional mailing options. The act also adds new forms of mailing options for a teacher to notify a district board of the teacher's desire for a hearing regarding nonrenewal of contract.

<sup>196</sup> Continuing law requires subpoenas to be issued via certified mail or by personal delivery; the act adds additional mailing options. See also R.C. 3319.31, not in the act.

Table 1: Notification changes									
A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act									
Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
School districts and other public schools – Notices regarding truancy or other attendance issues <sup>197</sup>	C		A						3321.21
<b>Environmental Protection Agency</b>									
Notice of a public hearing on an application for a variance from air emission requirements for an air contaminant source <sup>198</sup>	A		A		C				3704.03

<sup>197</sup> Continuing law requires notices regarding student truancy or other attendance issues be sent via registered mail; the act adds additional mailing options.

<sup>198</sup> Continuing law requires notice by certified mail. The act allows either certified mail or any other type of mail accompanied by receipt. Former law also required notification in a newspaper with general circulation in the applicable county. The act allows either notice by newspaper publication or notice on OEPA’s website.

Table 1: Notification changes

A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act

Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
Notice of a public hearing on an application for a variance from solid waste facility permitting requirement <sup>199</sup>			A		C				3734.02
Notice of public hearing on application for variance from infectious waste treatment requirements <sup>200</sup>			A		C				3734.021
<b>Department of Job and Family Services</b>									
County department of job and family services – notice to assistance group of option for pre-sanction conference								R	5107.161

<sup>199</sup> Former law required notification in a newspaper with general circulation in the applicable county. The act allows either notice by newspaper publication or notice on OEPA's website.

<sup>200</sup> Former law required notification in a newspaper with general circulation in the applicable county. The act allows either notice by newspaper publication or notice on OEPA's website.

Table 1: Notification changes

A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act

Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
Office of Child Support – acknowledgment of paternity	C							R	3111.23
<b>Department of Medicaid (ODM)</b>									
ODM – exception review of nursing facility quarterly resident assessment data								R	5165.193
ODM, Department of Health, and nursing facilities – written notice regarding nursing facility certification and survey orders	C							C	5165.86 <sup>201</sup>

<sup>201</sup> The act expands this authority by also permitting the notice to be provided by other means reasonably calculated to provide prompt actual notice.

Table 1: Notification changes									
A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act									
Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
Home care attendants – health and welfare meetings with consumers			A			A		C	5166.303 <sup>202</sup>
ODM – notice to hospital of preliminary amount of Hospital Care Assurance Program assessment	R								5168.08
ODM – notice to hospital of preliminary amount of hospital assessment	R								5168.22 and 5168.23
Department of Natural Resources – Division of Oil and Gas Resources Management									
Copy of drilling permit application to local government	C		C	R					1509.06

<sup>202</sup> The in-person meeting requirement may be satisfied by telephone or other electronic means, if permitted by ODM rules.

Table 1: Notification changes									
A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act									
Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
Notice of order regarding adjudication, determination, or finding <sup>203</sup>	C		A						1571.10 and 1571.14
Hearing officer Notice of order affirming or vacating adjudication, determination, or finding <sup>204</sup>	C		A						1571.14 and 1571.15
Notice of hearing of complaint regarding underground storage of gas <sup>205</sup>	C		A						1571.16

<sup>203</sup> R.C. 1571.10 provides for certified mail or electronic notice, rather than registered mail as under former law.

<sup>204</sup> R.C. 1571.14 and 1571.15 provide for certified mail or electronic notice, rather than registered mail as under former law.

<sup>205</sup> R.C. 1571.16 provides for certified mail or electronic notice, rather than registered mail as under former law.

Table 1: Notification changes									
A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act									
Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
<b>Department of Natural Resources – Division of Mineral Resources Management</b>									
Notices related to coal mining reclamation services <sup>206</sup>	C		A						1513.08
Notice of death by accident in any mine			A			C	R		1565.12
<b>Department of Natural Resources – other notifications</b>									
Reservoir operator that plugs or reconditions a coal mine in a specific time – Notice that plugging or reconditioning will be delayed <sup>207</sup>	C		A						1571.05

<sup>206</sup> R.C. 1513.08 provides for certified mail or electronic notice with acknowledgment of receipt.

<sup>207</sup> R.C. 1571.05 provides for certified mail or electronic notice, rather than registered mail as under former law.

Table 1: Notification changes

A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act

Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
Gas storage well inspector – Notice of use of alternative method or material regarding underground storage of gas <sup>208</sup>	C		A						1571.08(A)
Gas storage well inspector – Notice of objection regarding resolution of underground storage of gas issue <sup>209</sup>	C		A						1571.08(B)

<sup>208</sup> R.C. 1571.08(A) provides for certified mail or electronic notice, rather than registered mail as under former law.

<sup>209</sup> R.C. 1571.08(B) provides for certified mail or electronic notice, rather than registered mail as under former law.

Table 1: Notification changes

A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act

Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
<b>Public Utilities Commission of Ohio</b>									
Underground Technical Committee – Copy of meeting-related documents for committee members before meeting	C		C	R					3781.342(C)
<b>Department of Rehabilitation and Correction</b>									
Notice regarding escaped prisoners	C		A	C					5120.14
Written notice, request, and certificate for a prisoner's request for final disposition of a pending untried indictment, information, or complaint against the prisoner	C		A	A					2941.401

Table 1: Notification changes

A=Added by act as new form of communications; C=Continuing law unchanged by the act; R=Removed by act

Type of notice	Mail	Commercial/ common carrier	Email/ electronic	Fax	Newspaper	Telephone	Telegraph	In-person	R.C. citation
<b>Bureau of Workers' Compensation</b>									
Workers' compensation information a professional employer organization must provide to a client employer after receiving a written request from the client employer	C		A					C	4125.03
Consultation between Administrator of Workers' Compensation and designee that must occur before the designee issues certain orders under the Public Employment Risk Reduction Program						R		R	4167.10
<b>Local government</b>									
Municipal corporations – Notice regarding escaped prisoners	C		A	C					753.19

## Authority for public entities to meet via electronic means

The act permits certain public entities to meet via electronic means, instead of in-person meetings, provided that the meetings still allow for interactive public attendance.

Table 2: Public entities authorized to meet via electronic means		
Public entity	Description	R.C. citation
Ohio Advisory Council for the Aging	Permits the council to form a quorum and take votes at meetings conducted electronically, if arrangements are made for interactive public attendance at those meetings	173.03
Internet- or computer-based community schools (e-schools) – meetings with students	Permits e-school teachers to meet with each student electronically	3314.21
School districts or other public schools – hearings for students and parents regarding notice to Registrar of Motor Vehicles for excessive unexcused student absences from school	Permits districts and schools to conduct hearings electronically if requested by the child’s parent, guardian, or custodian.	3321.13
Department of Public Safety – Registrar of Motor Vehicles	Authorizes an administrative hearing on the suspension or impoundment of a driver’s license or license plates for a failure to provide proof of motor vehicle insurance to be held remotely upon request.	4509.101
County, township, or municipal corporation	Before creating a tax increment financing district (TIF), community reinvestment area (CRA), enterprise zone, or similar tax-exempt district, a political subdivision must send notice to each school district located within the proposed district or area. The school district may request a meeting with the political subdivision to discuss the terms of the agreement <sup>210</sup>	5709.83

<sup>210</sup> There is no requirement under continuing law that these meetings allow public attendance or participation.

## Electronic submission to receive certain public services

The act permits or requires public entities to establish electronic means of submission for such services as licensure, approvals, and other services. The table below provides an overview of these changes.

Table 3: Services permitting or requiring electronic submission		
Public entity	Description	R.C. citation
Department of Natural Resources – Division of Oil and Gas Resources Management	May require electronic submission of various documents; permits the Division Chief to establish a procedure to exempt a participant from electronic submission	1509.031
School district boards of education – notice of surplus property for donation	Removes the requirement that district boards publish, in a “newspaper of general circulation,” notice of intent to donate property that is not needed, obsolete, or unfit for the district’s use with a value of less than \$2,500; but maintains requirement of continual posting of such notice in the district board’s office  Permits a nonprofit organization to submit electronically its written notice to a district board of its desire to obtain donated district property	3313.41(G)
Department of Education and Workforce – Jon Peterson Special Needs Scholarship provider information to applicants	Permits an alternative public or registered private provider of special education services to submit the profile of the provider’s program to applicants by electronic means	3310.521
Board of county commissioners of a county solid waste management district and the board of directors of a joint solid waste management district	Allows a board to submit a report of fees and accounts to OEPA in any manner prescribed by the Director, rather than by computer disk only, as in former law	3734.575
Every court of record	When a person forfeits bail for a traffic or equipment offense, requires a county court judge, mayor of a mayor’s court, or clerk to submit to the Bureau of Motor Vehicles, in a secure electronic format, an abstract of the court record (former law did not specify the method of submission)	4510.03

## References to stenographic records

The act modifies or removes references to public entities creating or retaining stenographic records of certain proceedings. The table below summarizes these changes.

Table 4: Stenographic recordkeeping requirements		
Public entity	Description	R.C. citation
Department of Commerce – Division of Financial Institutions	Provides that a “stenographic record” includes the use of an audio electronic recording device in administrative hearings conducted by the Division	1121.38
Department of Commerce – Board of Building Standards	Removes the requirement that the Department of Commerce must assign stenographers to the Board of Building Standards to aid in their duties	3781.08
Department of Natural Resources – Division of Mineral Resources Management	Removes option to retain a stenographic record of certain proceedings	1513.071 and 1513.16
State Board of Education	Removes the requirement that public meetings of the State Board be recorded “in a book provided for that purpose”	3301.05
School district board of education	Removes the requirement that district boards provide for a “complete stenographic record” of hearings regarding teacher contract termination	3319.16
OEPA – hearing on application for variance from solid waste facility requirements	Authorizes the OEPA Director to make either a complete stenographic record <b>or</b> electronic record of testimony and other evidence submitted at the hearing (rather than a stenographic record only, as in prior law)	3734.02
OEPA – hearing on application for variance from infectious waste treatment requirements	Authorizes the OEPA Director to make either a complete stenographic record <b>or</b> electronic record of testimony and other evidence submitted at the hearing (rather than a stenographic record only, as in prior law)	3734.021
OEPA – public meeting on variance from Voluntary Action Program requirements	Authorizes a stenographic record <b>or</b> electronic record of proceedings (rather than stenographic only, as in prior law)	3746.09

<b>Table 4: Stenographic recordkeeping requirements</b>		
<b>Public entity</b>	<b>Description</b>	<b>R.C. citation</b>
BWC	Removes a requirement that all testimony recorded during a BWC proceeding be taken down by a BWC-appointed stenographer	4121.19
BWC	Removes a requirement that BWC pay for stenographic depositions when a claim is appealed to a court but retains the requirement that the BWC pay for the depositions filed	4123.512

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## MISCELLANEOUS

### **JobsOhio contract extension**

- Allows the state, upon agreement with JobsOhio, to extend the original transfer agreement regarding spirituous liquor distribution in Ohio for an additional 15 years from the end of the original term by entering into a new agreement.
- Subjects any transfer agreement extension to Controlling Board approval.

### **OneOhio Recovery Foundation**

- Defines “OneOhio Recovery Foundation” to mean a nonprofit corporation receiving payments under the settlement agreement in *State of Ohio v. McKesson Corp.*, Case No. CVH20180055 (C.P. Madison Co., settlement agreement of October 7, 2021) and its constituent regional boards.
- Specifies that OneOhio Recovery Foundation is not a state agency, executive agency, public office, state entity, public employer, or a department, office, or institution, and exempts it from requirements that apply to state agencies, public offices, public employers, or institutions.
- Exempts the Foundation from Ohio’s Open Meetings Law but requires that a meeting of its full board be open to the public unless its directors vote to hold an executive session by a majority of the quorum of the board.
- Requires the Attorney General to provide legal advice to and conduct any case, including bringing an action for equitable relief or recovery of damages, in which the Foundation or its employees, officers, or appointed members are a party to a legal action as a result of acting in its official capacity.

### **Data codes – children served by publicly funded programs**

- Authorizes specified state agency directors – on behalf of programs that are publicly funded – to request and receive data verification codes for children who are younger than compulsory school age and are receiving services from the publicly funded programs.

### **Observances**

- Designates April as the Month of the Military Child.
- Designates October 26 as “Sudden Unexpected Death in Epilepsy Awareness Day.”

### **JobsOhio contract extension**

(R.C. 4313.02)

The act allows the state, upon agreement with JobsOhio and subject to approval of the Controlling Board, to extend the original transfer agreement regarding spirituous liquor

distribution in Ohio for an additional 15 years from the end of the original term (expiring in 2038) by entering into a new agreement.

## **OneOhio Recovery Foundation**

(R.C. 182.02)

The act defines “OneOhio Recovery Foundation” to mean a nonprofit corporation receiving payments under the settlement agreement in *State of Ohio v. McKesson Corp.*, Case No. CVH20180055 (C.P. Madison Co., settlement agreement of October 7, 2021) and its constituent regional boards and specifies it is not a state agency, executive agency, public office, state entity, public employer, or a department, office, or institution.<sup>211</sup> The settlement agreement, totaling an award to Ohio of \$808.3 million, was the result of a lawsuit filed by the state against McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Drug Corporation (opioid manufacturers and distributors) to seek payment for damages caused by opioids in Ohio.

The act exempts the OneOhio Recovery Foundation, and its employees, officers, or appointed members, from the requirements of other state agencies, executive agencies, public offices, state entities, public employers, or departments, offices, or institutions. Specifically, the act exempts OneOhio Recovery Foundation from the following:

- The Ohio Ethics Law, including financial disclosure requirements, conflicts of interest, criminal code offenses related to offenses against justice and public administration, and executive agency lobbying laws.<sup>212</sup>
- Ohio’s Public Records Law, which requires public records of a public office to be made available for public inspection at all reasonable times during business hours.<sup>213</sup>
- Ohio’s Open Meetings Law (see below), which requires meetings of public bodies to be open to the public.<sup>214</sup>
- Ohio’s State and Local Government Expenditure database, which includes information about expenditures made in each fiscal year and is available for free to members of the public.<sup>215</sup>
- An audit by the Auditor of State, whose office is permitted to audit the accounts of private institutions, associations, boards, and corporations receiving public money.<sup>216</sup>

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<sup>211</sup> R.C. 1.60, not in the act.

<sup>212</sup> R.C. 121.41, 121.60, 102.01, and 2921.01, not in the act.

<sup>213</sup> R.C. 9.28 and 149.011, not in the act; R.C. 149.43.

<sup>214</sup> R.C. 121.22.

<sup>215</sup> R.C. 113.70, not in the act.

<sup>216</sup> R.C. 117.01, not in the act.

- Ohio's antitrust law.<sup>217</sup>
- Collective bargaining law that applies to public employees.<sup>218</sup>
- Laws governing state employee whistleblower protection, civil service, compensation, work hours, leave, and benefits.<sup>219</sup>
- Ohio's Public Employees Retirement System (OPERS).<sup>220</sup>
- Licensing authority prohibitions against a person who is a victim of nonconsensual dissemination of private sexual images.<sup>221</sup>

Although, the act generally exempts OneOhio Recovery Foundation from Ohio's Open Meetings Law, it does require that a meeting of the full board of directors of OneOhio Recovery Foundation be open to the public unless its directors vote to hold an executive session by a majority of the quorum of the board.

Additionally, the act requires the Attorney General to provide legal advice to and conduct any case, including bringing an action for equitable relief or recovery of damages, in which OneOhio Recovery Foundation or its employees, officers, or appointed members are a party to a legal action as a result of acting in its official capacity.

## **Data codes – children served by publicly funded programs**

(R.C. 3301.0714 and 3301.0723)

The act authorizes certain agency directors – on behalf of programs that receive public funds and provide services to children younger than compulsory school age – to request child data verification codes for children receiving services from the programs. The directors are the Director of Education and Workforce, the Director of Children and Youth, the Director of Developmental Disabilities, the Director of Health, the Director of Job and Family Services, the Director of Mental Health and Addiction Services, the Medicaid Director, the Executive Director of the Commission on Minority Health, and the Executive Director of Opportunities for Ohioans with Disabilities.

The act also requires the independent contractor that is under contract with the Department of Education and Workforce to create and maintain student data verification codes for school districts to (1) assign codes to children receiving services from a program and (2) provide the codes to the state agency director who requested them from the contractor on the program's behalf. Continuing law requires the independent contractor to perform those duties for publicly funded programs administered by a state agency.

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<sup>217</sup> R.C. 1331.01, not in the act.

<sup>218</sup> R.C. 4117.01, not in the act.

<sup>219</sup> R.C. 124.01, not in the act.

<sup>220</sup> R.C. 145.012, not in the act.

<sup>221</sup> R.C. 9.74, not in the act.

After receiving the codes, the agency director must provide them to the program. The act then requires the program to use the codes for purposes of submitting information about the children to the Department, but only to the extent permitted by federal law.

## **Month of the Military Child**

(R.C. 5.55)

The act designates April as the Month of the Military Child.

## **Sudden Unexpected Death in Epilepsy Awareness Day**

(R.C. 5.2320; Section 700.10)

The act designates October 26 as “Sudden Unexpected Death in Epilepsy Awareness Day” and names this provision “Brenna’s Law. “

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## NOTES

### Effective dates

(Sections 812.10 to 812.50)

Article II, Section 1d of the Ohio Constitution states that “appropriations for the current expenses of state government and state institutions” and “[l]aws providing for tax levies” go into immediate effect and are not subject to the referendum. The act includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section is subject to the referendum and takes effect on the 91<sup>st</sup> day after the act is filed with the Secretary of State (barring the filing of a referendum petition). It also includes exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect.

#### Note – effective date of veto override

On December 13, 2023, the House voted to override the Governor's veto of Item #24, which prohibits local governments from adopting regulations related to tobacco and alternative nicotine products (see page 645). The Senate voted to override on January 24, 2024. Presumably, the item is subject to the referendum and therefore takes effect on the 91<sup>st</sup> day after it is filed with the Secretary of State, which is April 24, 2024.

### Expiration

(Section 809.10)

The act includes an expiration clause stating that an item that composes the whole or part of an uncodified section (other than an amending, enacting, or repealing clause) has no effect after June 30, 2025, unless its context clearly indicates otherwise.

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## HISTORY

Action	Date
Introduced	02-15-23
Reported, H. Finance	04-26-23
Passed House (78-19)	04-26-23
Reported, S. Finance	06-14-23
Passed Senate (24-7)	06-15-23
House refused to concur in Senate amendments (23-71)	06-21-23
Senate requested conference committee	06-21-23
House acceded to request for conference committee	06-21-23

Action	Date
House agreed to conference committee report (67-30)	06-30-23
Senate agreed to conference committee report (25-6)	06-30-23
<a href="#">House voted to override veto item #24 (60-31)</a>	12-13-23
<a href="#">Senate voted to override vetoed item #24 (24-8)</a>	01-24-24