



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

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**Bill:** H.B. 483 of the 131st G.A.

**Date:** May 13, 2016

**Status:** As Passed by the House

**Sponsor:** Rep. Amstutz

**Local Impact Statement Procedure Required:** No

**Contents:** Modifies programs administered by the Department of Developmental Disabilities, allows an income tax deduction for contributions to ABLE savings accounts, authorizes residents of other states to open accounts under Ohio's disability savings account program, and makes an appropriation

### State Fiscal Highlights

- The bill transfers the responsibility for implementing the state's Part C Early Intervention Services Program from the Ohio Department of Health (ODH) to the Ohio Department of Developmental Disabilities (ODODD). To support this, the bill transfers a total of \$25.1 million (\$11.1 million in general revenue funds and \$14.4 million in federal funds) in FY 2017 from ODH to ODODD.
- The bill makes appropriation adjustments within ODODD's budget related to targeted case management. These adjustments are to provide for a new reimbursement methodology that allows county boards of developmental disabilities to certify their expenditures through billing rather than by sending match dollars to ODODD.
- The bill allows an Ohio income tax deduction for contributions to a savings account related to the existing Achieve a Better Living Experience (ABLE) Program. The deduction would reduce the state personal income tax (PIT) base and revenue from the tax. Any revenue loss would depend on the number of taxpayers eligible to take the deduction and the value of such deductions.
- Data on current participation in the ABLE Program are not yet available, but plausible estimates of potential usage yield a revenue loss in the millions annually. Revenue losses would begin in FY 2017. Currently, all income tax receipts are deposited into the GRF. Each month, the Local Government Fund (LGF) and the Public Library Fund (PLF) receive 1.66% and 1.70% of total GRF tax revenue, respectively. Any revenue loss to the GRF would subsequently reduce distributions to the LGF and PLF.

- The bill requires ODODD to recoup certain amounts, including interest, if certain intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) obtained approval to downsize by July 1, 2018, but fail to do so. The bill allows an ICF/IID to voluntarily pay the amount to be recouped. Any recoupments or repayments collected would be deposited to the General Revenue Fund.
- The bill permits ODODD to change the terms of an agreement if a county board or board of county commissioners closes or sells a community adult facility or community early childhood facility. ODODD could receive reimbursements related to the proceeds of a sale. However, ODODD is encouraging county boards and boards of county commissioners to instead use the proceeds of any sales for the acquisition of housing for individuals with disabilities.
- The bill modifies cost report requirements for downsized or partially converted ICFs/IID and requires ODODD to use the cost report covering the portion of the initial calendar year that the ICF/IID operated as a downsized or partially converted ICF/IID to determine the Medicaid rate for a specified period of time. As a result, providers may receive a higher Medicaid rate for a longer period of time.
- The bill provides that no change ODODD makes to resident assessment forms or to the manner in which the grouper methodology is applied in determining case mix-scores is valid unless certain conditions are met. The bill allows ODODD to disregard the results of an exception review conducted in calendar year 2015 in certain instances. Providers could receive higher Medicaid payments under certain conditions.
- The bill specifies that ODODD is to make a Medicaid payment to an ICF/IID that reserves a bed for a resident who is temporarily absent due to a visit to a potential new residential setting. ODODD could incur additional costs to make Medicaid payments to reserve these beds.

## **Local Fiscal Highlights**

- The bill requires ODODD to recoup certain amounts, including interest, if certain ICFs/IID obtained approval to downsize by July 1, 2018, but fail to do so. A county-operated ICF/IID could be subject to this requirement if it fails to downsize by this date. However, the Ohio Association of County Boards anticipates that county-operated ICFs/IID will meet downsize goals.
- Currently, in each month the LGF and the PLF receive 1.66% and 1.70% of total GRF tax revenue, respectively. Thus, any revenue loss associated with the bill's personal income tax deduction would also reduce distributions to the LGF and PLF. Reductions in LGF and PLF distributions would reduce allocations from these funds to various political subdivisions.
- The bill allows a county board of developmental disabilities to establish and maintain an individual or joint self-insurance program.

- The bill requires a county board of developmental disabilities or board of county commissioners that sells a community adult facility or community early childhood facility under certain circumstances to either reimburse ODODD the proceeds of the sale up to the outstanding balance owed or to use the proceeds of the sale for the acquisition of housing for individuals with developmental disabilities. According to ODODD, it will encourage the funds to be used to obtain housing.

## Detailed Fiscal Analysis

### Part C Early Intervention Services Program

The bill transfers from the Ohio Department of Health (ODH) to the Ohio Department of Developmental Disabilities (ODODD), the responsibility for implementing the state's Part C Early Intervention Services Program, through which eligible infants and toddlers receive early intervention services in accordance with federal law. The bill also makes conforming and technical changes associated with the program's transfer, including replacing the Help Me Grow Advisory Council with the Early Intervention Services Advisory Council and requiring ODODD (rather than the Director of Health) to fulfill certain duties when a child ceases receiving early intervention services and enrolls in a public school. The bill also requires ODODD to adopt rules that are necessary to implement the program.

The bill specifies that ODH employees assigned to the program on June 30, 2016 will transfer to ODODD and retain all benefits accrued on the date of the transfer. According to the departments, eight employees will transfer to ODODD.

Additionally, the bill designates ODODD as the "lead agency" responsible for the administration of funds provided for the program. Thus, the bill transfers a total of \$25.1 million in FY 2017 from ODH to ODODD. The table below shows the appropriation items impacted. The total net impact of the appropriation adjustments is \$0.

FY 2017 Appropriation Adjustments Related to Part C Early Intervention				
Agency	Fund	ALI	ALI Name	\$ Change FY 2017
ODH	GRF	440459	Help Me Grow	-\$11,109,909
ODH	3920	440618	Federal Public Health Programs	-\$14,000,000
ODODD	GRF	322421	Early Intervention	\$11,109,909
ODODD	3250	322612	Community Social Service Programs	\$14,000,000
<b>All Funds Total Net Impact</b>				<b>\$0</b>

According to both ODODD and ODH, this transfer will not impact services or local government program management relating to Part C Early Intervention. Funds for service coordination will continue to be provided to county family and children first

councils, while funds for early intervention services will continue to be provided to county boards of developmental disabilities. The only change will be that state and federal funds for these activities will come from ODODD rather than ODH.

### Targeted case management

The bill makes adjustments to certain appropriation items in FY 2017 relating to targeted case management. Additionally, the bill requires the Director of the Office of Budget and Management, on July 1, 2016, or as soon as possible thereafter, to transfer the cash balance in the Targeted Case Management Fund (Fund 5DJ0) to the Medicaid Waiver Fund (Fund 3G60). Fund 5DJ0 is abolished after this transfer. The Director is required to cancel existing encumbrances against appropriation items 322625 and 653625 and establish them against appropriation item 653639, Medicaid Waiver Services. The table below shows the appropriation adjustments by line item.

<b>FY 2017 Appropriation Adjustments Related to Targeted Case Management</b>				
<b>Agency</b>	<b>Fund</b>	<b>ALI</b>	<b>ALI Name</b>	<b>\$ Change FY 2017</b>
ODODD	5DJ0	322625	Targeted Case Management Match	-\$43,000,000
ODODD	5DJ0	653626	Targeted Case Management Services	-\$113,000,000
ODODD	3G60	653639	Medicaid Waiver Services	\$70,000,000
<b>Dedicated Purpose Funds Total</b>				<b>-\$156,000,000</b>
<b>Federal Funds Total</b>				<b>\$70,000,000</b>
<b>All Funds Total Net Impact</b>				<b>-\$86,000,000</b>

Essentially these adjustments are taking place due to a recent change in reimbursement methodology. Under the previous reimbursement methodology, appropriation item 322625, Targeted Case Management Match, was used to transfer the nonfederal share of the cost of targeted case management services provided by county boards of developmental disabilities to the Ohio Department of Medicaid (ODM) in order to draw down the federal Medicaid reimbursement. Then, appropriation item 653626, Targeted Case Management Services, was used to disburse to county boards both the county-paid nonfederal share plus the federal Medicaid reimbursement received. However, due to the change in reimbursement strategies, county boards are no longer required to send the nonfederal portion of funds to ODODD in order to draw down federal reimbursement. Instead, boards certify the expenditure has been made when billing. As a result, ODODD will use appropriation item 653639, Medicaid Waiver Services, to disburse the federal share to county boards. The appropriation to item 653639 is increased by \$70.0 million, while the appropriations to items 322652 and 653626 are decreased by a total of \$156.0 million because the county-paid nonfederal share will no longer flow through the state accounting system (either to be used to transfer to ODM to receive reimbursement or to disburse back to the counties). Thus, these appropriations are no longer necessary.

## **Ohio ABLE Program**

The bill makes several changes to the Ohio's Achieve a Better Living Experience (ABLE) Program. Under the bill, residents of other states are allowed to open accounts through the program. The bill authorizes the Treasurer of State to administer the issuance of interests from the Ohio ABLE Savings Program Trust Fund<sup>1</sup> to ABLE account beneficiaries. The changes would have no direct fiscal impact.

The state ABLE Program was authorized in October 2015 under H.B. 155 of the 131st General Assembly. The state ABLE Program was established pursuant to federal law, the Achieving a Better Life Experience Act of 2014, enacted in December 2014. Currently, the state ABLE Program is administered by the Office of the Treasurer of State. Currently, the Treasurer is allowed to impose a nonrefundable application fee to pay for expenses incurred by the Treasurer in administering the ABLE Program. Under the program, a designated beneficiary, or a trustee or guardian of a designated beneficiary who lacks the capacity to enter into an agreement, may apply and open an ABLE account to provide funding for the benefit of an eligible individual. According to the Treasurer of State's website,<sup>2</sup> eligible individuals may open an ABLE account by the summer of 2016.

### **Income tax deduction for contributions to ABLE accounts**

The bill would authorize an income tax deduction for contributions to a savings account related to the existing ABLE Program. The bill specifies that the deduction is limited to \$2,000 per taxable year for each ABLE account beneficiary. The \$2,000 annual limit per beneficiary applies to an individual taxpayer and married taxpayers, regardless of whether the taxpayer and the taxpayer's spouse file separately or jointly. The bill allows the taxpayer to carry forward and deduct any contributions over the annual limit in later taxable years until the contributions have been fully deducted. The deduction applies to taxable years beginning in or after the calendar year in which the bill is enacted.

This would reduce the Ohio personal income tax (PIT) base and thereby revenue from the tax. Any revenue loss would depend on the number of taxpayers eligible to take the deduction and the value of such deductions. LSC staff assume that the deduction would apply beginning in tax year 2016. Currently, PIT receipts are deposited into the GRF.

LSC staff could not find reliable data to estimate the number of taxpayers eligible to take the deduction related to contributions to ABLE accounts and the value of such deductions; this program is new, and data on contributions are not yet available. Based on the most recent data on students with disabilities collected by the federal Office of

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<sup>1</sup> The Fund is in the custody of the Treasurer. The Fund is used to accept deposits from ABLE account contributors.

<sup>2</sup> [http://www.tos.ohio.gov/Ohio\\_ABLE](http://www.tos.ohio.gov/Ohio_ABLE).

Special Education Programs (OSEP), in 2012 approximately 280,000 disabled students between ages 3 and 21 enrolled in schools in Ohio. It is not currently known for how many of these students ABLE accounts might be opened. Assuming 56,000 ABLE accounts (20% x 280,000) were established on behalf of the disabled children and on average each account receives \$2,000 in annual contributions from eligible taxpayers, a total of \$112 million (56,000 x \$2,000) of such contributions may be deducted. Using an average state marginal income tax rate of 3% and the estimated contributions to ABLE accounts above, the estimated PIT revenue loss would be about \$3.36 million. These numbers are illustrative rather than a true estimate of the revenue loss. The most LSC staff can say is that the revenue loss could be in the millions. Assuming that the deduction can be claimed in tax year 2016, revenue losses would begin in FY 2017.

According to an official at the Department of Taxation, the bill would result in an estimated loss of state revenue in the hundreds of thousands of dollars annually beginning in FY 2017,<sup>3</sup> with the loss expected to increase steadily over the course of five to ten years to a likely maximum of about \$1.5 million annually.

The majority of the loss would impact the GRF while the remaining loss would be shared by the Local Government Fund (LGF) and the Public Library Fund (PLF). Each month the LGF and PLF receive 1.66% and 1.70% of total GRF tax revenue, respectively. Thus, any revenue loss associated with the PIT deductions would also reduce allocations to the LGF and PLF. Moneys in the LGF are distributed to counties, municipalities, and townships while moneys in the PLF are distributed to libraries. Thus, reductions to these two funds would decrease allocations to such entities. If the revenue loss amounted to the \$3.36 million outlined above, approximately \$3.25 million would be borne by the GRF, about \$56,000 would be borne by the LGF, and about \$57,000 would be borne by the PLF.

### **Recoupments and voluntary repayments from ICFs/IID failing to downsize**

The bill requires, with an exception, ODODD to recoup a certain amount of efficiency incentive payments, including interest, from an intermediate care facility for individuals with intellectual disabilities (ICF/IID) in peer group 1 if the ICF/IID obtained approval to downsize not later than July 1, 2018, and fails to downsize by that date. The bill permits an ICF/IID to voluntarily repay the amount, excluding interest, that would otherwise be recouped. Under the bill, recoupments and repayments are deposited into the General Revenue Fund. ODODD is also required to adopt rules regarding recoupments and voluntary repayments.

The bill specifies that ODODD may exempt an ICF/IID provider from a recoupment otherwise required under the bill if (1) the provider, on or before July 1, 2018, demonstrates that it made a good faith effort to complete the downsizing, but did

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<sup>3</sup> ". . . the Office of the Treasurer is responsible for, and is currently working toward, implementing ABLE in Ohio by early 2016." [http://www.tos.ohio.gov/Ohio\\_ABLE](http://www.tos.ohio.gov/Ohio_ABLE).

not complete the downsizing due to reasons beyond the provider's control and (2) the ICF/IID becomes downsized within a period of time after July 1, 2018 that ODODD determines is reasonable.

According to ODODD, the total amount that could be available for recoupment or repayment is \$10.0 million per fiscal year. ODODD does not have an estimate regarding the number of ICFs/IID that may fail to downsize by July 1, 2018; but ODODD has stated that the maximum amount of recoupments or repayments it anticipates to be available could be 25% of this amount, or \$2.5 million per fiscal year. However, the amount actually collected would depend on this number and if all applicable ICFs/IID downsize, no recoupments or voluntary repayments would be collected. ODODD could also exempt a provider from these requirements under certain conditions. It is possible that some county-operated ICFs/IID could be subject to recoupment. However, the Ohio Association of County Boards believes that all county-operated ICFs/IID are on target to meet the goal by July 1, 2018. Any recoupments or voluntary repayments collected would be deposited into the General Revenue Fund. Lastly, there may be a potential minimal increase in administrative costs for ODODD to adopt rules regarding this provision.

### **County boards of developmental disabilities – self-insurance program**

Under the bill, a county board of developmental disabilities that provides health care benefits for their officers or employees may do any of the following: establish and maintain an individual self-insurance program with public moneys to provide health care benefits; establish and maintain a health savings account program whereby employees or officers may establish and maintain health savings accounts under the Internal Revenue Code; after establishing an individual self-insurance program, agree with other political subdivisions or county boards that have established such programs, that their programs will be jointly administered in a manner specified in an agreement; pursuant to the written agreement, join in any combination with other political subdivisions or county boards to establish and maintain a joint self-insurance program and/or to procure or contract for policies, contracts, or plans of insurance to provide health care benefits; and purchase health care plans approved by the Department of Administrative Services. Individual or joint self-insurance programs established under the bill are required to maintain reserve funds as necessary to cover potential costs of health care benefits. A certified audited financial statement and a report of aggregate amounts reserved and disbursements made, together with a written report of a member of the American Academy of Actuaries certifying whether such amounts conform to requirements, is required every fiscal year. Additionally, the bill requires a county board to reserve the funds necessary for an individual or joint self-insurance program in a special fund, which is to be created pursuant to resolution adopted by the county board.

Under a self-insured program, a plan sponsor directly funds its enrollees' health benefits. However, the sponsor may hire a third-party administrator to perform administrative tasks related to the self-insured plan, such as pay claims and negotiate payment rates. Under a fully insured plan, an employer purchases health insurance through an insurance company. The company assumes the risk associated with providing coverage to those enrolled and these risks are built into the rates charged. As a result, there may be some savings to county boards that choose to implement a self-insurance program.<sup>4</sup> In addition, there may also be indirect impacts as a result of the establishment of health savings account programs. Contributions made toward a health savings account are subtracted from income before arriving at a Federal Adjusted Gross Income; therefore, contributions made toward a health savings account would be excluded from Ohio taxable income. Thus, any decrease in revenues would depend on the amount contributed to the accounts and participants' income. However, this provision is permissive, so any fiscal impacts would be due to a county board's decision to establish a self-insurance program or health savings account program, the amount contributed to such accounts, and participants' incomes.

### **Community adult and early childhood facilities**

The bill permits the ODODD Director to change the terms of an agreement with a county board of developmental disabilities or a board of county commissioners regarding the closure of a community adult facility or community early childhood facility if certain conditions are met. Conditions include a commitment from the county board or board of county commissioners that if a facility is sold the board will either: (1) reimburse ODODD the proceeds of the sale up to the outstanding balance owed under the agreement, or (2) use the proceeds of the sale for the acquisition of housing for individuals with disabilities.

ODODD could realize an increase in revenue from reimbursement, of up to the outstanding balance owed under an agreement, if a county board or board of county commissioners sells a community adult facility or community early childhood facility. However, ODODD is encouraging county boards and boards of county commissioners to instead use the proceeds of any sales for the acquisition of housing for individuals with disabilities.

### **Cost reports for downsized or partially converted ICFs/IID**

The bill requires an ICF/IID that downsizes or partially converts to a provider of home and community-based services after the first day of October of a calendar year to file both of the following with ODODD in addition to a three-month cost report filed earlier: (1) a Medicaid cost report covering the entire calendar year during which the

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<sup>4</sup> Employer (i.e., county boards) that self-insure would assume the financial risk associated with those enrolled in the program, but they may limit such risks through the purchase of stop-loss insurance coverage.



ICF/IID downsized or partially converted and (2) another Medicaid cost report covering the portion of the initial calendar year that the ICF/IID operated as a downsized or partially converted ICF/IID. The bill requires ODODD to use the cost report covering the portion of the initial calendar year to determine the ICF's Medicaid rate for a specified period of time. As a result, providers may receive a higher Medicaid rate for a longer period of time.

### **Changes to ICF/IID resident assessment forms and grouper methodology**

The bill provides that no change ODODD makes to its instructions for ICF/IID resident assessment forms or the manner in which the grouper methodology is applied in determining case mix-scores is valid unless the change is applied prospectively and, before making the change, ODODD (1) notifies all ICFs/IID of the proposed change, (2) provides ICF/IID representatives an opportunity to provide their concerns and suggested revisions, and (3) in the case of a proposed change regarding the grouper methodology, determines that the proposed change is consistent with the documentation of ICF/IID staff time that was used to create the grouper methodology. The bill also requires ODODD to disregard, for the purpose of the Medicaid rates for ICF/IID services provided during FY 2017, the results of an exception review conducted during calendar year 2015 if the results are based on a change discussed above, unless ODODD applied the change retroactively or, before making the change, failed to take any of the actions discussed above. These provisions could allow ODODD to disregard the results of an exception review conducted in calendar year 2015 in certain instances. If this occurs, then a provider could receive payments at a higher rate.

### **Medicaid payments to reserve ICF/IID beds**

Continuing law requires ODODD to make a Medicaid payment to an ICF/IID that reserves a bed for a resident who is temporarily absent due to certain instances such as participation in a therapeutic program. The bill specifies that participation in a therapeutic program includes visits to potential new residential settings. As a result, ODODD could incur additional costs to make Medicaid payments to reserve these beds. The costs will depend on the number of beds reserved for visits to new residential settings.

### **Developmental disabilities personnel**

The bill expands the list of health care services that qualified personnel are authorized to provide for certain individuals with developmental disabilities. The bill also requires ODODD to develop courses for personnel that provide training in the performance of those health care services. The bill removes the performance of tube feeding from the list of services for which personnel must obtain a certificate from ODODD to perform. Additionally, the bill repeals a provision requiring ODODD to adopt rules establishing procedures for accepting complaints and conducting investigations regarding the administration of medication and performance of health-related activities by personnel. The bill permits ODODD to take disciplinary action for

good cause against a certificate holder. ODODD does not expect to experience an increase in costs to develop the above-mentioned training courses or to investigate and take disciplinary actions against certificate holders if good cause exists. However, there will be a minimal cost to revise the computer-based registry of certified personnel. According to the Ohio Association of County Boards, there could be potential minimal savings to county boards that provide adult services due to the removal of the nursing delegation requirement for certain services.

Additionally, the bill permits ICFs/IID to use medication aides to administer medications to residents. The bill permits an individual who will practice as a medication aide in an ICF/IID to satisfy a medication aide certificate eligibility requirement by having at least one year of direct care experience in an ICF/IID.

The bill also makes certain changes regarding services provided to residents of residential facilities with 17 or more resident beds. The bill requires personnel to obtain a certificate from ODODD, in addition to currently required training, to be eligible to provide health care services to residents of such a facility and requires a registered nurse to obtain a certificate from ODODD to provide the training.

### **Developmental center closure evaluation**

The bill requires ODODD to submit to the Speaker of the House of Representatives a report evaluating the progress of the efforts since July 1, 2015, to relocate the residents of developmental centers whose closures have been announced. The report is to include information such as the availability and appropriateness of the care provided to each relocated resident, the number of times a resident has since been relocated to a different residential setting, and reports of death, injury, hospital or nursing home stays, or arrests or detainments by law enforcement of relocated residents. ODODD is required to submit a copy of the report to the Speaker of the House by June 30, 2016. ODODD may experience a minimal increase in administrative costs to prepare and submit the required report.

### **Automatic denial of a supported living certificate**

The bill provides that a person or government entity's application to ODODD to provide Medicaid-funded supported living under a supported living certificate is automatically denied if ODM refuses to issue to the person or government entity a provider agreement authorizing the provision of Medicaid-funded supported living. There may be minimal administrative savings to ODODD related to this provision.

### **In-home care**

The bill permits a family member of an individual with a developmental disability to authorize an unlicensed in-home care worker to administer nutrition and medication through gastronomy and jejunostomy tubes, metered dose inhaled medications, oxygen, insulin, and prescribed medications for the treatment of metabolic glycemc disorders. The bill also establishes additional conditions that must be met

before a family member authorizes an unlicensed in-home care worker to perform a health care task.

Additionally, the bill requires a family member or a health care professional to be available to communicate with an unlicensed in-home care worker while the worker performs a health care task for an individual with a developmental disability.

According to ODODD, there should be no fiscal impact as a result of these provisions.

### **Combined replacement levies**

The bill authorizes taxing authorities to combine more than two existing levies into a single replacement levy. Current law only authorizes two such levies to be combined into a single replacement levy. The provision does not have a direct fiscal effect because levy proposals are decided by ballot questions submitted to the voters.

### **Developmental disability renewal and replacement levies**

The bill modifies the terms of certain developmental disabilities property tax levies and applies these changes to levies submitted to voters in future elections. The bill authorizes a replacement developmental disability levy to be for a different purpose than the existing levy or, in some cases, for a longer term than the existing levy. Continuing law authorizes two distinct types of developmental disability property levies:

- a tax for up to five years for community developmental disabilities "programs and services";
- a tax for up to ten years or a continuing period of time for "operational and capital costs" of a county board of developmental disabilities.

The bill authorizes a replacement levy for an existing "programs and services" levy for up to ten years or for a continuing period of time, similar to the "operational and capital costs" levy.

Additionally, the bill authorizes either type of levy to be replaced by an "operational and capital costs" levy. Current law permits the replacement of a levy only if the new levy is for the same purpose as the levy being replaced (certain school district levies are exempted from this limitation).

The bill also allows a county to combine two or more existing developmental disabilities levies into a single renewal levy. The ballot question whether to renew such a combined levy may be submitted on the date of the primary or general election held during the year before at least one of the renewal levies is scheduled to expire.

These provisions do not have a direct fiscal effect because levy proposals are decided by ballot questions submitted to the voters.