



# OHIO LEGISLATIVE SERVICE COMMISSION

## Final Analysis

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(As Passed by the General Assembly)

*(For details of the fiscal provisions of the act, see the LSC Budget in Detail, As Enacted; LSC Comparison Document, As Enacted; and LSC Greenbooks, all of which are available on LSC's website, [www.lsc.ohio.gov](http://www.lsc.ohio.gov), under "Budget Central.")*

**Reps.** R. Smith, Duffey, Ginter, Hambley, Hill, Lanese, Manning, McColley, Patton, Perales, Reineke, Ryan, Scherer, Sprague, Rosenberger

**Sens.** Eklund, Hite, Hoagland, Obhof, Oelslager, Peterson, Terhar, Wilson

**Effective date:** June 29, 2017; most provisions effective September 29, 2017; other provisions effective on other dates; contains item vetoes; six vetoed items overridden

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This final 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.

The act consolidates several health-related boards into one of the following: the State Medical Board, the State Board of Pharmacy, the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board, or one of two new boards. The consolidations are addressed in the "Consolidation of Health-Related Boards" category.

The analysis concludes with a Local Government category, a Miscellaneous category, and 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 discussion of their content and operation.

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\* The prior version omitted discussion of a vetoed item from the PUCO chapter. See pages 526-527.

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## ADJUTANT GENERAL

- Modifies the leave of absence law for certain permanent public employees who are members of the Ohio organized militia or other reserve components of the U.S. Armed Forces, including the Ohio National Guard.

### **Military leave for permanent public employees**

(R.C. 5923.05)

The act modifies the leave of absence law for certain permanent public employees who are members of the Ohio organized militia or other reserve components of the U.S. Armed Forces, including the Ohio National Guard. It establishes that the entitlement applies to each federal fiscal year, which is from October 1 through September 30. Former law applied the entitlement to a calendar year. Under continuing law, these employees are entitled to a leave of absence from their positions without loss of pay for the time they are performing service in the uniformed services, for periods of up to one month per year. (Under continuing law, public employees of a municipality may be subject to the municipality's ordinance related to leave of absence for military members and not the state law. A municipal employee may be offered a different entitlement because of municipal home rule authority. A municipality's ordinance regulating employee wages while on military leave of absence has been held to be a matter of substantive local self-government.<sup>1</sup>)

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<sup>1</sup> *Northern Ohio Patrolmen's Benevolent Assn. et. al., v. City of Parma et. al.*, 61 Ohio St.2d 375 (1980).



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## DEPARTMENT OF ADMINISTRATIVE SERVICES

### Suspension of purchasing and contracting requirements

- Authorizes the Department of Administrative Services (DAS) to suspend state purchasing and contracting requirements when a state agency is experiencing a "state procurement emergency."

### Electronic licensing fee

- Authorizes the Office of Information Technology to assess a transaction fee, up to \$3.50, on each license or registration issued as part of its electronic licensing system.
- Creates the Professions Licensing System Fund for the purpose of operating the electronic licensing system and requires the transaction fees to be deposited in or transferred to the Fund.
- Prohibits, if a fee is assessed by the Office, any agency, board, or commission from issuing a license or registration unless the required fee has been received.

### Tenant improvement services

- Removes the DAS Director's authority with respect to construction project services for state agencies and instead authorizes the Director to provide tenant improvement services.
- Eliminates the Minor Construction Project Management Fund.

### State agency data sharing

- Allows DAS to establish a program to gather, combine, and analyze unspecified types of data provided by state agencies that participate in the program.
- Specifies the program's purposes are to measure outcomes of state-funded programs, to develop policies to promote effective, efficient, and best use of state resources, and to identify, prevent, or eliminate fraudulent use of state funds, resources, or programs.
- Notwithstanding the entire Revised Code to specify that a state agency's provision of data under the program is a permitted use and does not violate any contrary laws that apply to the data the state agency provides.



- Specifies that a state agency providing data under the program retains ownership over the data and is the only state agency that must comply with Ohio law regarding requests for records or information.
- Subjects data in possession of participating state agencies to any confidentiality laws that apply to the data when in the possession of the state agency that provided the data.
- Subjects employees of DAS and other state agencies who have access to data collected under the program to any confidentiality laws or duty to maintain confidentiality of the data that apply to the state agencies that provided the data.
- Specifies that results of any data analysis are subject to the most stringent confidentiality obligations that apply to the source data.
- Requires DAS to develop a data-sharing protocol to which participating state agencies are subject, and a security plan to state how data will be protected.
- Requires any system with personal information derived under the program to comply with Personal Information Systems Law.

### **Repeal of Ohio Building Authority Law**

- Formally repeals the Ohio Building Authority Law.
- Retains the provision of the Law that permits, under certain circumstances, firearms in motor vehicles in the Riffe Center parking garage.
- Codifies DAS's authority to provide certain facility management services and charge rent and other charges for the use of its facilities.

### **Legislative agency office space**

- Allows legislative agencies to make purchases, leases, and repairs for the agencies' office spaces, and provides the agencies custody of the office spaces.
- Allows a legislative agency to enter into a contract with DAS to have DAS perform services requested by the legislative agency, but prohibits DAS from using a competitive selection process.
- Specifies a legislative agency may improve its office space only if DAS concludes the improvement does not adversely impact the building's structural integrity.

## **Pay for Success Contracting Program**

- Establishes the Pay for Success Contracting Program and authorizes the DAS Director to enter into multi-year contracts with social service intermediaries under the Program to achieve certain social goals in Ohio.
- Requires that one or two projects intended to reduce infant mortality and poor birth outcomes, as well as promote equity in birth outcomes among different races in Ohio, be administered by such a contractor.

## **Suspension of purchasing and contracting requirements**

(R.C. 125.04 and 125.061)

The act authorizes the Department of Administrative Services (DAS) to suspend state purchasing and contracting requirements in continuing law for any state agency experiencing a "state procurement emergency." A "state procurement emergency" includes: (1) a threat to public health, safety, or welfare, (2) an immediate and serious need for supplies or services that cannot be met through normal procurement methods, and (3) a serious threat of harm to the functioning of state government, the preservation or protection of property, or the health or safety of any person.

Although somewhat similar to the process for a suspension for the Emergency Management Agency and other agencies participating in response and recovery activities, this new suspension authority is permissible under emergency conditions that do not rise to the level of an emergency declared by Congress, the President, or other chief executive.

For a state procurement emergency suspension, the director or administrative head of the state agency must request DAS to suspend the purchasing and contracting requirements in the DAS Office Services Law (R.C. Chapter 125.) (for example, competitive bidding). The request must include information detailing the immediacy of the emergency and a description of the necessary supplies or services that cannot be timely purchased through normal procurement methods required under state law. However, whenever practical, the agency must obtain a release and permit from DAS under continuing law before making purchases under this suspension authority. Additionally, before any purchases may be made DAS must send notice of the suspension, as approved by DAS, to the Director of Budget and Management and to members of the Controlling Board. The notice must provide details of the request and a copy of the DAS Director's approval.



Continuing law pertaining to the DAS joint purchasing program does not apply to purchases of supplies or services for state agencies acting under the act's suspension authority.

### **Electronic licensing fee**

(R.C. 125.18; Section 207.40)

The act allows the Office of Information Technology within DAS to assess a transaction fee, not to exceed \$3.50, on each license or registration issued as part of its electronic licensing system. The fee applies to all transactions, regardless of form, that immediately precede the issuance, renewal, reinstatement, reactivation of, or other activity that results in a license or registration to operate as a regulated professional or entity. Each license or registration is a separate transaction to which a fee applies. The act prohibits, if a fee is assessed by the Office, any agency, board, or commission from issuing a license or registration unless the required fee has been received. The DAS Director may collect the fee or require a state agency, board, or commission for which the electronic licensing system is being operated to collect the fee. The amounts received from the fees must be deposited in or transferred to the Professions Licensing System Fund, which the act creates for the purpose of operating the electronic licensing system.

### **Tenant improvement services**

(R.C. 125.28)

The act removes authorization for the DAS Director to provide minor construction project management services to any state agency, and instead authorizes the Director to provide tenant improvement services and to collect reimbursement costs for providing those services. The act also requires money collected for those services to be deposited into the state treasury to the credit of the Building Management Fund. Under former law, money collected for minor construction project management was required to be deposited to the credit of the Minor Construction Project Management Fund, which is eliminated by the act.

### **State agency data sharing**

(R.C. 125.32)

The act allows DAS to establish an enterprise data management and analytics program to gather, combine, and analyze unspecified types of data provided by state agencies that participate in the program. The program's purposes, under the act, are to measure outcomes of state-funded programs, develop policies to promote effective,

efficient, and best use of state resources, and to identify, prevent, or eliminate fraudulent use of state funds, resources, or programs.

A state agency must provide data for use under the program. Notwithstanding the entire Revised Code, a state agency's provision of data under the program is considered a permitted use under Ohio law and is not in violation of any contrary laws by providing the data.

The act specifies that a state agency providing data under the program retains ownership over the data. The act also notwithstanding the entire Revised Code to provide that only the state agency that provides data must comply with Ohio law regarding requests for records or information including, specifically, public records requests, subpoenas, warrants, and investigatory requests.

Participating state agencies must maintain confidentiality of data under the applicable laws. Employees of DAS and other state agencies who have access to data under the program are subject to any confidentiality requirements or duties that apply to the data when in the possession of the state agency that provided it. Results of the data analysis must be compared against the confidentiality laws that apply to the source data. The comparison must determine if the results of the data analysis retain any attributes of the source data that would result in the need to apply any confidentiality obligations to the data analysis that would have applied to the source data. If a data analysis retains attributes of the source data and a conflict exists between which confidentiality obligation applies between the results of the data analysis and the source data, the data is subject to the most stringent confidentiality obligations that apply to the state agencies that provided the data.

In consultation with participating state agencies, the act requires DAS to develop a data-sharing protocol to which participating state agencies are subject, and a security plan to state how data will be protected. The protocol must specify how participating state agencies may use confidential data in accordance with confidentiality laws that apply to the provided data, who has authority to access data gathered under the program, and how participating state agencies must make, verify, and retain corrections to personal information gathered under the program.

The act requires any collection of data derived under the program to comply with the Personal Information Systems Law (R.C. Chapter 1347.).



## **Repeal of Ohio Building Authority Law**

(R.C. 123.011 and 154.11; repealed R.C. Chapter 152.)

The act repeals the Ohio Building Authority (OBA) Law (R.C. Chapter 152.), except for a provision that permits, under certain circumstances, firearms in motor vehicles in the Riffe Center parking garage. It also codifies DAS's authority to charge rentals for the use of its buildings and other properties and to provide its tenants with medical, food, and other services. In 2011, H.B. 153, the main operating budget of the 129th General Assembly, in *uncodified* law, had transferred the OBA's building and facility operations and management functions to DAS and transferred the Authority's financing authority to the Treasurer of State, but had not amended the OBA Law to reflect these changes.

## **Legislative agency office space**

(R.C. 123.01)

The act allows agencies within the legislative branch of the state government to make purchases, leases, and repairs for the agencies' office spaces, and provides the agencies custody of the office spaces. An agency may improve its office space only if DAS concludes the proposed improvements do not adversely impact the structural integrity of the building. Under continuing law, DAS generally controls buildings and office spaces of state agencies, except the Capitol Square Review and Advisory Board (CSRAB) controls its buildings and the Joint Legislative Ethics Commission (JLEC) controls its office space. As under prior law that applied only to JLEC, the act allows an agency of the legislative branch (except CSRAB) to enter into a contract with DAS to have DAS perform services requested by the legislative agency, but the act prohibits DAS from using any type of competitive selection process for the performance of those services.

## **Pay for Success Contracting Program**

(R.C. 125.66 and 125.661; Section 207.71)

The act establishes the Pay for Success Contracting Program. Under the Program, the DAS Director may enter into multi-year contracts with social service intermediaries to achieve certain social goals in Ohio. The act defines a "social service intermediary" as a nonprofit organization exempt from federal income taxation, or a wholly owned subsidiary of a nonprofit organization, that delivers or contracts for the delivery of social services, raises capital to finance the delivery of social services, and provides ongoing project management and investor relations for these activities.



A contract under the Program must include provisions that:

--Require DAS, in consultation with a state agency that administers programs or services related to the contract's subject matter, to specify performance targets to be met by the social service intermediary;

--Specify the process or methodology that an independent evaluator contracted by DAS must use to evaluate the intermediary's progress toward meeting each performance target;

--Require DAS to pay the intermediary in installments at times determined by the DAS Director that are specified in the contract and are consistent with state law;

--Require the installment payments to be based on the intermediary's progress toward achieving each performance target, as determined by the independent evaluator;

--Specify the maximum amount an intermediary may earn for its progress toward achieving performance targets; and

--Require DAS to ensure, in accordance with state and federal laws, that the intermediary has access to any data in the possession of a state agency, including historical data, that the intermediary requests for performing its contractual duties.

The act requires the DAS Director, if he or she contracts with a social service intermediary, to contract with a person or government entity to evaluate the social service intermediary's progress toward meeting each performance target specified in a contract. The Director must choose an evaluator that is independent from the social service intermediary, ensuring that both parties do not have common owners or administrators, managers, or employees.

### **Pilot projects to reduce infant mortality**

(Section 207.71)

The act requires the DAS Director, by December 30, 2017, in consultation with the Department of Health, and as part of the Pay for Success Contracting Program, to contract with one or more social service intermediaries to administer one or two pilot projects intended to:

--Reduce the incidence of infant mortality, low-birthweight births, premature births, and stillbirths in infant mortality hot spots that have been specified by the Director of Health under existing law; and



--Promote equity in birth outcomes among infants of different races in Ohio.

The DAS Director may request that the Director of Health pay the costs of the Pay for Success Contracting Program under appropriations to the Department of Health.



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## DEPARTMENT OF AGING

### Long-term Care Ombudsman Program

- Requires the State Long-term Care Ombudsman to conduct advocacy visits with long-term care providers, residents, or recipients.
- Prohibits a long-term care provider, provider employee, or individual from willfully interfering with an Ombudsman representative in the performance of any duties or exercise of any rights.
- Specifies that certain actions under the State Long-term Care Ombudsman Program may be taken only to the extent permitted by federal law.
- Eliminates provisions regarding investigations by the Department of Aging of alleged violations of the Residents' Rights Law, but retains the State Ombudsman's role as a residents' rights advocate.
- Extends the authority of the State Long-term Care Ombudsman's Office to MyCare Ohio.

### Long-term Care Consultation Program

- Modifies the duties of the Department or a program administrator to provide services under the Long-term Care Consultation Program.
- Eliminates provisions specifying the categories of individuals to whom a long-term care consultation must or may be provided and the time frames in which the consultation must be provided, and requires those decisions to be made in accordance with rules to be adopted by the Director of Aging.

### Long-term Care Consumer Guide fee

- Authorizes the Department to establish a deadline for long-term care facilities to pay annual fees for publication of the Ohio Long-term Care Consumer Guide.
- Authorizes the Department to impose a late penalty if the annual fee is not received within 90 days of the deadline.

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

- Specifies that the representatives of the Department of Health and Office of the State Long-term Care Ombudsman are nonvoting members on the Board of Executives of Long-term Services and Supports.



- Specifies that a majority of the voting members of the Board constitutes a quorum, and requires a quorum for the Board to act.
- Expands the Board's authority to create education and training programs for nursing home administrators.
- Revises the Board's authority to take disciplinary action against a nursing home administrator by allowing it to impose civil penalties and fines, revising fine amounts, and permitting, rather than requiring, a court to fine or imprison a person for a violation.

### **Other provisions**

- Creates a workgroup to review the Assisted Living Program.
- Repeats, in an uncodified section, the authority the Department of Medicaid already has in ongoing law to provide for the Department of Aging to assess whether Medicaid applicants and recipients need a nursing facility level of care.
- Repeats, in an uncodified section, a requirement the Department of Aging already has in ongoing law to provide long-term care consultations to help individuals plan for their long-term health care needs.
- Repeats, in an uncodified section, the duty the Department of Aging already has in ongoing law to administer the PASSPORT Program, Assisted Living Program, and PACE.
- Permits the Department of Aging to design and utilize a method of paying for PASSPORT administrative agency operations that includes a pay-for-performance incentive component.
- Eliminates references to the defunct Ohio Transitions II Aging Carve-Out Program and the defunct Choices Program.

### **State Long-term Care Ombudsman Program**

(R.C. 173.01, 173.14, 173.15, 173.17, 173.19, 173.20, 173.21, 173.22, 173.24, 173.28, 173.99, and 5101.61)

The act makes several changes to the law governing the State Long-term Care Ombudsman Program. Under continuing law, the program receives and investigates complaints relating to long-term care, including care provided to residents of long-term



care facilities and to recipients in their own homes or community care settings. The program does not regulate long-term care facilities or home or community care services providers, but assists in the resolution of complaints brought by facilities, providers, residents, recipients, or their families.<sup>2</sup>

### **Advocacy visits**

Under the act, the State Long-term Care Ombudsman must conduct advocacy visits with long-term care providers, residents, or recipients. The act also requires the Ombudsman to authorize other representatives of the Office of the State Long-term Care Ombudsman to conduct the visits.

An "advocacy visit" is defined as a visit to a long-term care provider, resident, or recipient when the purpose of the visit is one or more of the following:

- (1) To establish a regular presence that creates awareness of the Office's availability;
- (2) To increase awareness of the services the Office provides; or
- (3) To address any other matter not related to the representative's investigation of a specific complaint.

The act also provides that an advocacy visit may unexpectedly involve addressing uncomplicated complaints or lead to an investigation of a complaint when needed.

### **Complaints**

Continuing law requires the State Ombudsman and regional long-term care ombudsman programs to receive, investigate, and attempt to resolve complaints made by residents, recipients, or their representatives, sponsors, or long-term care providers. The complaints must relate to the health, safety, welfare, or civil rights of a resident or recipient or to an action, inaction, or decision on the part of a specified entity adversely affecting the health, safety, welfare, or right of resident or recipient. The act adds Medicaid managed care organizations to the list of entities.

### **Willful interference**

The act prohibits a long-term care provider or other entity, provider or entity employee, or individual from engaging in willful interference. "Willful interference" is defined as any action or inaction that is intended to prevent, interfere with, or impede a

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<sup>2</sup> For more information on the State Ombudsman, see <http://aging.ohio.gov/Ombudsman/>.



representative of the Office of the State Long-term Care Ombudsman from exercising any of an ombudsman's rights or duties.

Any individual or entity that engages in willful interference is subject to a criminal or civil penalty. In lieu of a fine not to exceed \$500 for each violation that may be imposed for a criminal offense, the Director of Aging may impose a fine not to exceed \$500 for each day the violation continued. The Director must do so in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

### **Private communication and access rights**

In order to fulfill the duties of the State Long-term Care Ombudsman's Office, continuing law grants a representative of the Office the right to private communication with residents, recipients, and their sponsors as well as the right of access to long-term care facilities and sites. Continuing law also provides for the imposition of civil and criminal penalties if a representative is denied communication or access. The act clarifies this law by specifically prohibiting a long-term care provider or other entity, provider or entity employee, or individual from knowingly denying a representative of the Office the right of private communication with a resident, recipient, or sponsor or the right of access to any facility or site.

### **Retaliation**

The act expands the law prohibiting long-term care providers, other entities, or provider or entity employees from retaliating against residents or recipients for providing information to or participating in registering a complaint with the Office in the following ways:

- (1) It prohibits any individual from engaging in retaliatory actions.
- (2) It also prohibits retaliation against provider or entity employees, representatives of the Office, or other individuals.
- (3) It includes discharge and termination of employment within the list of prohibited retaliatory actions.

### **Delegation**

The act prohibits the State Long-term Care Ombudsman from delegating to a staff member any authority or duty that federal law requires to be exercised or performed by the Ombudsman.



## **Suspected violations of law**

Prior law allowed for the reporting of suspected violations of certain laws discovered during the course of an investigation conducted by the State Ombudsman or any other representative of the Office as follows: in the case of the law governing nursing homes or residential care facilities, to the Department of Health and in the case of criminal violations, to the Attorney General or other appropriate law enforcement authority. The act broadens this law by authorizing any suspected violation of state law discovered during the course of an investigation or advocacy visit to be reported to an appropriate authority. However, it specifies that this authority to report is limited to the extent permitted by federal law.

### **Reports of abuse, neglect, or exploitation**

The act exempts the State Ombudsman and representatives of the Office from the law requiring certain individuals to report suspected adult abuse, neglect, or exploitation to county departments of job and family services.<sup>3</sup> Permission to report is retained, but the act specifies that the authority is limited to the extent permitted by federal law.

### **Provider records**

With respect to giving oral consent for the State Ombudsman or representative of the Office to access a resident's or recipient's records, the act eliminates the requirement that, in the case of records maintained by a long-term care provider, the resident's or recipient's oral consent must be witnessed in writing by an employee of the long-term care provider. In a related provision, it eliminates the requirement that each long-term care provider designate one or more employees to be responsible for witnessing the giving of oral consent.

The act also eliminates the requirement that the State Ombudsman take necessary action to return records obtained from a long-term care provider during the course of an investigation to the provider no later than three years after the investigation's completion.

### **Investigative files**

The act specifies that any records relating to advocacy visits made by representatives of the Office contained within the Office's investigative files are not

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<sup>3</sup> This exemption is duplicated, in part, in a separate but related provision of the act, effective September 29, 2018. See "**Adult Protective Services – Retained Mandatory Reporters**" under the **DEPARTMENT OF JOB AND FAMILY SERVICES** portion of this analysis.)



public records subject to inspection. It also exempts from the law governing the maintenance of personal information systems by state or local agencies the investigative files of the Office, including any proprietary records of a long-term care provider or any records relating to advocacy visits made by representatives of the Office contained within such files.

### **Annual reports**

Continuing law requires the State Ombudsman to prepare an annual report regarding the types of problems experienced by residents and recipients and the complaints made by or on their behalf. The report must be submitted to certain officials, including the Directors of the Department of Health and the Department of Job and Family Services. Under the act, it must also be submitted to the Medicaid Director and Director of the Department of Mental Health and Addiction Services.

### **MyCare Ohio**

(Section 209.30)

The act extends the authority of the State Long-term Care Ombudsman's Office to MyCare Ohio while that program is operated. MyCare Ohio, called the Integrated Care Delivery System in the Revised Code, is a demonstration project the Department of Medicaid operates.

### **Residents' rights and the Department of Aging**

The act eliminates provisions requiring the Department of Aging to conduct investigations related to grievances filed by or on behalf of nursing home and residential care facility residents regarding alleged violations of Ohio's Residents' Rights Law. Under law unchanged by the act, these grievances are investigated by the Department of Health, and the State Ombudsman continues to serve as a residents' rights advocate.

### **Long-term Care Consultation Program**

(R.C. 173.42 and 173.424)

The act modifies the Department's responsibilities regarding the Long-term Care Consultation Program, under which individuals or their representatives are provided with information through professional consultations about options available to meet long-term care needs and about factors to consider in making long-term care decisions.

The act makes permissive, instead of mandatory as under prior law, that the Department or a program administrator provide the following services under the



program: (1) assist an individual or an individual's representative in accessing all appropriate sources of care and services for which the individual is eligible and (2) provide for assessments or evaluations and the development of individualized plans of care or services.

The act eliminates provisions that specify which individuals must be given a long-term care consultation. Prior law required that a consultation be given to individuals who apply or indicate an intention to apply for admission to a nursing facility, individuals who request a consultation, and individuals identified by the Department or a program administrator as being likely to benefit from a consultation. The act instead requires a consultation to be provided to each individual for whom the Department or a program administrator determines such a consultation is appropriate and permits the Director of Aging to adopt rules specifying criteria for identifying such individuals.

The act eliminates provisions specifying time frames in which the consultations must be provided and completed, and instead requires that a consultation be provided or completed within time frames to be established in rules. Under prior law, a consultation must have generally been provided within five calendar days after the Department or program administrator received notice that an individual was required to be provided with a consultation, unless the individual had applied for Medicaid and the consultation was being provided within the time frames established for a level of care assessment.

The act modifies the Director's duty to adopt rules to implement the program by making the duty mandatory rather than permissive. It permits the rules to specify any standards or procedures the Director considers necessary.

### **Long-term Care Consumer Guide fee**

(R.C. 173.48)

The act authorizes the Department to establish by rule a deadline for payment of annual fees for the Ohio Long-term Care Consumer Guide (the fees must be paid by long-term care facilities under law unchanged by the act). Under the act, if the annual fee is not paid within 90 days of any deadline established by the Department, a long-term care facility may be required to pay a late penalty equal to the annual fee.

Continuing law provides that annual Guide fees paid by nursing facilities that participate in Medicaid are to be reimbursed by the Medicaid program. The act extends the reimbursement to the late penalty, but provides for both the annual fee and the late penalty that reimbursement is to be made "unless prohibited by federal law." Like



annual fees, late penalties are to be credited to the Long-term Care Consumer Guide Fund.

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

### **Nonvoting board members**

(R.C. 4751.03)

The act specifies that the representatives of the Department of Health and the Office of the State Long-term Care Ombudsman are nonvoting members on the Board of Executives of Long-term Services and Supports and serve only in an advisory capacity. Accordingly, the act clarifies that a majority of the voting members of the Board constitutes a quorum, and requires a quorum for the Board to act. Under prior law, the representatives of the Department and Office were both voting members.

### **Education and training programs for nursing home administrators**

(R.C. 4751.04, 4751.043, 4751.044, and 4751.14)

The act modifies the Board's duty to create education, training, and credentialing opportunities. Continuing law requires the Board to create such opportunities for nursing home administrators and others in leadership positions in long-term services and supports settings. The act adds persons interested in becoming licensed nursing home administrators. It also adds credentialed individuals to the list of individuals for whom the Board must identify appropriate core competencies and areas of knowledge.

The act requires the Board to approve continuing education courses for nursing home administrators and permits training and education programs developed by the Board to be conducted in person or through electronic media. It also permits the Board to establish and charge a fee for the programs and for approving the programs. The fees must be deposited into the Board of Executives of Long-term Services and Supports Fund.

The act permits the Board to enter into a contract with a government or private entity to develop and conduct the education and training programs. The contract may authorize the entity to pay the costs associated with the programs and to collect any program enrollment fees as all or part of the entity's compensation under the contract.



## **Disciplinary authority**

(R.C. 4751.04, 4751.10, 4751.14, and 4751.99)

The act revises the Board's authority to take disciplinary action against a nursing home administrator. Under the act, the Board may impose a civil penalty, fine, or any other Board-authorized sanction against a nursing home administrator for failure to substantially conform to Board standards. The sanctions added by the act are in addition to the Board's authority under continuing law to revoke or suspend a nursing home administrator's license or registration. The act also eliminates the requirement that disciplinary proceedings to suspend or revoke a license or registration be instituted by the Board or begin by filing written charges with the Board.

The act permits, rather than requires as under prior law, a court to fine or imprison a person who violates the Nursing Home Administrator Licensing Law. The act revises the fine amounts to not more than \$500 for each violation. Previously, the fine amounts were \$50 to \$500 for a first violation and \$100 to \$500 for each subsequent violation. Additionally, the act specifies that a court's existing authority to fine or imprison a person for violating the Law does not preclude the Board from imposing other civil penalties or fines. Any civil penalties and fines collected by the Board under the act must be deposited into the Board of Executives of Long-term Services and Supports Fund.

## **Assisted Living Program workgroup**

(Section 209.61)

The act establishes a workgroup to conduct a review of the Assisted Living Program. The workgroup is to consist of the following:

- (1) Two members of the House appointed by the Speaker from among the chairpersons of the Aging and Long-Term Care Committee, the Health Committee, and the Finance Subcommittee on Health and Human Services;
- (2) One member of the House appointed by the Minority Leader from among the members of the minority party serving on any of those House committees;
- (3) Two members of the Senate appointed by the Senate President from among the chairpersons of the Health, Human Services, and Medicaid Committee, the full Finance Committee, and the Finance – Health and Medicaid Subcommittee;
- (4) One member of the Senate appointed by the Minority Leader from among members of the minority party serving on any of those Senate committees;



(5) The Executive Director of the Office of Health Transformation;

(6) The Medicaid Director;

(7) The Director of Aging;

(8) The Director of Health;

(9) One representative of each of the following organizations, appointed by the chief executive of the organization: LeadingAge Ohio, the Ohio Assisted Living Association, the Ohio Association of Area Agencies on Aging, and the Ohio Health Care Association.

Appointments must be made to the workgroup by August 29, 2017. A member may designate another individual to serve in the member's place for one or more sessions. Members are to serve without compensation or reimbursement, except to the extent that serving on the workgroup is part of their usual job duties.

The Medicaid Director and Director of Aging are to serve as co-chairpersons. The Departments of Medicaid and Aging must provide any administrative assistance the workgroup needs.

The workgroup must do both of the following in reviewing the Assisted Living program:

(1) Identify potential barriers to enrollment and providers' participation, including barriers related to payment rates, the tier levels to which enrollees are assigned and their use in setting payment rates, the statutory and administrative requirements that providers must meet to participate, and other issues the workgroup determines are barriers; and

(2) Determine the feasibility and desirability of making community-based services that are similar to assisted living services available under pre-existing Department of Aging programs or under a new program.

Each state agency and advocacy organization represented on the workgroup must make available to the workgroup any relevant federal or state data concerning, or assessments of, providers of assisted living services that the agency or organization possesses and is needed for the workgroup to complete its review. The workgroup must use the data and assessments only for the purpose of its review.

The workgroup must complete a report of its review by July 1, 2018. The report must include recommendations regarding assisted living services. The workgroup is

prohibited from recommending that different types of facilities be allowed to be providers under the Assisted Living program in addition to residential care facilities (i.e., assisted living facilities) licensed by the Department of Health. If the workgroup recommends that a new program be created, it must include (1) a name for the new program and its services that distinguishes them for the Assisted Living program and assisted living services, (2) potential sources of funding the new program that do not reduce any pre-existing or future federal or state funds for the Assisted Living program, and (3) a determination of whether a new Medicaid waiver would be needed for the new program. The report must be submitted to the Governor, General Assembly, and Joint Medicaid Oversight Committee. It also must be made available to the public. On submission of the report, the workgroup ceases to exist.

### **Nursing facility level of care assessments**

(Sections 209.20 and 809.10)

The act permits the Department of Medicaid to enter into an interagency agreement with the Department of Aging under which the Department of Aging assesses whether Medicaid applicants and recipients need a nursing facility level of care. This uncodified provision has no effect after June 30, 2019, but the Department of Medicaid has this authority on an ongoing basis under continuing codified law.<sup>4</sup>

### **Long-term care consultations**

(Sections 209.20 and 809.10)

The act requires the Department of Aging to provide long-term care consultations to help individuals plan for their long-term health care needs. This uncodified provision has no effect after June 30, 2019, but the Department has this authority on an ongoing basis under continuing codified law.<sup>5</sup>

### **Administration of parts of the Medicaid program**

(Sections 209.20 and 809.10)

The act requires the Department of Aging to administer the following parts of the Medicaid program through an interagency agreement with the Department of Medicaid: the PASSPORT Program, Assisted Living Program, and PACE. This

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<sup>4</sup> R.C. 5165.04, not in the act.

<sup>5</sup> R.C. 173.42.

uncodified provision has no effect after June 30, 2019, but the Department of Aging has this duty on an ongoing basis under continuing codified law.<sup>6</sup>

## **Performance payment for PASSPORT administrative agencies**

(Sections 209.20 and 809.10)

The act permits the Department of Aging to design and utilize a method of paying for PASSPORT administrative agency operations that includes a pay-for-performance incentive component. A PASSPORT administrative agency would earn an incentive payment by achieving consumer and policy outcomes. This provision has no effect after June 30, 2019.

## **References to defunct programs**

### **Ohio Transitions II Aging Carve-Out Program**

(R.C. 5166.01, 5166.16, and 5166.30; repealed R.C. 5166.13)

The act eliminates references to the defunct Ohio Transitions II Aging Carve-Out Program. The Program was a Medicaid waiver program administered by the Department of Aging. The federal waiver authorizing the Program expired July 1, 2015.<sup>7</sup>

### **Choices Program**

(R.C. 173.42, 173.51, 173.55, and 5166.16; repealed R.C. 173.53)

The act eliminates references to the defunct Choices Program, which was a Medicaid waiver program administered by the Department of Aging. The Program ceased to operate on June 30, 2014.

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<sup>6</sup> R.C. 173.50, 173.52, and 173.54, none of which are in the act.

<sup>7</sup> Amendment to the Ohio Transitions II Aging Carve-Out Program, approved September 15, 2014, by the U.S. Department of Health and Human Services.



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## DEPARTMENT OF AGRICULTURE

### Amusement rides

- Requires the Director of Agriculture to charge a prorated fee for an operating permit for an inflatable ride that has a term of less than one year.
- Eliminates the \$105 annual inspection and reinspection fee for inflatable amusement rides, and instead requires the Director to set the fee by rule, within stipulations.
- Adds two members representing the inflatable amusement ride industry to the Advisory Council on Amusement Ride Safety.
- Would have divided the inspection of aquatic amusement rides between the Departments of Agriculture (structural) and Health (sanitation) (VETOED).

### Soybean Marketing Program

- Establishes the Soybean Marketing Program, and generally applies to it the procedures, requirements, and other provisions that apply to the Grain Marketing Program.
- Prohibits the levying of assessments under the Soybean Marketing Program if assessments are levied under the National Soybean Checkoff Program.

### Nursery stock collector or dealer fee exemption

- Revises an exemption from the nursery stock collector or dealer license fee for a person who is not a nurseryman, dealer, or collector by limiting the exemption to a person who:
  - Conducts the sale of nursery stock as a fund raiser for a nonprofit organization for up to two days a year; and
  - Makes up to \$2,000 (formerly \$200) in annual revenue from the sale of nursery stock.

### Bee inspection fee allocation

- Reallocates money generated from fees charged for the inspection of bee colonies and beekeeping equipment to the Plant Pest Program Fund, rather than the General Revenue Fund as provided in former law.



## **Interstate Pest Control Compact**

- Eliminates Ohio's participation in the Interstate Pest Control Compact.

## **Appraisal of animals ordered destroyed**

- Allows the Director to order the destruction of an animal because of disease before it is appraised, rather than prohibiting the destruction order until after the appraisal as under former law.
- Requires the Director to take an inventory of each animal that is destroyed and record sufficient information for an appraisal to be conducted.
- Revises procedures that authorize the owner of an animal that is ordered destroyed to have the animal appraised, to request an appraisal by the Department of Agriculture, and, if the two appraisals do not agree, to have a third appraisal conducted by a disinterested party.
- Requires the owner of an animal to have an initial appraisal conducted and to request an appraisal by the Department within 30 days of the destruction order.

## **Captive deer licenses – civil penalties**

- Authorizes the Director to assess a civil penalty for violations of the law that requires the licensure of captive deer propagators and animal preserves with captive deer.
- Specifies that the civil penalties are between \$500 and \$10,000, depending on the number of offenses within a five-year period.

## **Food regulation**

- Authorizes the Director to assess a civil penalty against a person who is operating a food processing establishment (for example: a confectionery, cannery, or bottler) without registering the establishment with the Director.
- Specifies that the civil penalties are between \$500 and \$5,000, depending on the number of offenses within a five-year period.
- Expands the exemption from the requirement to pay a food processing establishment registration fee to all bakeries, rather than solely home bakeries as under former law.
- Exempts a processor of apple syrup or apple butter who directly harvests from trees at least 75% of the apples used to produce the apple syrup or butter from:



--The law governing retail food establishments; and

--The Director's rules governing standards and good manufacturing practices for food processing establishments.

### **Wine tax diversion to Grape Industries Fund**

- Extends through June 30, 2019, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund.

### **Ohio Agriculture Scholarships – Agro Ohio Fund**

- Revises the law governing Ohio Agriculture license plates by:
  - Requiring the Director to use money generated from the license plates for promoting agriculture, rather than for the Agriculture License Plate Scholarship Program as under former law;
  - Eliminating the Ohio Agriculture License Plate Scholarship Program and the related Scholarship Fund Board; and
  - Requiring money generated from the license plates to be deposited in the Agro Ohio Fund rather than the Ohio Agriculture License Plate Scholarship Fund, which the act eliminates.
- Revises the purposes for which money in the Agro Ohio Fund may be used, including eliminating the Agro Ohio Fund grant program under which the Director awarded grants for promoting agriculture in Ohio.

### **Animal and Consumer Protection Laboratory Fund**

- Allocates money generated from the registration and renewal of livestock brands to the Animal and Consumer Protection Laboratory Fund, rather than the Brand Registration Fund, which the act eliminates.

### **Matching funds, soil and water conservation districts**

- Eliminates the requirement that the Department had to match soil and water conservation district funds received pursuant to a contract to carry out Phase II of the federal storm water program.



## **Amusement rides**

### **Inflatable amusement rides**

(R.C. 1711.51 and 1711.53)

#### **Operating permit fee**

Under the act, if the Director of Agriculture issues a permit to operate an inflatable ride for a term of less than a year, the Director must charge a prorated fee for the permit equal to  $\frac{1}{12}$  of the annual permit fee multiplied by the number of full months for which the permit is issued. Under former law, if the Director issued an operating permit for a period of less than one year, the Director had to charge the full annual permit fee of \$150.

#### **Inspection/reinspection fee**

The act eliminates the \$105 annual inspection and reinspection fee for an inflatable amusement ride, and instead requires the Director to establish a new fee by rule. However, the Director must adopt a fee that is less than \$105 and that reasonably reflects the costs of an inspection and reinspection.

#### **Advisory Council**

Under the act, the Governor, by October 29, 2017, must appoint two additional members to the Advisory Council on Amusement Ride Safety. They must be representatives of the inflatable amusement ride industry who are owners or operators of inflatable amusement rides or consultants from the industry. Under continuing law, the Council is tasked with studying topics pertaining to the amusement ride industry and making recommendations to the Director regarding rules that address amusement ride safety.

### **Aquatic amusement rides (VETOED)**

(R.C. 1711.53, 3749.01, 3749.02, 3749.03, 3749.04, 3749.05, 3749.06, and 3749.07; Section 737.31)

The Governor vetoed a provision that would have divided the inspection of aquatic amusement rides between the Departments of Agriculture and Health. The Department of Agriculture would have retained its authority over the structural aspects of aquatic amusement rides. The Department of Health and local boards of health would have had authority over the sanitation aspects of aquatic amusement rides. Because the act's provisions were vetoed, the Department of Agriculture retains full authority over aquatic amusement ride inspections.



## **Soybean Marketing Program**

(R.C. 924.01, 924.09, and 924.211)

The act establishes the Soybean Marketing Program, and generally applies the procedures, requirements, and other provisions that are established for the Grain Marketing Program to the Soybean program. However, unlike the Grain Marketing Program's operating committee, the Soybean Marketing Program's operating committee must consist of 18 members, 14 of whom must be elected by eligible soybean producers in accordance with the election procedures that apply to the Grain Marketing Program's committee. The Director must appoint the remaining four members from the United Soybean Board from Ohio, who will serve as voting members.

With regard to levying assessments to fund the Soybean Marketing Program, the Director must levy an assessment on soybean producers at the rate of 0.5% of the per-bushel price of soybeans at the first point of sale. This assessment is consistent with the assessments levied on grains under the Grain Marketing Program. However, the Director may not levy an assessment if assessments are levied under the National Soybean Checkoff Program.

## **Nursery stock collector or dealer fee exemption**

(R.C. 927.55)

The act revises an exemption from the nursery stock (plants, shrubs, and trees) collector or dealer license fee for a person who is not a nurseryman, dealer, or collector by limiting the exemption to a person who:

- (1) Conducts the sale of nursery stock as a fund raiser for a nonprofit organization for up to two days a year; and
- (2) Makes up to \$2,000 (formerly \$200) in annual revenue from the sale of nursery stock during a calendar year.

## **Bee inspection fee allocation**

(R.C. 909.10)

The act reallocates money generated from inspection fees charged for inspecting bee colonies and beekeeping equipment to the Plant Pest Program Fund, rather than the General Revenue Fund as provided in former law. The Department of Agriculture uses money in the Plant Pest Program Fund to administer the law governing nursery stock, plant pests, and apiaries.



## **Interstate Pest Control Compact**

(Repealed R.C. 921.60 to 921.65)

The act eliminates Ohio's participation in the Interstate Pest Control Compact. The Compact was formed in 1968 with the assistance of the Council of State Governments. It serves to remedy funding restraints, bridge the jurisdictional gaps that exist among federal and state governments, and address the realities of dynamic plant pest infestations or outbreaks. According to the Department, Ohio is leaving the Compact because the functions authorized under the Compact are now performed under the National Association of State Departments of Agriculture Pest Eradication Assistance and Resources Program.

## **Appraisal of animals ordered destroyed**

(R.C. 941.12 and 941.55)

The act revises the appraisal procedures that apply to an owner of an animal that is ordered destroyed by the Director because the animal is diseased. The appraisal is used to determine the amount of indemnification for the animal that the person may claim. The act also allows the Director to order the destruction of an animal before it is appraised, which former law prohibited.

If an animal is ordered destroyed by the Director, the Director must take an inventory of the animal and record sufficient information in order for an appraisal to be conducted, if necessary. The animal's owner must:

- (1) Request the information recorded by the Director, as specified above, and have an appraisal of the animal conducted at the owner's expense; and
- (2) Request that the Department conduct an appraisal of the animal.

If the owner and the Department do not agree on the value of the animal, the two must select a third disinterested person, at the owner's expense, to appraise the animal. The appraisal conducted by that person is the value of the animal for purposes of indemnification.

The owner of an animal must have an appraisal conducted and request an appraisal by the Department within 30 days of the destruction order. Otherwise, the owner waives the right to indemnification for that animal.



## **Captive deer licenses – civil penalties**

(R.C. 943.23)

Under the act, the Director, after providing an opportunity for a hearing under the Administrative Procedure Act, may assess a civil penalty against a person who has violated or is in violation of the law requiring the licensure of animal preserves with captive deer and captive deer propagators. It establishes the amount of the civil penalties as follows:

(1) If, within five years of the violation, the Director has not assessed a civil penalty against the person who committed the violation, up to \$500.

(2) If, within five years of the violation, the Director has assessed one civil penalty against the person who committed the violation, up to \$2,500.

(3) If, within five years of the violation, the Director has assessed two or more civil penalties against the person who committed the violation, up to \$10,000.

Civil penalties must be credited to the Captive Deer Fund, which the Director uses to administer the captive deer program.

## **Food regulation**

### **Food processing establishment enforcement**

(R.C. 3715.041)

Law unchanged by the act requires a food processing establishment to annually register with the Director. The act enhances the Director's enforcement authority regarding the registration by authorizing the Director to assess a civil penalty against a food processing establishment that is not registered. A food processing establishment is a premises or part of a premises where food is processed or otherwise held or handled for distribution to another location or for sale at wholesale. Confectioneries, canneries, and bottlers are examples of food processing establishments.

Under the act, if the Director finds that a person is operating a food processing establishment without registering it, the Director must issue a letter of warning and give the person ten days to register the establishment. If the person fails to register the establishment within the ten-day period, the Director may assess a civil penalty against the person. If the Director assesses a civil penalty, the Director must do so as follows:

(1) If, within five years of the issuance of the warning letter, the Director has not previously assessed a civil penalty against the person, up to \$500;



(2) If, within five years of the issuance of the warning letter, the Director has previously assessed one civil penalty against the person, up to \$1,500; or

(3) If, within five years of the issuance of the warning letter, the Director has previously assessed two or more civil penalties against the person, up to \$5,000.

### **Bakeries**

(R.C. 3715.041)

The act exempts all bakeries from the requirement to pay the registration fee for registering as a food processing establishment. Under prior law, the exemption applied only to home bakeries.

### **Apple syrup and apple butter processors**

(R.C. 3715.021 and 3717.22)

The act exempts a processor of apple syrup or apple butter who directly harvests from trees at least 75% of the apples used to produce the apple syrup or butter from:

(1) The law governing retail food establishments; and

(2) The Director's rules governing standards and good manufacturing practices for food processing establishments.

### **Wine tax diversion to Grape Industries Fund**

(R.C. 4301.43)

The act extends through June 30, 2019, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund. Continuing law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to \$1.48 per gallon. From the taxes paid, a portion is credited to the Fund for the encouragement of the state's grape and wine industry. The remainder is credited to the GRF.

### **Ohio Agriculture Scholarships – Agro Ohio Fund**

(R.C. 901.04, 4503.503, and 4503.77; repealed R.C. 901.90)

The act alters the law governing Ohio Agriculture license plates by doing all of the following:



(1) Requiring the Director to use money generated from the registration and renewal of the license plates solely for promoting agriculture in Ohio rather than for the Ohio Agriculture License Plate Scholarship Program as under prior law;

(2) Eliminating the Ohio Agriculture License Plate Scholarship Program, which benefited students enrolled at Ohio institutions of higher learning in programs related to agriculture;

(3) Eliminating the Ohio Agriculture License Plate Scholarship Board, which governed the Scholarship Program, including the awarding of scholarships;

(4) Eliminating the Ohio Agriculture License Plate Scholarship Fund; and

(5) Requiring money generated from the license plates to be deposited in the existing Agro Ohio Fund.

### **Uses of money in the Agro Ohio Fund**

The act revises the allowable uses of money credited to the Agro Ohio Fund by first eliminating the Director's authority to use money in the Fund to administer a grant program to promote agriculture in Ohio. Second, it eliminates the requirement that money in the Fund that is derived from the proceeds of land escheated to the state in rural areas be used for the "benefit of agriculture." Finally, it specifies that money deposited in the Fund, that is not otherwise allocated under continuing law, must be used for the purpose of promoting agriculture in Ohio, as determined by the Director.

### **Animal and Consumer Protection Laboratory Fund**

(R.C. 947.06 and 901.43)

The act allocates money generated from the registration and renewal of livestock brands to the Animal and Consumer Protection Laboratory Fund, rather than to the Brand Registration Fund. It also eliminates the Brand Registration Fund, which was used to pay the costs and expenses of administering the Department's livestock brand registration program. The Animal and Consumer Protection Laboratory Fund is used by the Department to pay the expenses necessary to operate the animal industry laboratory and the consumer protection laboratory, including the purchase of supplies and equipment.



## Matching funds, soil and water conservation districts

(R.C. 940.15)

The act alters the law that requires the Department, within the limits of funds appropriated to it, to pay to a soil and water conservation district a matching amount of up to \$1 for every \$1 raised from any of four local sources. Specifically, it eliminates the requirement that the Department match money received by a district from a contract entered into between the district and a board of county commissioners to carry out projects related to Phase II of the federal storm water program. It also eliminates a cap on the matching amounts related to the federal program (effective through 2017), which was set at the amount a district received during calendar year 2013.



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## OHIO AIR QUALITY DEVELOPMENT AUTHORITY

- Repeals the authority of the Ohio Air Quality Development Authority (OAQDA) to issue bonds to fund loans and grants for advanced energy projects, but retains its authority to issue the loans and grants from related funds.
- Clarifies that bonds and notes issued by the OAQDA for air quality projects are not general obligations.

### Repeal of bond-issuing authority for advanced energy projects

(R.C. 166.08, 166.11, and 3706.27; repealed R.C. 3706.26)

The act repeals the authority of the Ohio Air Quality Development Authority (OAQDA) to issue bonds to fund loans and grants for advanced energy projects. An advanced energy project is any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users.<sup>8</sup>

Under continuing law, OAQDA retains authority to make loans and provide grants for advanced energy projects from any money remaining in the Advanced Energy Research and Development Taxable Fund (for loans) or the Advanced Energy Research and Development Fund (for grants).<sup>9</sup> These funds were funded by the bonds that the act no longer allows to be issued. Continuing law also permits some of the proceeds from the state's transfer to JobsOhio of spirituous liquor distribution to go to the two advanced energy funds.<sup>10</sup>

### Bonds and notes for air quality projects

(R.C. 3706.05)

The act clarifies that bonds and notes issued by the OAQDA for air quality projects are not general obligations. It also emphasizes that the bonds and notes are payable *solely* out of OAQDA revenues.

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<sup>8</sup> R.C. 3706.25, not in the act.

<sup>9</sup> R.C. 166.30, not in the act.

<sup>10</sup> R.C. 4313.02(B)(3), not in the act.



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## ATTORNEY GENERAL

### Monetary settlements

- Requires the Attorney General (AG) to notify the Director of the Office of Budget and Management (OBM) of the amount of money to be collected or received under, and the terms of, a court order naming Ohio or a state agency or officer as the recipient of the money.
- Provides for the distribution and transfer from the Attorney General Court Order Fund to the appropriate fund of the money ordered by a court to be paid to Ohio or a state agency or officer.
- Prohibits state agencies from agreeing to any monetary settlement that obligates payments from any fund within the state treasury without consulting with the OBM Director.

### Domestic violence programs

#### Domestic Violence Program Fund

- Creates in the state treasury the Domestic Violence Program Fund consisting of appropriated and donated moneys and administered by the AG to provide funding to domestic violence programs, and requires the AG to adopt implementing rules.
- Requires that funding priority be given to domestic violence programs in existence on and after July 1, 2017.
- Specifies the purposes for which the funds received by either type of domestic violence program must be used.

#### State Victims Assistance Advisory Council

- Requires the State Victims Assistance Advisory Council to advise the AG in determining the needs of domestic violence victims, developing a policy for administering the Domestic Violence Program Fund, and making recommendations for distributing the funds.

### Removing sealed or expunged records from databases – pilot

- Establishes a pilot program, to operate through September 29, 2018, that creates a procedure for removing sealed or expunged criminal records from databases, websites, and publications, upon notice of court orders sent to a qualified third party.



### **Third party to receive notices of sealed or expunged records**

- Requires the AG, under the pilot program, to select a private entity as a qualified third party to receive notices of court orders sealing or expunging criminal case records under procedures provided in continuing law.
- Requires the AG and the selected qualified third party to enter into a contract specifying the third party's duties and the fee to be paid by an applicant for the sealing or expungement of records who wishes to have the court send the third party notice of its record sealing or expunging order.
- Specifies that the AG has oversight of the third party's functions and activities.

### **Receipt of notice of court order**

- Requires the qualified third party who receives notice of a court order sealing or expunging the records to send notice of the order to identified data repositories and to websites and publications that the third party knows utilize, display, publish, or disseminate any information from those records.
- Requires an identified data repository that receives the notice to remove from its database, and the websites and publications to remove from the website or publication, all records that are subject to the court order sealing or expunging the records and all references to, and information from, those records.

### **Procedure upon application to have records sealed or expunged**

- Upon an application to have the records of the applicant's criminal case sealed or expunged, requires the clerk of court to notify the applicant in writing that the court will send notice of its order sealing or expunging the records to the qualified third party.
- Requires the applicant to notify the clerk if the applicant wishes to opt out of the benefits of the court sending the notice to the qualified third party and to have data repositories, websites, and publications remove those records from their database, website, or publication.
- If the applicant does not opt out, requires the applicant to pay the fee provided in the contract between the AG and the qualified third party, and the clerk of court to remit the fee to the qualified third party upon issuance of the court order sealing or expunging the records.
- If the application is denied by the court or the applicant opts out before the issuance of a court order, requires the clerk to remit the fee back to the applicant.



## **Credit for drug use prevention training**

- Allows peace officers to earn continuing professional training hours by providing drug use prevention education in K-12 public schools.

## **Peace Officer Training Commission**

- Adds one member from a fraternal organization that represents law enforcement officers to the Ohio Peace Officer Training Commission.

## **Monetary settlements**

(R.C. 109.112 and 126.071)

The act requires the Attorney General (AG) to notify the Director of the Office of Budget and Management (OBM) of the amount of any money to be collected or received under, and the terms of, a court order, if Ohio or any state agency or officer is named as the recipient of the money. The OBM Director must determine, in consultation with the AG, the appropriate distribution of the money. Upon its collection or receipt, the AG must transfer the money from the Attorney General Court Order Fund to the appropriate fund (or funds) as determined by the OBM Director.

The act also prohibits state agencies from agreeing to any monetary settlement that obligates payments from any fund within the state treasury without consulting with the OBM Director.

## **Domestic violence programs**

(R.C. 109.46 and 109.91)

### **Domestic Violence Program Fund**

The act creates in the state treasury the Domestic Violence Program Fund, consisting of money appropriated to it by the General Assembly or donated to it. The AG must administer the Fund, may not use more than 5% of the moneys in it to pay associated administering costs, and must use 95% of the moneys to provide funding to domestic violence programs. "Domestic violence program" means any of the following:

- The nonprofit state domestic violence coalition designated by the Family and Youth Services Bureau of the U.S. Department of Health and Human Services;



- A program operated by a nonprofit entity with the primary purpose of providing a broad range of services to domestic violence victims that may include hotlines, emergency shelters, victim advocacy and support, justice systems advocacy, individual and group counseling for adults and children, or transitional service and education to prevent domestic violence. This program may provide some or all of those services.

The AG must adopt rules establishing procedures for domestic violence programs to apply for funding and for the AG to distribute money to the programs. Priority must be given to the domestic violence programs in existence on and after July 1, 2017.

A domestic violence program must use the funds for the following purposes:

- To provide training and technical assistance to service providers, if the program that receives the funds is the nonprofit state domestic violence coalition;
- To provide services to domestic violence victims, including education to prevent domestic violence, if the program that receives the funds is a nonprofit victim service entity. The funds received may also be used for general operating support, including capital improvements and primary prevention and risk reduction programs for the general population.

### **State Victims Assistance Advisory Council**

The act requires the State Victims Assistance Advisory Council to advise the AG in determining the needs of domestic violence victims, developing a policy for administering the Domestic Violence Program Fund, and making recommendations for distributing the funds.

### **Removing sealed or expunged records from databases – pilot**

(R.C. 109.38, 109.381, 2953.32, 2953.37, 2953.38, and 2953.53)

The act establishes a pilot program, to operate through September 29, 2018, that creates a procedure to remove sealed or expunged criminal records from databases, websites, and publications following the court's issuance of the order to seal or expunge. The pilot procedure involves sending notices of the court orders sealing or expunging records to a qualified third party selected by the AG, and the third party notifying data repositories, websites, and publications to remove the records. The person who applies to have records sealed or expunged must pay a fee for notifying the third party, but may opt out.



## Third party to receive notices of sealed or expunged records

### Appointment and qualifications

The AG must select a private entity as a qualified third party to receive notices of court orders of sealed or expunged records. The entity must have the following qualifications (see "**Definitions**" of terms in quotation marks):

- Specific knowledge and expertise regarding the operation of the Fair Credit Reporting Act (FCRA);<sup>11</sup>
- Prior experience in interacting and cooperating with "consumer reporting agencies" regarding their obligations for accuracy under section 1681e(b) of the FCRA (requirement of maximum possible accuracy of the information concerning the individual about whom the consumer report relates) and reinvestigations of disputed information under section 1681i of the FCRA (procedures in case of disputed accuracy of any information in a consumer's file) to ensure the accomplishment of the goal of updating their records, files, or databases containing references to, or information on, convictions of crime (conviction of, or plea of guilty to, an offense).
- Relationships with data aggregators, public record vendors, and other companies that collect and compile data or information in conviction records to ensure their cooperation in maintaining the legitimacy, accuracy, completeness, and security of that data or information.
- At least two years' experience in processing and sending notices of sealed or expunged conviction records to "identified data repositories."
- Not an identified data repository or an entity that is owned or controlled by an identified data repository.
- Meet all security clearances and requirements imposed by the AG to ensure that the entity does not misuse any information received from the courts under the act and that other persons do not have unauthorized access to that information.

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<sup>11</sup> 15 U.S.C. 1681 *et seq.*, as amended.



### **Term of service**

The selected qualified third party must serve for a minimum of three years. The AG may either select another qualified third party at the end of any three-year period or retain the existing qualified third party for another three-year period.

### **AG's functions**

Upon the selection or retention of a qualified third party, the AG and the party must enter into a contract that includes:

(1) The qualified third party's duties;

(2) The fee to be paid by an applicant for a court order to seal or expunge records who wishes to have the court send notice to the qualified third party and to have the procedures described below in "**Receipt of notice of court order**" apply to the records; and

(3) Any other provisions as determined by the AG in rules.

The AG must determine the portion of the fee described in (2) above that the qualified third party retains for its services and each portion that the third party must remit to the clerk of the court that sent the notice of the court order sealing or expunging the records, the AG, and the state treasury.

The AG has oversight of the functions and activities of the qualified third party, and must promulgate rules to implement the act.

### **Procedure upon application to have records sealed or expunged**

At the time an applicant files an application to have the records of a case sealed or expunged:

- The clerk of court must notify the applicant in writing that the court will send notice of its order granting the application to the qualified third party and inform the applicant of the procedures described below in "**Removal of records after receipt of notice.**"
- The applicant must then notify the clerk if the applicant wishes to opt out of receiving the benefits of having the court send notice of its order to the qualified third party and having those procedures apply to the records that are subject to the order.
- If the applicant does not opt out, the applicant must pay the clerk the fee provided in the contract between the AG and the qualified third party.



Upon issuance of an order granting the application to seal or expunge the records, unless the applicant opts out, the clerk must remit the fee paid by the applicant to the qualified third party, and the court must send notice of its order to the qualified third party. If the application is denied for any reason or if the applicant informs the clerk in writing, before the court issues the order, that the applicant wishes to opt out, the clerk must remit the fee back to the applicant.

### **Removal of records after receipt of notice**

Upon receiving a notice of a court order sealing or expunging the records subject to the order (see below), the qualified third party must send a notice of that order to identified data repositories (see definition below) and to websites and publications that the qualified third party knows utilize, display, publish, or disseminate any information from those records.

Immediately upon receipt of the notice, an identified data repository, website, or publication must remove all records that are subject to the court order sealing or expunging the records and all references to, and information from, those records.

### **Definitions**

The act defines the following terms:

"**Consumer reporting agency**" has the same meaning as in section 1681a(f) of the Fair Credit Reporting Act, that is, any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

"**Identified data repository**" means either:

- A person or entity that is a consumer reporting agency and is known to a qualified third party as having a database that includes publicly available records of convictions of crime and from which consumer reports are prepared pursuant to the FCRA; or
- Any person or entity, other than a consumer reporting agency, that is known to a qualified third party as having a database that includes publicly available records of convictions of crime and registers with a qualified third party for the purpose of receiving notices of court orders of sealed or expunged records and agreeing to remove those records and any



references to and information from those records from the person's or entity's database.

### **Background – sealing or expunging criminal records**

Ohio law, unchanged by the act, permits any of the following to apply to have the records of a case sealed:

- An "eligible offender" generally may apply to the sentencing court if convicted in Ohio or to the court of common pleas if convicted in another state or a federal court for the sealing of the record of the case that pertains to the conviction. "Eligible offender" generally means anyone who has been convicted of an offense in Ohio or any other jurisdiction and who has not more than one felony conviction, not more than two misdemeanor convictions, or not more than one felony conviction and one misdemeanor conviction in Ohio or any other jurisdiction.<sup>12</sup>
- Any person who has been arrested for any misdemeanor offense and who has effected a bail forfeiture for the offense charged may apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing of the record of the case that pertains to the charge.
- Any person, who is found not guilty of an offense by a jury or a court or who is the defendant named in a dismissed complaint, indictment, or information, may apply to the court for an order to seal the person's official records in the case.<sup>13</sup>
- Any person, against whom a no bill is entered by a grand jury, may apply to the court for an order to seal the person's official records in the case.<sup>14</sup>

The following may apply for expungement of the record of the case under continuing law unchanged by the act:

- Any person who is or was convicted of, or pleaded guilty to, specified violations under the offense of improperly handling firearms in a motor vehicle as they existed prior to September 30, 2011, and is specifically

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<sup>12</sup> R.C. 2953.31(A), not in the act.

<sup>13</sup> R.C. 2953.52(A)(1), not in the act.

<sup>14</sup> R.C. 2953.52(A)(2), not in the act.



authorized by law to file an application may apply to the sentencing court for the expungement of the record of conviction.

- Any person who is or was convicted of any of the following offenses may apply to the sentencing court for the expungement of the record of conviction if the person's participation in the offense was a result of the person having been a victim of human trafficking: soliciting, solicitation after a positive HIV test, loitering to engage in solicitation, loitering to engage in solicitation after a positive HIV test, prostitution, or engaging in prostitution after a positive HIV test.

Ohio law, unchanged by the act, also provides the procedures, including a hearing, for the court to make specified determinations regarding the circumstances of the applicant and issue an order based on its determinations.

### **Expiration of pilot program**

The pilot program ends on September 29, 2018.

### **Credit for drug use prevention training**

(R.C. 109.803)

Under the act, the AG must include, in the AG's rules setting minimum standards for continuing professional training (CPT) for peace officers and troopers, specific rules that:

- Allow peace officers and troopers to earn credit for up to four hours of CPT for time spent on duty providing drug use prevention education training that utilizes evidence-based curricula to students in K-12 public schools;
- Allow peace officers to earn up to four CPT hours for other peace officers in the same law enforcement agency by providing that drug use prevention education in K-12 public schools; and
- Prohibit the use of CPT hours so earned from offsetting any mandatory hands-on training requirement.



## Peace Officer Training Commission

(R.C. 109.71)

The act adds a member to the Ohio Peace Officer Training Commission who represents a fraternal organization representing law enforcement officers. Under continuing law, unchanged by the act, members must be appointed by the Governor with the advice and consent of the Senate. The newly added member increases the Commission's membership to ten.



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## AUDITOR OF STATE

- Increases the time period during which the Auditor of State must review a sworn affidavit and evidence against a local fiscal officer and must determine whether clear and convincing evidence supports the allegations.
- Retains the fiscal watch law that changed the time period for filing a financial recovery plan and that added a condition for moving a municipal corporation, county, or township from a fiscal watch to a fiscal emergency.

### **Auditor of State removal of local government fiscal officers**

(R.C. 319.26, 321.37, 507.13, and 733.78)

The act increases, from ten business days to 30 calendar days, the time period during which the Auditor of State must review a sworn affidavit and evidence against a local fiscal officer (i.e., county auditor, county treasurer, township fiscal officer, or fiscal officer of a city or village) and must determine whether clear and convincing evidence supports the allegations. Under continuing law, if the Auditor of State finds by clear and convincing evidence that an allegation is supported by the evidence, the Auditor must submit written findings to the Attorney General, who must review them within ten business days.

### **Continuance of a law regarding fiscal watches**

(Section 105.20 (repealing the future version of R.C. 118.023))

In 2015, H.B. 64 of the 131st General Assembly made two changes to a law (R.C. 118.023) that specifies what a municipal corporation, county, or township must do when it has been declared to be under a fiscal watch. The changes were to be in effect only until September 29, 2017. The act retains the two changes. In other words, the law continues to operate the way it does as amended by H.B. 64, and the changes do not "expire" September 29, 2017.

The first change that the act retained reduced, from 120 to 90 days, the time a local government under a fiscal watch was given to submit its financial recovery plan to the Auditor of State. The other change retained added another condition under which the Auditor of State must move the local government from a fiscal watch to a fiscal emergency: when the Auditor of State finds that the local government has not made reasonable proposals or otherwise taken action to discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal watch, and the



Auditor determines a fiscal emergency declaration is necessary to prevent further decline. (The Auditor of State already must move a local government from a fiscal watch to a fiscal emergency if the local government does not submit a feasible financial recovery plan within a prescribed time period.)



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## OFFICE OF BUDGET AND MANAGEMENT

- Requires state agencies and state issuers seeking changes to certain state public obligations laws to timely submit those changes to the Director of Budget and Management for review and comment.
- Authorizes the Director to correct accounting errors committed by any state agency or state institution of higher education.
- Permits the Director, under certain circumstances, to transfer interest earned by any state fund to the GRF.
- Authorizes the Director, during the biennium ending June 30, 2019, to transfer up to \$200 million in cash to the GRF from non-GRF funds that are not constitutionally restricted.
- Appropriates any money the Controlling Board approves for expenditure, or any increase in appropriation the Controlling Board approves, pursuant to continuing law.
- Requires the Director to issue reports, beginning October 1, 2018, and every six months thereafter, on:
  - Line items that have been discontinued but have a remaining balance;
  - Funds without expenditures;
  - Funds that have spent less than 50% of their appropriations; and
  - Dedicated purpose funds that have over 100% of their appropriation in cash on hand.
- Requires the Director to send the reports to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House, and the chairpersons of the House and Senate Finance committees.
- Abolishes various uncodified funds.



## **Review of public obligation law changes**

(R.C. 126.11)

The act requires state agencies or state issuers seeking new legislation or changes to existing law relating to public obligations for which the state or a state agency is the direct obligor, or obligor on any backup security or related credit enhancement facility, to timely submit the legislation or changes to the Director of Budget and Management for review and comment. For this purpose, "public obligations" means obligations of a public issuer to make payments under installment sale, lease, lease purchase, or similar agreements, which obligations may bear interest or interest equivalent.<sup>15</sup>

## **Correction of accounting errors**

(R.C. 126.22)

The act authorizes the Director to correct accounting errors committed by any state agency or state institution of higher education, including reestablishing encumbrances cancelled in error.

## **Transfers of interest to the GRF**

(Section 512.10)

The act permits the Director, through June 30, 2019, to transfer interest earned by any state fund to the GRF, as long as the source of revenue of the fund is not restricted or protected under the Ohio Constitution or federal law.

## **Transfers of non-GRF funds to the GRF**

(Section 512.20)

The act authorizes the Director, during the biennium ending June 30, 2019, to transfer up to \$200 million in cash to the GRF from non-GRF funds that are not constitutionally restricted.

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<sup>15</sup> R.C. 133.01(GG)(2), not in the act.



## **Expenditures, appropriation increases approved by Controlling Board**

(Section 503.110)

The act states that any money the Controlling Board approves for expenditure, or any increase in appropriation the Controlling Board approves, as permitted under continuing law<sup>16</sup> is appropriated for the period ending June 30, 2019.

## **Reports every April and October**

(R.C. 126.231)

The act requires the Director to issue reports, beginning October 1, 2018, and every six months thereafter, on:

- Line items that have been discontinued, but have a remaining balance;
- Funds that have spent less than half of the appropriations;
- Dedicated purpose funds that have over 100% of their appropriation in cash on hand; and
- Either: for an October report, funds that had no expenditures in the immediately preceding fiscal year; or for an April report, funds that had no expenditures in the current fiscal year.

The reports must be furnished to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House, and the chairpersons of the Finance committees of the Senate and House.

## **Various uncodified funds abolished**

(Section 512.90)

The act requires the Director to abolish various uncodified funds pertaining to certain state agencies, as indicated in the act, after (1) transferring their cash balances to other funds, and (2) cancelling and reestablishing encumbrances. The amendment or repeal of any Revised Code sections that create any of the abolished funds is addressed in other parts of this analysis.

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<sup>16</sup> See, for example, R.C. 131.35 (the amendments to which were vetoed); R.C. 127.14 and 131.39, not in the act.



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## **CAPITOL SQUARE REVIEW AND ADVISORY BOARD**

- Removes an obsolete reference in Capitol Square Review and Advisory Board Law that pertains to the Board's prior involvement in the management of the Ohio Governmental Telecommunications System.

### **Ohio Governmental Telecommunications System**

(R.C. 105.41)

The act removes an obsolete reference in Capitol Square Review and Advisory Board Law that pertains to the Board's prior involvement in the management of the Ohio Governmental Telecommunications System. This involvement was terminated and transferred in 2001 by H.B. 94 of the 124th General Assembly.



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## STATE BOARD OF CAREER COLLEGES AND SCHOOLS

### Disclosure fee

- Requires that for-profit career colleges and schools pay disclosure course fees charged by the State Board of Career Colleges and Schools and prohibits them from charging students for those fees either directly or indirectly.
- Requires the Board to refund all student disclosure course fees collected since January 2017.
- Specifies that the amount refunded to a career college and school for student disclosure fees must be used to refund students who were charged that fee by the college or school.

### Transfer of credits

- Requires the Chancellor of Higher Education to prepare a transferability strategy plan that enables students to transfer credits earned from a for-profit career college or school to a state institution of higher education without unnecessary duplication or institutional barriers.
- Requires the Chancellor to submit an interim strategy plan by July 1, 2018, and a final strategy plan by January 1, 2019, to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House.

### Disclosure fees

(R.C. 3332.071; Section 233.20)

The State Board of Career Colleges and Schools requires that each new Ohio student who enrolls in a private, for-profit career college or school complete an online consumer information course (called a student disclosure course), for which the Board assesses a \$25 fee.<sup>17</sup> The Board permitted the colleges and schools to pass that fee onto each student who was required to complete the course. The act requires that the career colleges and schools pay the disclosure course fees, and expressly prohibits them from charging students for the fees, either directly or through an increase in tuition and fees.

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<sup>17</sup> Ohio Administrative Code (O.A.C.) 3332-1-22.1(B).



Further, the Board must refund to schools all student disclosure course fees collected since January 2017. The schools then must refund the respective amount to each student who paid the fee.

### **Transfer of credits**

(R.C. 3333.166)

The act requires the Chancellor of Higher Education to prepare a transferability strategy plan for career colleges and schools. The Chancellor's plan must define criteria, policies, procedures, and timelines that enable students to transfer agreed-upon courses completed through a career college or school to a state institution of higher education without unnecessary duplication or institutional barriers. Where applicable, the Chancellor must use the articulation agreement and transfer initiative course equivalency system for associate degrees already established under continuing law.<sup>18</sup> The Chancellor must convene the "necessary stakeholders" to assist in preparing the plan.

The Chancellor must complete an interim strategy plan and submit it to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House by July 1, 2018, and submit a final strategy plan by January 1, 2019.

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<sup>18</sup> R.C. 3333.16, not in the act.



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## CASINO CONTROL COMMISSION

- Abolishes the Permanent Joint Committee on Gaming and Wagering, consisting of three members of the House and three members of the Senate, that was to study and submit recommendations on various items related to gaming, including reviewing license fees and penalties.

### **Permanent Joint Committee on Gaming and Wagering**

(R.C. 3772.032 (repealed), with conforming changes in R.C. 3772.03, 3772.17, 3772.99, and 5119.47)

The act abolishes the Permanent Joint Committee on Gaming and Wagering. The Committee was tasked with reviewing, studying, and submitting recommendations and reports on various items related to gaming, including reviewing license fees and penalties under the Casino Law.



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## DEPARTMENT OF COMMERCE

### **New Banking Law**

- Effective January 1, 2018, enacts a new Banking Law governing banks, savings and loan associations, and savings banks under the same statute.
- Provides for a single "bank" charter under which all three types of financial institutions are to operate.
- Eliminates the separate laws regulating savings and loan associations and savings banks.
- Makes numerous conforming changes throughout the Revised Code.

### **Good Funds Law: disbursements from escrow accounts**

- With respect to residential real property, increases – from \$1,000 to \$10,000 – the maximum amount that can be disbursed by an escrow or closing agent from an escrow account when the funds necessary for the disbursement are in the form of cash or check.
- Removes the requirement that certain electronically transferred funds be "via the real-time gross settlement system provided by the Federal Reserve Bank" and instead permits those funds be "any other electronically transferred funds."

### **Bedding and toy tests**

- Explicitly authorizes private laboratories that are designated by the Superintendent of Industrial Compliance to be used for tests and analysis of bedding and stuffed toys.

### **State Fire Marshal vacancy**

- Eliminates certain notification requirements by the State Fire Council when a vacancy occurs in the position of the State Fire Marshal.
- Eliminates the requirement that the Council make a list of all qualified applicants for the position of State Fire Marshal when a vacancy occurs.

### **Boiler certificates and fees**

- Eliminates the requirement of a satisfactory inspector's report for the Superintendent of Industrial Compliance to issue or renew a certificate of operation for certain



newly installed or operating power boilers, high pressure, high temperature water boilers, low pressure boilers, and process boilers.

- Maintains the inspection report requirement for certain boilers used to control corrosion.
- Requires the Superintendent, in considering whether to issue or renew a certificate, to find that the owner or user of boilers used to control corrosion kept certain records and did not operate the boiler at pressures exceeding the safe working pressure.
- Replaces the Director of Commerce with the Superintendent of Industrial Compliance as the person who may increase the fees for licensing, inspections, and issuing certificates.
- Authorizes the Superintendent to establish fees to pay the costs necessary to fulfill the duties of the Division of Industrial Compliance in relation to boilers.

### **Elevator fees**

- Limits the authority of the Division of Industrial Compliance to charge fees for elevator, escalator, and moving walk inspections to attempted inspections by a general inspector that failed through no fault of the inspector or the Division; eliminates the fee for successful inspections.
- Requires any person who fails to pay a certificate of operation fee within 45 days after the certificate's expiration to pay a late fee equal to 25% of the inspection fee.
- Allows the Superintendent of Industrial Compliance to increase the inspection fees and the fees for issuing and renewing certificates of operation.
- Allows the Superintendent to establish fees to pay the costs of the Division incurred in administering and enforcing the elevator laws.

### **Real estate brokers and salespersons**

- Clarifies that licensed real estate brokers and salespersons are not subject to the Standard Renewal Procedure Law.

### **Fireworks license moratorium**

- Extends the moratorium on issuing a fireworks manufacturer or wholesaler license and approving the geographic transfer of those licenses to September 15, 2018.



## **Liquor permits**

- Creates the A-5 liquor permit to allow a person to manufacture and sell ice cream containing between 0.5% and 6% alcohol by volume.
- Modifies the following conditions for certain community entertainment districts in which a D-5j liquor permit may be issued:
  - Decreases the minimum population of a municipal corporation in which the district may be located from 5,000 to 3,000; and
  - Increases the minimum investment in development and construction in the district from \$100 million to \$150 million.
- Expands the eligibility criteria for the issuance of an F-9 liquor permit by allowing it to be issued to a nonprofit that operates, or manages entertainment for, a city park if:
  - The park property is the subject of an agreement between a municipal corporation, a national nonprofit that is a foundation, and an Ohio-based nonprofit; and
  - The agreement is for the purposes of hosting outdoor performing arts events or orchestral performances.
- In conjunction with the F-9 permit eligibility expansion, exempts a person attending an outdoor performing arts event or orchestral performance from the Opened Container Law if certain conditions are met.

## **Tasting samples of alcohol**

- Allows casinos (D-5n liquor permit) and restaurants in casinos (D-5o liquor permit) to offer free tasting samples of beer, wine, or spirituous liquor if certain conditions apply.

## **Reports by H liquor permit holders**

- Requires a person who transports beer or intoxicating liquor into Ohio for delivery (H liquor permit holders) to an individual or entity that is not a liquor permit holder to submit a monthly report to the Division of Liquor Control.
- Requires the report to include specified information relating to the delivery, including the name and address of each consignor, the consignee of the beer or intoxicating liquor, and the date of delivery.



- Prohibits a person from violating the reporting requirements, and allows the Liquor Control Commission to suspend or revoke any liquor permit issued to the violator.

### **Merger of Manufactured Homes Commission into Department**

- Abolishes the Manufactured Homes Commission and transfers its duties to the Department.
- Creates the Manufactured Homes Advisory Council to advise the Director of Commerce concerning the Director's duties in the regulation of manufactured housing in Ohio.

### **Removal of manufactured homes from manufactured home parks**

- Modifies procedures regarding the removal of abandoned or unoccupied manufactured homes, mobile homes, or recreational vehicles.
- Requires the manufactured home park operator to provide a person that has an outstanding interest in the home or vehicle a written notice to remove it from the park or arrange for its sale within 21 days from the delivery of the notice.
- Permits the park operator to remove the home or vehicle from the manufactured home park, or sell, destroy, or transfer ownership of the home or vehicle, if a person does not come forward with an outstanding interest.
- Requires the park operator to submit a notarized affidavit (1) listing the value of an abandoned home or vehicle and (2) signed by the auditor confirming the value, and establishes procedures if there is a disagreement over the value.
- Permits the park operator to remove the home or vehicle from the park and potentially sell, destroy, or transfer ownership if a probate court does not grant administration of a deceased resident's estate within 90 days from eviction, reduced from one year under former law.
- Establishes procedures to identify and notify persons with an interest in the home or vehicle of a deceased resident.
- Revises the required contents of the writ of execution.
- Eliminates the requirement that a lienholder consent to the transfer of title, if the judgment is executed by transfer of title.
- Provides immunity for a sheriff, police officer, constable, or bailiff for damage caused by the park operator's removal of the home, vehicle, or personal property



from the premises, or any damage to the home, vehicle, or personal property when the home or vehicle remains abandoned or stored in the park.

### **Nuisances in manufactured home parks**

- Authorizes the Division of Industrial Compliance to contract with a local board of health to permit the Division to exercise the board's authority to abate and remove any abandoned or unoccupied home or vehicle that constitutes a nuisance and is located in a manufactured home park.

### **Manufactured home installation standards**

- Removes the option of the Division to adopt, as the uniform standards for the design and installation of manufactured housing, manufacturers' standards that are equal to or not less stringent than the federal model standards.

### **Manufactured home inspections**

- Permits a township, municipal corporation, or county that does not have a certified building department regarding manufactured homes to designate the certified building department of another political subdivision to perform manufactured home inspection duties for it.
- Establishes fees for manufactured home inspector certification and certification renewal.

### **Condition of manufactured home park**

- Requires the park operator to ensure that all buildings, lots, streets, walkways, homes, and other facilities located in the park are maintained in satisfactory condition at all times.

## New Banking Law

(Sections 130.21 to 130.27)<sup>19</sup>

### Overview

Effective January 1, 2018, the act enacts a new Banking Law that regulates banks, savings and loan associations, and savings banks under the same statute. That statute is a modification of the law governing banks (R.C. Chapters 1101. to 1127. and 1181.). The definition of "bank" is expanded to include savings and loan associations and savings banks, and a single "bank" charter is created under which all of the financial institutions are to operate. The separate statutes regulating savings and loan associations (R.C. Chapters 1151. to 1157.) and savings banks (R.C. Chapters 1161. to 1165.) are repealed by the act.

Because, unlike banks, the ownership structure of a savings and loan association or savings bank may *not* be represented by shares of stock, the act enacts new provisions in the Banking Law to specifically address these mutually owned institutions. For mutual institutions, the depositors are voting members and have an ownership interest in the institution. And an institution's code of regulations may provide that all borrowers from the institution are members. As such, some of the act's provisions expressly apply to "stock state banks" and their "shareholders," while others apply to "mutual state banks" and their "members." In those provisions that apply to both types of state banks, a reference to "or members" is added wherever "shareholders" are addressed. Other language to recognize the differences between stock state banks and mutual state banks is added, such as what constitutes "capital."

The act modifies a number of provisions of ongoing law to make them expressly apply only to *state* banks. Many of those provisions are noted in this portion of the analysis, but, due to the extensive nature of the act's changes, a complete list is not included.

While the new Banking Law takes effect January 1, 2018, a few provisions take effect September 29, 2017.<sup>20</sup>

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<sup>19</sup> Overlapping provisions relative to the Banking Commission, the Banks Fund, assessments and examination fees, and bank examination records appear in Section 101.01 of the act; consequently, they will be harmonized. The changes will be described in this portion of the analysis only, however.

<sup>20</sup> See Section 130.26.



## Organization of the analysis

This portion of the analysis provides a chapter by chapter discussion of the new Banking Law. For each chapter, the analysis summarizes the *major substantive changes* being proposed by the act in the order in which they are found in that chapter. If any section of the law regulating banks (R.C. Chapters 1101. to 1127. and 1181.) remains unchanged, it is not included in the act and, therefore, not mentioned in this analysis.

Following that is a discussion of other related changes made by the act, including updates, corrections, and conforming changes. The discussion concludes with a chart indicating the sections of prior law that have been renumbered and where they are located in the new Banking Law.

### **Chapter 1101. – General Provisions**

#### **Definitions added or modified by the act**

(R.C. 1101.01)

**"Bank"** or **"banking corporation"** means an entity that solicits, receives, or accepts money or its equivalent for deposit as a business, and includes (1) a state bank or (2) any entity doing business as a bank, savings bank, or savings association under authority granted by the Office of the Comptroller of the Currency or the former Office of Thrift Supervision, the appropriate bank regulatory authority of another state, or the appropriate bank regulatory authority of another country. "Bank" or "banking corporation" does not include a credit union.

**"Bank holding company"** has the same meaning as in the federal Bank Holding Company Act of 1956.

#### **"Capital":**

--With respect to a **stock state bank**, "capital" means the sum of the bank's (1) paid-in capital and surplus relating to common stock, (2) paid-in capital and surplus relating to preferred stock (to the extent permitted by the Superintendent of Financial Institutions), (3) undivided profits, and (4) the proceeds of the sale of debt securities and other assets and reserves (to the extent permitted by the Superintendent).

--With respect to a **mutual state bank**, "capital" means (1) retained earnings or (2) at the discretion of the Superintendent, any other form of capital, subject to any applicable federal and state laws.

**"Code of regulations"** includes a constitution adopted by a state bank for similar purposes.



"**Deposit**" has the same meaning as in 12 C.F.R. 204.2.

"**Entity**" has the same meaning as in the General Corporation Law.<sup>21</sup>

"**Mutual holding company**" means (1) a mutual state bank or an affiliate of a mutual state bank reorganized in accordance with the act to hold all or part of the shares of the capital stock of a subsidiary state bank or (2) a mutual holding company organized in accordance with 12 U.S.C. 1467a(o) that has converted to a mutual holding company under the act.

"**Mutual state bank**" means a state bank without stock that has governing documents consisting of articles of incorporation and code of regulations adopted by its members and bylaws adopted by its board of directors.

"**Person**" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, limited liability company, corporation, or any similar entity or organization.

"**Remote service unit**" means an automated facility, operated by a customer of a bank, that conducts banking functions, such as receiving deposits, paying withdrawals, or lending money.

"**Savings and loan holding company**" has the same meaning as in 12 U.S.C. 1467a.

"**Savings association**" means a savings and loan association doing business under authority granted by the regulatory authority of another state or a federal savings association. The term also includes a state bank that, in accordance with the act, elects to operate as a savings and loan association.<sup>22</sup>

"**Savings bank**" means a savings bank doing business under authority granted by the regulatory authority of another state.

"**Shares**" means any equity interest, including a limited partnership interest and any other equity interest in which liability is limited to the amount of the investment. The term does not include a general partnership interest or any other interest involving general liability.

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<sup>21</sup> See R.C. 1707.01, not in the act.

<sup>22</sup> See also R.C. 1109.021.



"**State bank**" means a bank doing business under authority granted by the Superintendent. The term also includes a state bank that, in accordance with the act, elects to operate as a savings and loan association.<sup>23</sup>

"**Stock state bank**" means a state bank that has an ownership structure represented by shares of stock.

"**Trust company**" means an entity licensed under Ohio law to engage in trust business in Ohio or a person that is required to be an entity licensed under Ohio law to engage in trust business in Ohio.

### **Purposes of the Banking Law**

(R.C. 1101.02)

Expanding the purposes set forth in ongoing law for the enactment of the laws regulating banks, the act adds the purpose of providing "state banks with competitive parity with other types of financial institutions doing business in this state."

### **Transition**

(R.C. 1101.03(E) and (F))

Both of the following apply to every savings bank and savings and loan association that is organized under Ohio law and is in existence as of January 1, 2018 (the date the new Banking Law takes effect):

(1) The powers, privileges, duties, and restrictions conferred and imposed in the charter or act of incorporation of such an institution are modified so that each charter or act of incorporation conforms to the new Banking Law.

(2) Notwithstanding any contrary provision in its charter or act of incorporation, every such institution possesses the powers, rights, and privileges and is subject to the duties, restrictions, and liabilities conferred and imposed by the new Banking Law.

Additionally, the act permits any state bank that wishes to become or remain an affiliate of a savings and loan holding company to do so by complying with the procedures set forth in the act.<sup>24</sup>

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<sup>23</sup> See also R.C. 1109.021.

<sup>24</sup> See also R.C. 1109.021.



## **Enforceability**

(R.C. 1101.05)

The act generally provides that the new Banking Law (1) is enforceable only by the Superintendent, the Superintendent's designee, the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve, or, with respect to the laws governing crimes and prohibited activities (R.C. Chapter 1127.), a prosecuting attorney, and (2) does not create or provide a private right of action or defense for or on behalf of any party other than the Superintendent or the Superintendent's designee.

## **Designation or name of business**

(R.C. 1101.15(A) and (C))

Under ongoing law, only a bank doing business under authority granted by the Superintendent, the bank chartering authority of another state, the Office of the Comptroller of the Currency, or the bank chartering authority of a foreign county can:

(1) Use "bank," "banker," or "banking" in a designation or name under which the bank conducts business in Ohio; or

(2) Represent itself as a bank.

The act modifies (1), above, to allow the use of the words "savings association," "savings and loan," "building and loan," or "savings bank" in a designation or name.

Ongoing law also prohibits a bank from using "state" as part of a designation or name unless it is doing business under authority granted by the Superintendent or the bank chartering authority of another state. The act extends that prohibition to trust companies.

## **Authority to accept deposits or transact banking business in Ohio**

(R.C. 1101.16)

Prior law prohibited any person from soliciting, receiving, or accepting deposits in Ohio, except:

- A bank;
- A "domestic association," which is defined as an Ohio chartered savings and loan or a federally chartered savings association that has its home office in Ohio;



- A "savings bank," which is defined as a corporation that has its home office in Ohio, is organized for the purposes of receiving deposits and raising money to be loaned to its members or others, and maintains at least 60% of its total assets in certain housing-related and other investments;
- A credit union organized under Ohio law; and
- As otherwise permitted by law, including by means of interstate acquisitions, the establishment or acquisition of banking offices or branches in Ohio, and mergers.

The act instead prohibits any person from soliciting, receiving, or accepting "money or its equivalent for deposit as a business" in Ohio, except:

- A state bank;
- An entity doing business as a bank, savings bank, or savings association under authority granted by a bank regulatory authority of the United States, another state, or another country, which institution is authorized to accept deposits in Ohio;
- A credit union organized under Ohio law.

A bank or bank holding company incorporated under the laws of another state or having its principal place of business in another state was prohibited under prior law from (1) soliciting, receiving, or accepting deposits in Ohio unless it had established or acquired a banking office in accordance with Ohio law or (2) transacting any banking business of any kind in Ohio other than lending money, trust business in accordance with Ohio law, or through or as an agent pursuant to Ohio law. The act removes this prohibition.

Additionally, a depository institution outside Ohio was formerly prohibited from establishing a deposit account with or for a person in Ohio by means of an ATM or other money transmission device in Ohio. The act removes this prohibition.

## **Chapter 1103. – General Governance**

### **Application**

R.C. Chapter 1103. is amended to clarify that it applies to *state* banks.



## **Name of bank; misleading use of name**

(R.C. 1103.07(A) and (E) and 1103.99)

Under the act, the name of a state bank must include (1) "bank," "banking," "company," or "co." or (2) "savings," "loan," "savings and loan," "building and loan," or "thrift." It also may include the word "state," "federal," or "association," or, if approved by the Superintendent of Financial Institutions, another term.

The act prohibits any person from using the name of a state bank in an advertisement, solicitation, promotional, or other material in a way that may mislead another person or cause another person to be misled into believing that the person issuing the advertisement, solicitation, promotional, or other material is associated or affiliated with the bank, *unless* the person has obtained the express written permission of the bank. A bank injured by a violation of this prohibition may bring an action for damages, a temporary restraining order, an injunction, or any other available remedy. Additionally, a person who violates the prohibition is subject to a civil penalty of up to \$10,000 for each day the violation is committed, repeated, or continued.

## **Requirement of signatures**

(R.C. 1103.19)

When the signatures of two authorized representatives of a state bank are required, one must be the chairperson of the board of directors, the president, or a vice-president, as determined by the board, and the other must be the secretary or an assistant secretary, also as determined by the board.

## **Chapter 1105. – Board of Directors**

### **Application**

R.C. Chapter 1105. is amended to indicate the provisions that apply only to *state* banks.

### **Classes of directors**

(R.C. 1105.01(C))

Ongoing law permits the classification of directors into either two or three classes. Under prior law, each class had to consist of at least three directors. The act reduces the minimum number of directors to two.



### **Residency requirement**

(R.C. 1105.02(A)(1)(b))

The act eliminates the requirement that a majority of the directors be residents of Ohio or live within 100 miles of Ohio.

### **Outside directors**

(R.C. 1105.02(A)(1)(b))

Ongoing law generally requires that a majority of the directors be outside directors. The act provides that anyone who is not an employee of the state bank or the bank holding company is to be considered an outside director.

### **Disqualification**

(R.C. 1105.02(B))

Prior law prohibited any person who had been convicted of, or had pleaded guilty to, a felony involving dishonesty or breach of trust from taking office as a director. The act expands the basis for disqualification to "a felony or any crime involving an act of fraud, dishonesty, breach of trust, theft, or money laundering." Additionally, under the act, it applies not only to the directors of a bank, but also to the directors of a subsidiary or affiliate of a bank. The Superintendent of Financial Institutions may waive this restriction if the crime was a misdemeanor or minor misdemeanor or the equivalent of either.

### **Meetings**

(R.C. 1105.08)

Law modified by the act permits meetings of the board or a committee of the board to be held "in any manner permitted by the laws of this state," including by communications equipment, if all persons participating can communicate with each of the others.

### **Removal of directors; vacancies**

(R.C. 1105.10)

In addition to the reasons stated in ongoing law, the act provides that a director can be removed:



- By the board or the Superintendent if the director has been removed in accordance with federal law;
- By the board for any of the grounds set forth in the state bank's code of regulations or bylaws; and
- By a majority of the disinterested directors if they determine the director has a conflict of interest.

The act adds that a vacancy occurs if a director is removed, as well as if the director dies or resigns, as is provided in ongoing law. The act also provides that, if a vacancy created on the board causes the number of directors to be less than that fixed by the articles of incorporation or code of regulations, the vacancy does not have to be filled until an appropriate candidate is duly appointed or elected.

Further, the act states that the requirement for a quorum set forth in the General Corporation Law applies to a state bank's board of directors despite anything to the contrary in this statute.<sup>25</sup>

### **Personal liability**

(R.C. 1105.11)

Under prior law, a director of a bank who knowingly violated or permitted any of the officers, agents, or employees of the bank to violate any provision of the Banking Law was liable personally and individually for all damages the bank, its shareholders, or any other person sustained because of the violation. The act removes this provision and, instead, provides that a director, officer, employee, or other institution-affiliated party of a bank is *not* personally and individually liable for direct or indirect damages the bank, its shareholders or members, or any other person sustains due to a violation of or failure to comply with any provision of the Banking Law, or the rules adopted under the Law, including any civil money penalties, *unless* it can be shown (1) that the director, officer, employee, or other party knowingly violated or failed to comply with that provision of law or (2) with respect to a director's liability, that the director knowingly permitted any of the officers, employees, or other parties to violate or fail to comply with any such provision. However, this does not deprive a director of the defenses set forth in the General Corporation Law.<sup>26</sup>

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<sup>25</sup> See R.C. 1701.62, not in the act.

<sup>26</sup> See R.C. 1701.59, not in the act.



## **Chapter 1107. – Capital and Securities**

### **Application**

R.C. Chapter 1107. is amended to clarify that it applies to *state* banks.

### **Definition of "treasury shares"**

(Repealed R.C. 1107.01)

The act eliminates the definition of "treasury shares."

### **Debt securities**

(R.C. 1107.05(C))

Under prior law, the terms of any option granted in connection with the issuance of debt securities, or any right to convert debt securities to shares, could not permit or require the holders of the securities to be held individually responsible for assessments for restoration of the banks' paid-in capital, on the basis of their status as holders of the securities. The act removes this provision.

### **Bank shares: retired and canceled; assessments**

(R.C. 1107.07)

The act eliminates the provisions of law stating that:

--In general, bank shares held as treasury shares one year after being acquired are deemed retired and to be authorized and unissued shares;

--Authorized and unissued bank shares that are not issued or reissued and fully paid in one year after being authorized or otherwise becoming authorized and unissued shares are deemed canceled;

--Preferred shares retired by a bank are to be canceled and not reissued;

--Both common and preferred shares are to be assessable for restoration of the bank's paid-in capital.

### **Employee stock options; granting of shares**

(R.C. 1107.09)

Ongoing law permits a bank, with the approval of the board of directors, the holders of a majority of the bank's voting shares, and the Superintendent of Financial



Institutions, to carry out plans for the offering or sale of, or the grant of options on, the bank's shares to any or all employees of the bank or the bank's subsidiaries or to a trustee on their behalf. The act clarifies that this provision applies to stock state banks, additionally authorizes "the grant of" these shares, and adds to the list of those eligible to receive the shares. Under the act, those eligible include "any or all employees, officers, or directors of the bank or any of the bank's subsidiaries or affiliates, or [to] other parties, or [to] a trustee on their behalf." "Other parties" is defined as any person that has provided or will provide a service or a benefit to the bank, as determined by the board of directors.

### **Pre-emptive rights**

(R.C. 1107.11(C))

The act specifies that pre-emptive rights with respect to shares issued by a stock state bank chartered on or after January 1, 2018 (the date the new Banking Law takes effect), are to be governed by the General Corporation Law.<sup>27</sup>

### **Bank's purchase of its own shares**

(R.C. 1107.13)

Prior law listed the circumstances under which a bank could purchase its own shares. The act eliminates that list and, instead, permits a stock state bank to purchase its own shares (1) with the prior written approval of the Superintendent and (2) in accordance with the General Corporation Law.<sup>28</sup>

### **Dividends and distributions**

(R.C. 1107.15)

The act generally permits the payment of a dividend or distribution funded from a special reserve created from proceeds from the sale of a stock state bank's stock, subject to the approval of the Superintendent.

## **Chapter 1109. – Bank Powers**

### **Application**

R.C. Chapter 1109. is amended to clarify the provisions that apply only to *state* banks.

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<sup>27</sup> See R.C. 1701.15, not in the act.

<sup>28</sup> See R.C. 1701.35, not in the act.



## **General powers**

(R.C. 1109.02)

The act specifies that, in addition to what is otherwise authorized under the Banking Law, a state bank has and may exercise all powers, perform all acts, and provide all services that are permitted for national banks and federal savings associations, other than those dealing with interest rates, regardless of the date the corresponding parity rule adopted by the Superintendent of Financial Institutions takes effect. If a state bank intends to take any such action before the adoption of the corresponding parity rule, the bank must provide the Superintendent with prior written notice of the action and the basis for the action. Within 90 days after receipt of that notice, the Superintendent may prohibit the bank from taking the action if the Superintendent determines it would be unsafe or unsound for the bank.

## **Election to operate as a savings and loan association**

(R.C. 1109.021)

Under the act, a state bank may elect to operate as a savings and loan association by filing a written notice of that election with the Superintendent. Upon filing the notice, the bank is to be considered a savings and loan if its qualified thrift investments (1) equal or exceed 65% of its portfolio assets *and* (2) continue to equal or exceed 65% of its assets on a monthly average basis in nine out of every twelve months. A state bank may revoke its election at any time by submitting written notice to the Superintendent.<sup>29</sup>

## **Good faith reliance**

(R.C. 1109.04(A))

The act provides that a bank may, in good faith, rely (1) on any information, agreements, documents, and signatures provided by its customers as being true, accurate, complete, and authentic and (2) that the persons signing have full capacity and complete authority to execute and deliver any such documents and agreements and to act in such capacity as may be represented to the bank. For this purpose, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

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<sup>29</sup> As used in this provision, "portfolio assets" and "qualified thrift investments" have the same meanings as in 12 U.S.C. 1467a, as amended.



## **Electronic statements and notices**

(R.C. 1109.04(B) and (C))

Under the act, a bank may – with the customer's consent – provide electronically any statement, notice, or report required to be provided customers under R.C. Chapter 1109. A customer's consent may be obtained electronically or in writing. Likewise, a bank customer may – with the bank's consent – provide electronically any notice required to be provided to the bank under R.C. Chapter 1109. A bank's consent may be obtained electronically or in writing.

## **Deposit contracts and accounts**

(R.C. 1109.05(B) and (C))

Under ongoing law, banks are required to provide a customer, at the time of opening a deposit account, with a statement containing the terms and conditions of the deposit contract. The statement may be set forth on the depositor's signature card. The act provides that the signature card may be electronic or in writing.

Before changing the terms and conditions of the contract, a bank was formerly required to send written notice of the change to the depositor. The act instead requires a bank to "provide notice, in written or electronic form."

Prior law also required a bank, for each deposit account, to send to the customer a written report of the customer's account. Under the act, the bank is to "make available" to each deposit customer "a report, in written or electronic form, of the customer's deposit account activity since the last report was provided, unless the account is a certificate of deposit with no activity except for compounding interest."

## **Public deposits**

(R.C. 1109.05(E)(2))

The act states that depositors of public funds that are collateralized by securities pledged by a bank in accordance with the Uniform Depository Act (R.C. Chapter 135.) and any applicable federal law have and maintain a first and best lien and security interest in and to the securities, any substitute securities, and the proceeds of those securities, in favor of the depositors.

## **Safes, vaults, and night depositories**

(R.C. 1109.08)

Ongoing law governs a bank's provision of safes, vaults, safe deposit boxes, night depositories, and other secure receptacles for the use of its customers. The act adds that, unless agreed to in writing by the bank, nothing in this statute creates a bailment between a customer and the bank.

## **Relationship between bank and its obligor/customer**

(R.C. 1109.15(E) and 1109.151)

Prior law specified that, unless otherwise agreed in writing, the relationship between a bank and its obligor, with respect to any extension of credit, was that of a creditor and debtor, and created no fiduciary or other relationship between the parties. The act alters this provision, as follows: "*Unless otherwise expressly agreed to in writing by the bank, the relationship between a bank and its obligor, or a bank and its customer, creates no fiduciary or other relationship between the parties or any special duty on the part of the bank to the customer or any other party.*"

## **Extensions of credit**

### **Standards for extensions of credit involving real estate**

(R.C. 1109.16)

Under ongoing law, the Superintendent is required to prescribe standards for extensions of credit that are secured by liens on real estate or are made to finance the construction of a building or improvements to real estate. In prescribing those standards, the Superintendent is to consider certain factors, such as the risk the extensions of credit pose to the federal deposit insurance funds. The act adds "or any other factors the Superintendent considers appropriate."

### **Limitations on extensions of credit to one person**

(R.C. 1109.22)

The act adds that, despite the limitations set forth in ongoing law relative to the total loans and extension of credit that can be made to one person, a state bank may grant one or more loans in an aggregate amount of up to \$500,000 to one person, subject to any restrictions under federal law.



## **Extensions of credit to executive officers**

(R.C. 1109.24(F))

Under prior law, whenever an executive officer of a bank became indebted to any bank or banks, *other than the bank served as an executive officer*, on account of certain categories of extensions of credit in a total amount greater than the total amount of credit of the same category that could lawfully be extended to the executive officer by the bank served as an executive officer, the executive officer was required to submit a report to the board of directors of the bank. The report had to provide the date and amount of each extension of credit, the security for each, and the purpose for which the proceeds were to be used. The act removes this reporting requirement.

## **Holding of real estate or stock acquired as satisfaction of debt**

(R.C. 1109.26)

Ongoing law modified by the act limits the time in which a bank may own or hold (1) real estate it acquires by foreclosure or otherwise in satisfaction of a previously contracted debt and (2) stock of companies acquired in satisfaction of a previously contracted debt or taken on a refinancing plan involving an investment. The act replaces the word "stock" with "shares" and specifies that these limitations do not apply to real estate or shares owned or held by a state bank affiliate, except for a company that is a subsidiary of the state bank.

## **Investments**

### **Real estate**

(R.C. 1109.31)

Ongoing law modified by the act authorizes a bank to purchase or otherwise invest in real estate the board of directors considers necessary for transaction of the bank's business, including "by ownership of stock of a wholly owned subsidiary corporation" having as its exclusive authority the ownership and management of the bank's real estate interests. The act replaces "by ownership of stock of a wholly owned subsidiary corporation" with "by ownership of an entity."

### **Debt securities**

(R.C. 1109.32)

Ongoing law authorizes banks to invest in specified bonds, debentures, and other debt securities. Prior law permitted the Superintendent to approve banks' investment in other debt securities and obligations in which national banks are



permitted to invest. The act eliminates the Superintendent's authority to approve those investments and, instead, allows state banks to invest in debt securities and obligations in which national banks, savings banks, and savings associations insured by the FDIC are permitted to invest.

#### **Stock of federally chartered banks engaged in foreign banking**

(R.C. 1109.33)

Ongoing law permits a bank to apply to the Superintendent for permission to invest a total amount not exceeding 10% of the bank's paid-in capital and surplus in the stock of certain banks or corporations chartered or incorporated under federal law and principally engaged in international or foreign banking. The act clarifies that the limitation on paid-in capital and surplus refers to a *stock* state bank, and it adds – for mutual state banks – a limitation of 10% of the bank's retained earnings.

#### **Venture capital firms and small businesses**

(R.C. 1109.35(A))

Ongoing law modified by the act authorizes a bank to invest, in the aggregate, 5% of its paid-in capital and surplus in shares of certain venture capital firms and small businesses. The act specifies that this limitation applies to *stock* state banks and adds – for mutual state banks – a limitation of 5% of its retained earnings.

#### **Bankers' bank or holding company**

(R.C. 1109.43)

The act eliminates the prohibition against a bank or affiliate of a bank owning or controlling or having the power to vote shares of (1) more than one bankers' bank, (2) more than one bankers' bank holding company, or (3) both a bankers' bank and a bankers' bank holding company, unless the bankers' bank is an affiliate of that bankers' bank holding company.

#### **Bank subsidiary corporations and service corporations**

(R.C. 1109.44 and 1109.441)

Under ongoing law, a bank may invest, in the aggregate, 25% of its assets in the securities of bank subsidiary corporations and bank service corporations. Prior to investing in, acquiring, or establishing a bank subsidiary corporation or bank service corporation, or performing new activities in such a corporation, a bank must obtain the approval of the Superintendent. For these purposes, the act makes the following changes:



--It clarifies that only a bank subsidiary corporation *that is a wholly owned subsidiary of the state bank* may engage in any activities, except taking deposits, that are a part of the business of banking.

--Rather than requiring that a bank service corporation be owned solely by one or more depository institutions, as in prior law, the act requires that it be owned solely by one or more banks.

--The act authorizes a bank subsidiary corporation or a bank service corporation to invest in a lower-tier bank subsidiary corporation or bank service corporation, subject to certain requirements.

--The act moves the provisions relative to a state bank's additional investment authority under R.C. 1109.39 and 1109.40 to a new section.

### **In a single issuer**

(R.C. 1109.47)

Under ongoing law modified by the act, a bank cannot invest more than 15% of its capital in the stock, obligations, or other securities of one issuer, subject to certain exceptions. The act replaces the term "stock" with "shares."

One of those exceptions is investment in the obligations or securities of the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation. The act clarifies that this applies to obligations or securities *other than stock*. It also adds another exception for the shares, obligations, securities, or other interests of any other issuer with the written approval of the Superintendent.

### **Transactions with affiliates**

(R.C. 1109.53, 1109.54, and 1109.55)

The act specifies that the law governing transactions with affiliates applies to *state* banks and their subsidiaries. It also expands the definition of "company" used in that law to expressly include a limited liability company.

### **Sale of insurance**

(R.C. 1109.62)

The act permits a state bank to engage in the business of selling insurance through a subsidiary insurance agency subject to licensing under Ohio law and the law of every other state in which services are provided by the bank or its subsidiary.



## **Retention of records**

(R.C. 1109.69)

Ongoing law modified by the act requires that each bank retain or preserve bank records and supporting documents for only a specified period of time, based on the type of record or document involved. The act adds "unless a longer record retention period is required by applicable federal law or regulation."

## **Chapter 1111. – Trust Companies**

The only revisions made in R.C. Chapter 1111. are conforming changes in recognition of the single "bank" charter, an update of the definition of "investment company," and corrections required by the elimination of the Office of Thrift Supervision and the resulting transfer of regulatory authority over federal savings associations to the Office of the Comptroller of the Currency.

## **Chapter 1113. – Stock State Banks: Corporate Governance/Formation**

### **General Corporation Law applies**

(R.C. 1113.01)

The act specifies that a stock state banking corporation is to be created, organized, and governed, its business is to be conducted, and its directors are to be chosen, in the same manner as is provided under the General Corporation Law (R.C. Chapters 1701. and 1704.), to the extent it is not inconsistent with the Banking Law.

### **Application for incorporation**

(R.C. 1113.02(B))

Ongoing law requires the persons proposing to incorporate a stock state bank to submit an application to the Superintendent of Financial Institutions for approval of the bank. Certain information must be included in the application, including the proposed articles of incorporation, application for reservation of a name, and the location of the proposed initial banking office. The act adds that an application must also include the proposed code of regulations and any other information required by the Superintendent.



## **Incorporators adoption of amendments to articles of incorporation**

(R.C. 1113.05(C) to (F))

Ongoing law modified by the act sets forth procedures under which the incorporators, before any subscription to shares has been received, may adopt amendments to the bank's articles of incorporation or amended articles of incorporation. (For purposes of this discussion, they are collectively referred to as "amendments.") Under prior law, upon their adoption of an amendment, the incorporators were required to send to the Superintendent a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent then conducted an examination to determine if (1) the amendment and the manner and basis for its adoption complied with the applicable statutory requirements and (2) it would not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 60 days after receiving the amendment, the Superintendent was required to approve or disapprove it.

The act revises these procedures to require the Superintendent's *prior* approval of a *proposed* amendment. Under the act, if the incorporators propose the adoption of an amendment to a stock state bank's articles of incorporation or amended articles of incorporation, the bank must send the Superintendent a copy of the proposed amendment for review and approval *prior* to adoption by the incorporators.

Upon receiving the proposed amendment, the Superintendent is to conduct an examination to determine if the proposed amendment (1) complies with the applicable statutory requirements and (2) will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 45 days after receiving the proposed amendment, the Superintendent must notify the bank of the Superintendent's approval or disapproval *unless* the Superintendent determines additional information is required.

In that event, the Superintendent is to request the information in writing within 20 days after the date the proposed amendment was received. The bank has 30 days to submit the information. Within 45 days after the date the additional information is received, the Superintendent must notify the bank of the Superintendent's approval or disapproval.

If the proposed amendment is disapproved, the Superintendent is required to notify the bank of the reasons for the disapproval. If the Superintendent fails to approve or disapprove the amendment within the time period required, the proposed amendment is considered approved. The approval of a proposed amendment cannot,



however, be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

After the incorporators adopt the approved amendment, they must send the Superintendent a certificate containing a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent must then conduct an examination to determine if the manner of and basis for the adoption comply with the applicable statutory requirements. Within 30 days after receiving the certificate, the Superintendent is to approve or disapprove the amendment. If the amendment is approved, the Superintendent is to send a copy to the Secretary of State for filing. Upon filing, the amendment is considered effective. If the Superintendent fails to approve or disapprove the amendment within that 30-day period, the bank is to forward a copy to the Secretary of State for filing.

### **Code of regulations**

(R.C. 1113.11)

Ongoing law requires each bank to have a code of regulations for its governance as a corporation, the conduct of its affairs, and the management of its property. The code of regulations must be consistent with Ohio law and the bank's articles of incorporation. The act repeals provisions that specify:

- (1) How the original code is to be adopted;
- (2) How the shareholders may amend the code or adopt a new one;
- (3) How notice of a shareholders' meeting to adopt an amendment to the code is to be given;
- (4) What provisions may be included in the code; and
- (5) The procedures to be followed if the code is to be amended without a shareholders' meeting.

### **Shareholder adoption of amendments to articles of incorporation**

#### **Procedure**

(R.C. 1113.12(F) to (I))

Ongoing law modified by the act sets forth the procedures under which the shareholders, after subscriptions to shares have been received by the incorporators, may adopt amendments to the bank's articles of incorporation or amended articles of incorporation. (For purposes of this discussion, they are collectively referred to as



"amendments.") Under prior law, upon their adoption of an amendment, the bank was required to send to the Superintendent a copy of the resolution adopting the amendment and a statement of the manner of its adoption. The Superintendent then conducted an examination to determine if (1) the amendment and the manner of its adoption complied with the applicable statutory requirements and (2) it would not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 60 days after receiving the amendment, the Superintendent was required to approve or disapprove it.

The act revises these procedures to require the Superintendent's *prior* approval of a *proposed* amendment. Under the act, if the shareholders propose the adoption of an amendment to a stock state bank's articles of incorporation or amended articles of incorporation, the bank must send the Superintendent a copy of the proposed amendment for review and approval *prior* to adoption by the shareholders.

Upon receiving the proposed amendment, the Superintendent is to conduct an examination to determine if the proposed amendment (1) complies with the applicable statutory requirements and (2) will not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 45 days after receiving the proposed amendment, the Superintendent must notify the bank of the Superintendent's approval or disapproval *unless* the Superintendent determines additional information is required.

In that event, the Superintendent is to request the information in writing within 20 days after the date the proposed amendment was received. The bank has 30 days to submit the information. Within 45 days after the date the additional information is received, the Superintendent must notify the bank of the Superintendent's approval or disapproval.

If the proposed amendment is disapproved, the Superintendent is required to notify the bank of the reasons for the disapproval. If the Superintendent fails to approve or disapprove the proposed amendment within the required time period, it is considered approved. The approval of a proposed amendment cannot, however, be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

After the shareholders adopt the approved amendment, the bank must send the Superintendent a certificate containing a copy of the resolution adopting the amendment and a statement of the manner of its adoption. The Superintendent must then conduct an examination to determine if the manner of adoption complies with the applicable statutory requirements. Within 30 days after receiving the certificate, the Superintendent is to approve or disapprove the amendment. If the amendment is



approved, the Superintendent is to send a copy to the Secretary of State for filing. Upon filing, the amendment is considered effective. If the Superintendent fails to approve or disapprove the amendment within that 30-day period, the bank is to forward a copy to the Secretary of State for filing.

### **Signature of authorized representatives**

(R.C. 1113.12(G))

Under prior law, if the *directors* proposed the amendment, the certificate sent to the Superintendent had to be signed by "bank officers." The act instead requires that it be signed by "the bank's authorized representatives."<sup>30</sup>

### **Amendment to permit certain shares**

(R.C. 1113.12(D))

Ongoing law modified by the act permits the shareholders to adopt an amendment to the bank's articles of incorporation to permit the bank to have authorized and unissued shares or treasury shares for a specific purpose, such as a merger or acquisition. The act eliminates the requirement that there be a specific purpose for the shares.

## **Directors adoption of amendments to articles of incorporation**

### **Procedure**

(R.C. 1113.13(D) to (G))

Ongoing law modified by the act sets forth the procedures under which the board of directors, after subscriptions to shares have been received by the incorporators, may adopt amendments to the bank's articles of incorporation for certain purposes or adopt amended articles of incorporation. (For purposes of this discussion, they are collectively referred to as "amendments.") Under prior law, upon the directors' adoption of an amendment, the bank was required to send the Superintendent a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent then conducted an examination to determine if (1) the amendment and the manner of and basis for its adoption complied with the applicable statutory requirements and (2) it would not adversely affect the interests of the bank's depositors and creditors and the convenience and needs of the public. Within 60 days after receiving the amendment, the Superintendent was required to approve or disapprove it.

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<sup>30</sup> See also R.C. 1103.19.



The act revises these procedures to require the Superintendent's *prior* approval of a *proposed* amendment. Under the act, if the directors propose the adoption of an amendment to a stock state bank's articles of incorporation or amended articles of incorporation, the bank must send the Superintendent a copy of the proposed amendment for review and approval *prior* to adoption by the directors.

Upon receiving the proposed amendment, the Superintendent is to conduct an examination to determine if the proposed amendment (1) complies with the applicable statutory requirements and (2) will not adversely affect the interests of the bank's depositors and creditors. Within 45 days after receiving the proposed amendment, the Superintendent must notify the bank of the Superintendent's approval or disapproval *unless* the Superintendent determines additional information is required.

In that event, the Superintendent is to request the information in writing within 20 days after the date the proposed amendment was received. The bank has 30 days to submit the information. Within 45 days after the date the additional information is received, the Superintendent must notify the bank of the Superintendent's approval or disapproval.

If the proposed amendment is disapproved, the Superintendent is required to notify the bank of the reasons for the disapproval. If the Superintendent fails to approve or disapprove the amendment within the required time period, it is considered approved. The approval of a proposed amendment cannot, however, be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

After the directors adopt the approved amendment, the bank must send the Superintendent a certificate containing a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent must then conduct an examination to determine if the manner of and basis for the adoption complies with the applicable statutory requirements. Within 30 days after receiving the certificate, the Superintendent is to approve or disapprove the amendment. If the amendment is approved, the Superintendent is to send a copy to the Secretary of State for filing. Upon filing, the amendment is considered effective. If the Superintendent fails to approve or disapprove the amendment within that 30-day period, the bank is to forward a copy to the Secretary of State for filing.

## **Signature of authorized representatives**

(R.C. 1113.13(E))

Under prior law, upon the directors' adoption of an amendment, the certificate sent to the Superintendent had to be signed by "bank officers." The act instead requires that it be signed by *the bank's authorized representatives*.<sup>31</sup>

## **Meetings of shareholders**

(R.C. 1113.14(A) to (D))

Prior law specified the manner in which written notice of meetings of the shareholders was to be provided and the period of time for giving the notice. The act eliminates those specific requirements and, instead, provides that a meeting may be called for any of the reasons and in the manner set forth in the General Corporation Law. Notice of the meeting is also to be provided in accordance with that Law.<sup>32</sup>

Additionally, the act states that the requirements of this provision do not apply with respect to annual or special meetings of shareholders of a stock state bank that is wholly owned, except for directors' qualifying shares, if any, by a bank holding company or savings and loan holding company.

## **Voting by shareholders**

(R.C. 1113.16)

Ongoing law states that, in elections of directors and in deciding other questions at shareholder meetings, each holder of a bank's voting shares is entitled to one vote for each share held and cannot accumulate the votes unless otherwise provided in the articles of incorporation. Under the act, this applies "except as otherwise expressly provided in the terms of any class of shares issued by a stock state bank."

Ongoing law modified by the act also permits any shareholder to vote by proxy authorized in writing. The act limits this right to vote by proxy to those shareholders *eligible to vote*. And it specifies that an appointment of a proxy expires in accordance with the General Corporation Law.<sup>33</sup>

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<sup>31</sup> See also R.C. 1103.19.

<sup>32</sup> See R.C. 1701.40 and 1701.41, not in the act.

<sup>33</sup> See R.C. 1701.48, not in the act.



## **Shareholder lists; right to examine records**

(R.C. 1113.17)

Under ongoing law modified by the act, the board of directors – upon request of any shareholder at any meeting of shareholders – must produce a list of the shareholders of record. The act clarifies that the request can only be made by any shareholder "eligible to attend and vote" at any meeting of "the bank's" shareholders.

Lastly, the act states that the authority granted under the Banking Law to inspect the books and records of a stock state bank applies solely to the Superintendent and to the bank's shareholders of record.

## **Chapter 1114. – Mutual State Banks: Corporate Governance/Formation**

### **Governance**

(R.C. 1114.01)

The act specifies that a mutual state bank and the rights and liabilities of its members are to be governed by its articles of incorporation, code of regulations, and bylaws and by R.C. Chapter 1114.

### **Incorporating a mutual state bank**

#### **Application**

(R.C. 1114.02)

Five or more individuals, at least one of whom is a resident of Ohio, may incorporate a mutual state bank with the approval of the Superintendent of Financial Institutions. To apply for approval, the individuals must submit an application that includes:

- The proposed articles of incorporation and code of regulations;
- An application for reservation of a name, if reservation is desired by the incorporators and has not been previously filed;
- The location and a description of the proposed initial banking office;
- Information to demonstrate the proposed bank will satisfy the requirements of R.C. Chapter 1114.; and



- Any other information the Superintendent requires.<sup>34</sup>

### **Publication of the proposed incorporation; comments**

(R.C. 1114.03(A) and (B))

Within ten days after receipt of the Superintendent's notice of acceptance of an application for approval to incorporate a mutual state bank, the incorporators must publish notice of the proposed incorporation in a newspaper of general circulation in the county where the bank's initial banking office is to be located. The notice must be published once a week for two weeks, and a certified copy of it is to be furnished to the Superintendent. Any comments on the application must be filed with the Superintendent within 30 days of the first publication of the notice. If any comments are received, the Superintendent must determine whether the comments are relevant to the incorporation requirements and, if so, investigate the comments in a manner that Superintendent considers appropriate.

### **Approval of the application**

(R.C. 1114.03(C) to (E))

After examining all of the facts connected with the application, the Superintendent is to determine if the following requirements are met:

--The proposed articles of incorporation and code of regulations, application for reservation of name, fees, and other items required meet the requirements of the Revised Code.

--The population and economic characteristics of the area primarily to be served afford reasonable promise of adequate support for the proposed bank.

--The competence, experience, and integrity of the proposed directors and officers are such as to command the confidence of the community and warrant the belief that the business of the proposed bank will be honestly and efficiently conducted.

--The capital of the proposed bank is adequate in relation to the amount and character of the anticipated business of the bank and the safety of prospective depositors.

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<sup>34</sup> The articles of incorporation also must contain the purpose or purposes for which the bank is formed. The articles may set forth any other lawful provision regulating the exercise of authority of the bank and certain persons and any provision that could be set forth in the code of regulations. (R.C. 1114.04.)



Within 180 days after acceptance of the application, the Superintendent must approve or disapprove the incorporation based on the examination. In giving approval, the Superintendent may impose conditions that must be met prior to issuing a certificate of authority to commence business. If the application is approved, the Superintendent must make a certificate to that effect and forward the certificate and the articles of incorporation to the Secretary of State for filing.

### **Authorized capital**

(R.C. 1114.05)

The initial funding required to organize a mutual state bank, known as the "authorized capital," must be of such amount as the Superintendent determines based on the amount and character of the bank's anticipated business and the safety of prospective depositors. Additionally, the Superintendent may fix the amount of the expense fund for operating losses to be created by nonrefundable contributions.

The bank's organization may be completed when a sum equal to 5% of the authorized capital is paid in, and the names and addresses of its officers, its code of regulations, and its bylaws have been filed with and approved by the Superintendent. Five years after the bank commences business, any remaining balance in the expense fund must be transferred to retained earnings if the bank is on a profitable operating basis as determined by the Superintendent.

### **Certificate of authority to commence business**

(R.C. 1114.06 and 1114.07)

Until a mutual state bank organized under R.C. Chapter 1114. has received a certificate of authority to commence business issued by the Superintendent, it cannot accept deposits, incur indebtedness, or transact any business other than business incidental to its organization. The bank must file a report with the Superintendent when it has completed everything required by the Superintendent before it can be authorized to commence business. Upon receipt of that report, the Superintendent is to examine the affairs of the bank and determine if the bank has complied with all of the requirements necessary to entitle it to engage in business.

The act requires the Superintendent to issue a certificate of authority to commence business if the Superintendent (1) is satisfied that the bank is entitled to commence business and (2) has received written confirmation from the FDIC that the bank's application to become an insured bank was approved. The bank must cause the certificate to be published once a week for two consecutive weeks in a newspaper of general circulation in the county where the bank's initial banking office is located.



## **Members of a mutual state bank; proxies**

(R.C. 1114.08)

A depositor of a mutual state bank is a voting member and has such ownership interest in the bank as may be provided in the terms and conditions set forth in the articles of incorporation, code of regulations, and bylaws of the bank. The code of regulations may provide that all borrowers from the bank are members and if so, must provide for their rights and privileges.

Unless otherwise provided in the articles of incorporation or code of regulations, a proxy granted by a depositor to officers and directors of a mutual state bank expires on the date specified in the proxy. If no date is specified, the authority granted by the proxy is perpetual. On and after January 1, 2018, the writing or verifiable communication appointing a proxy must be separate and distinct from any deposit or loan agreement or any other document or disclosure provided by the bank to a depositor.

## **Incorporators' adoption of amendments to articles of incorporation**

(R.C. 1114.09(A) to (C)(1))

Before any member deposits have been received, the incorporators may, by unanimous written action, adopt amendments to the bank's articles of incorporation or amended articles of incorporation. (For purposes of this discussion, they are collectively referred to as "amendments.") Any *proposed* amendment must be provided to the Superintendent for review and approval *prior* to adoption by the incorporators.

### **Prior approval**

(R.C. 1114.09(C)(2) to (5))

Upon receiving a proposed amendment, the Superintendent is to conduct an examination to determine if the amendment (1) complies with the applicable statutory requirements and (2) will not adversely affect the interests of the bank's depositors and creditors. Within 45 days after receiving the amendment, the Superintendent must notify the bank of the Superintendent's approval or disapproval *unless* the Superintendent determines additional information is required.

In that event, the Superintendent is to request the information in writing within 20 days after the date the amendment was received. The bank has 30 days to submit the information. The Superintendent must notify the bank of the approval or disapproval within 45 days after receiving the additional information.



If the Superintendent disapproves the proposed amendment, the Superintendent must provide the reasons for the disapproval. If the Superintendent fails to take action on an amendment within the required time period, it is to be considered approved. The approval of a proposed amendment cannot, however, be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

### **Final approval**

(R.C. 1114.09(D) to (F))

After the incorporators adopt the approved amendment, they must send the Superintendent a certificate containing a copy of the resolution adopting the amendment and a statement of the manner of and basis for its adoption. The Superintendent is to conduct an examination to determine if the manner of and basis for the amendment's adoption comply with the applicable statutory requirements and, within 30 days after receiving the certificate, approve or disapprove the amendment. If the amendment is approved, the Superintendent must send a copy to the Secretary of State for filing. If the Superintendent fails to approve or disapprove the amendment within that 30-day period, the bank is to forward a copy to the Secretary of State for filing. The amendment is effective when so filed.

### **Code of regulations**

(R.C. 1114.10)

Each mutual state bank must have a code of regulations for its governance as a corporation, the conduct of its affairs, and the management of its property. The code of regulations must be consistent with Ohio law and the bank's articles of incorporation.

### **Notice of meetings**

(R.C. 1114.12(A) and (B))

Whenever members of a mutual state bank are required or authorized to elect directors or take any other action at a meeting, annual or special, a notice of the meeting must be given in either of the following ways:

(1) By publication, once each week on the same day of the week for three consecutive weeks immediately preceding the date of the meeting in a newspaper published in and of general circulation in the county in which the principal office of the bank is located, of a notice containing the name of the bank and the purpose, place, date, and hour of the meeting;



(2) By notice served upon or mailed to members in accordance with the General Corporation Law.<sup>35</sup>

The notice must include a statement that, if a member granted a proxy to the officers and directors of the bank, the proxy is revocable at any time before the meeting or by attending the meeting and voting in person.

### **Member or director adoption of amendment to articles of incorporation**

(R.C. 1114.11(A))

A mutual state bank's code of regulations may provide for the amendment of the articles of incorporation or code of regulations, or the adoption of amended articles of incorporation or code of regulations, at any meeting of the members for which proper notice has been given. (For purposes of this discussion, the amendment of the articles of incorporation or code of regulations, or the adoption of amended articles of incorporation or code of regulations, are collectively referred to as "amendments.") These amendments must be adopted by a two-thirds vote of votes cast in person or by proxy at the meeting or, if the articles of incorporation or code of regulations provide or permit, by the affirmative vote of a greater or lesser proportion, but not less than a majority, of the voting members represented at the meeting. The number of votes that each member may cast is to be determined by the code of regulations.

Unless precluded by its articles of incorporation or code of regulations, a mutual state bank may adopt amendments at any meeting authorized in writing by majority of its members of record if:

--Proper written notice of the meeting is given;

--The notice of the proposed action to be taken at the meeting is in a form approved by the Superintendent;

--The proposed action is approved by a two-thirds vote of the votes cast authorizing the meeting; and

--A majority of the members of record are present in person or by proxy at the meeting.

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<sup>35</sup> See R.C. 1701.41, not in the act.



### **Prior approval**

(R.C. 1114.11(D))

If the members or board of directors propose the adoption of an amendment, the mutual state bank must send the Superintendent a copy of the proposed amendment for review and approval *prior* to the adoption by the members or directors. Upon receiving the proposed amendment, the Superintendent is to conduct an examination to determine if (1) the proposed amendment complies with the applicable statutory requirements and (2) it will not adversely affect the interests of the bank's depositors and creditors.

Within 45 days after receiving the proposed amendment, the Superintendent must notify the bank of the Superintendent's approval or disapproval *unless* the Superintendent determines additional information is required. In that event, the Superintendent must request the information in writing within 20 days after the proposed amendment was received. The bank has 30 days to submit the information. The Superintendent must notify the bank of the Superintendent's approval or disapproval within 45 days after receiving the additional information.

If the Superintendent disapproves the proposed amendment, the Superintendent must provide the reasons for the disapproval. If the Superintendent fails to take action on an amendment within the required time period, it is to be considered approved. The approval of a proposed amendment cannot, however, be construed or represented as an affirmative endorsement of the amendment by the Superintendent.

### **Final approval**

(R.C. 1114.11(E) to (G))

If the members adopt the approved amendment, the bank must provide to the Superintendent a certificate containing a copy of the members' resolution adopting the amendment and a statement of the manner of and basis for its adoption. (If the board of directors proposed the amendment, the certificate must include a copy of the resolution adopted by the directors to propose the amendment to the members.) These certificates must be signed by the bank's authorized representatives.

If the board of directors adopts the approved amendment, the bank must provide to the Superintendent a copy of the amendment along with a certificate containing a copy of the directors' resolution adopting the amendment and a statement of the manner of and basis for its adoption. The certificate must be signed by the bank's authorized representatives.



The Superintendent is to then conduct an examination to determine if the manner of and basis for adoption of the amendment comply with the applicable statutory requirements and, within 30 days after receiving the certificate, approve or disapprove the amendment. If the amendment is approved, the Superintendent must forward a copy of the amendment and certificate to the Secretary of State for filing. If the Superintendent fails to approve or disapprove the amendment within that 30-day period, the bank is to forward the copies to the Secretary of State for filing. The amendment is effective when so filed.

### **Liquidations and dissolutions**

(R.C. 1114.16)

In the event of a liquidation or dissolution of a mutual state bank, the priority claims are to be established in accordance with the Banking Law.<sup>36</sup>

## **Chapter 1115. – Conversions/Acquisitions/Mergers**

### **Conversions**

#### **Ohio bank into national or other state institution**

(R.C. 1115.01)

Under the act, a *stock* state bank may:

(1) Convert into a national bank or federal savings association if the conversion is approved by the Office of the Comptroller of the Currency and the affirmative vote or written consent of the holders of two-thirds, or other proportion not less than a majority as the bank's articles of incorporation require, of the outstanding shares of each class of the bank's stock;

(2) Convert into a bank, savings bank, or savings association pursuant to the laws of another state if the conversion is approved by the regulatory authority of the other state and the affirmative vote or written consent of the holders of two-thirds, or other proportion not less than a majority as the bank's articles of incorporation require, of the outstanding shares of each class of the bank's stock.

A *mutual* state bank may:

(1) Convert into a national bank or federal savings association if the conversion is approved by the Office of the Comptroller of the Currency, the affirmative vote of two-

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<sup>36</sup> See R.C. 1125.24.



thirds of the bank's board of directors, and the affirmative vote of two-thirds of the total outstanding votes eligible to be cast at the meeting at which the plan of conversion is presented to the members for adoption;

(2) Convert into bank, savings bank, or savings association pursuant to the laws of another state if the conversion is approved by the regulatory authority of the other state, the affirmative vote of two-thirds of the bank's board of directors, and the affirmative vote of two-thirds of the total outstanding votes eligible to be cast at the meeting at which the plan of conversion is presented to the members for adoption.

As soon as the conversion is effective, a state bank must file with the Superintendent of Financial Institutions all information the Superintendent determines is necessary to reflect in the state's records that the bank is no longer a corporation organized and doing business under Ohio law.

#### **National or other state institution into Ohio bank**

(R.C. 1115.02)

The act provides that a national bank, a bank doing business under authority granted by the bank regulatory authority of another state, a savings association, a savings bank, or a state or federally chartered credit union may, with the approval of the Superintendent, convert into a stock state bank or mutual state bank by submitting an application in accordance with rules adopted by the Superintendent.

#### **Mutual state bank into stock state bank and vice versa**

(R.C. 1115.03)

The act authorizes a mutual state bank to convert into a stock state bank if the conversion is approved by the Superintendent, the affirmative vote of two-thirds of the bank's board of directors, and the affirmative vote of two-thirds of the total outstanding votes eligible to be cast at the meeting at which the plan of conversion is presented to the members for adoption.

A stock state may convert into a mutual state bank if the conversion is approved by the Superintendent and the affirmative vote or written consent of two-thirds, or any other proportion not less than a majority as the bank's articles of incorporation require, of the outstanding shares of each class of the bank's stock.

Any such conversion is effective on the date indicated in the materials filed with the Secretary of State by the converting bank. The bank resulting from the conversion has all the property, rights, interests, and powers of its predecessor bank within the



limits of the charter of the resulting bank. All duties, trust, obligations, and liabilities of the predecessor bank continue in the bank resulting from the conversion.

## **Acquisitions**

(R.C. 1115.06(B) and (C))

Continuing law prohibits any person from acquiring control of a state bank through a purchase, transfer, or other disposition of voting securities of a state bank unless the Superintendent has been given 60 days' prior written notice of the proposed acquisition and, within that time period, the Superintendent has not disapproved the acquisition or extended the time during which the Superintendent may disapprove it. Prior law required that the notice provided to the Superintendent include specific information, such as the identity and business background of each person on whose behalf the acquisition was to be made, that person's assets and liabilities, the terms and conditions of the acquisition, and the source and amount of the funds to be used in making the acquisition. The act eliminates the list of specific information that is required and, instead, requires that the notice contain any information the Superintendent may require by rule.

## **Consolidations/Mergers**

### **With another financial institution**

(R.C. 1115.11(A), (B), and (I))

The act modifies prior that continues in part law to permit a state bank to consolidate or merge with another state bank, a bank, savings bank, or savings association doing business under authority granted by the bank regulatory of another state, a national bank, or a federal savings association, regardless of where it maintains its principal place of business, with the approval of:

- The directors of both constituent corporations:
- Either or both of the following, as applicable:
  - (1) The shareholders of each constituent state bank that is a *stock state bank*, by the affirmative vote or written consent of the holders of two-thirds, or other proportion not less than a majority as the bank's articles of incorporation or code of regulations provide, of the outstanding shares of each class of the bank's stock; or
  - (2) The members of each constituent state bank that is a *mutual state bank*, by the affirmative vote of two-thirds, or other proportion not less than a



majority as the bank's articles of incorporation or code of regulations provide, of the voting members.

- The shareholders or members of the other constituent bank, savings bank, or savings association as required by the applicable state or federal law, articles of incorporation, or code of regulations; and
- If the resulting corporation will be:
  - (1) A state bank, the Superintendent;
  - (2) A national bank or federal savings association, the Office of the Comptroller of the Currency;
  - (3) A bank, savings bank, or savings association doing business under authority granted by the regulatory authority of another state, the state regulatory authority under which the bank, savings bank, or savings association is doing business.

Under prior law that continues in part, for a merger or consolidation in which the resulting or surviving corporation would have been a state bank, an application that included an officers' certification regarding the transaction, a copy of the consolidation or merger agreement, and any other information the Superintendent required, had to be filed with the Superintendent for the Superintendent's approval. The act eliminates the officers' certification but maintains the other requirements.

The act states that the shareholders of the nonsurviving stock state bank have a right to dissent and are entitled to relief as dissenting shareholders under the General Corporation Law for those transactions requiring prior shareholder approval.<sup>37</sup>

#### **With an affiliate**

(R.C. 1115.27)

The act modifies continuing law to authorize a state bank to merge with any of its affiliates with the approval of:

- The directors of all constituent corporations to the merger;
  - (1) The shareholders of each constituent *stock state bank*, by the affirmative vote or written consent of the holders of two-thirds, or other proportion

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<sup>37</sup> See R.C. 1701.85, not in the act.

not less than a majority as the bank's articles of incorporation provide, of the outstanding shares of each class of the bank's stock; or

(2) The members of each constituent *mutual state bank*, the affirmative vote of two-thirds, or other proportion not less than a majority as the bank's articles of incorporation or code of regulations provide, of the voting members.

- The shareholders or members of each other constituent to the merger as required by the applicable state or federal law, articles of incorporation, or code of regulations; and
- The Superintendent.

Under prior law that continues in part, the bank that would have been the surviving bank in the merger was required to file, for the Superintendent's approval, an application including an officers' certification regarding the transaction, a copy of the merger agreement and any other information the Superintendent required. The act eliminates the officers' certification but maintains the other requirements.

### **Transfers or acquisitions of assets and liabilities**

(R.C. 1115.14(A) and (H) and 1115.15)

Under continuing law, a state bank may transfer assets and liabilities to, and acquire assets and liabilities from, another state bank, a bank doing business under authority granted by the bank regulatory of another state, or a national bank, savings bank, or savings association, regardless of where it maintains its principal place of business, with the approval of certain parties.

The act clarifies that, if the assets to be transferred equal more than 50% of the assets of a transferring or acquiring state bank at the time of the transfer and the institution is a *stock state bank*, the shareholders of the state bank must approve of the transaction by the affirmative vote or written consent of the holders of two-thirds, or other proportion not less than a majority as the bank's articles of incorporation provide, of the outstanding shares of each class of the bank's stock. If the assets to be transferred equal more than 50% of the assets of a transferring or acquiring state bank at the time of the transfer and the institution is a *mutual state bank*, the members of the state bank must approve by the affirmative vote of two-thirds, or other proportion not less than a majority as the bank's articles of incorporation or code of regulations provide, of the voting members.



The act states that the shareholders of a stock state bank whose assets have been transferred have a right to dissent and are entitled to relief as dissenting shareholders under the General Corporation Law for those transactions requiring prior shareholder approval.<sup>38</sup>

Lastly, continuing law authorizes the immediate transfer of assets and liabilities whenever an emergency exists with regard to a state bank, national bank, savings bank, or savings association. However, a transfer involving a state bank cannot be made without the consent of the Superintendent. The act adds that the consent must be given in writing.

### **Rights of creditors protected**

(R.C. 1115.20)

Prior law provided that, in any transfer, consolidation, or merger, the rights of creditors is preserved unimpaired and the constituent corporations were deemed to continue their separate existence if the continuation was necessary to preserve any creditor's right. Under the act, this provision applies only to transfers. With respect to consolidations or mergers, the act adds that the rights and obligations of the surviving or new bank are to be governed by the General Corporation Law.<sup>39</sup>

### **Shelf charter**

(R.C. 1115.24)

The act authorizes the Superintendent, at the Superintendent's sole discretion, to grant a "shelf charter" (that is, the preliminary conditional approval of a charter) to an applicant that intends or desires to enter into a transaction resulting in any of the following:

- Formation of an interim bank under R.C. Chapter 1115.;
- Acquisition of control of a designated or undesignated state bank;
- Acquisition of control of a designated or undesignated bank chartered by the banking authority of any other state or the United States that the person intends to convert to a state bank;

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<sup>38</sup> See R.C. 1701.85, not in the act.

<sup>39</sup> See R.C. 1701.82, not in the act.



--Acquisition of assets from and assumption of liabilities, pursuant to R.C. Chapter 1115., of a bank or from the FDIC as receiver of a designated or undesignated bank headquartered in Ohio or any other state that the person intends to convert to a state bank; or

--Formation of a new bank pursuant to the Banking Law.

In determining whether to grant a shelf charter, the Superintendent must consider (1) the availability of adequate capital for the transaction, (2) the existence of acceptable business plans, (3) whether acceptable management, directors, and control persons are identified, and (4) whether all necessary approvals from state and federal agencies have been secured.

A shelf charter granted by the Superintendent, and any final approval for one of the transactions described above, are subject to any conditions and ongoing requirements the Superintendent considers appropriate. An applicant granted a shelf charter is prohibited from exercising control over the bank or consummating the transaction authorized by the charter until the Superintendent gives final approval of the transaction.

A shelf charter expires 24 months after the date it is granted; however:

--The Superintendent may voluntarily extend the expiration date at any time or may approve a written request for an extension submitted by the person who was granted the shelf charter.

--The person granted the shelf charter may withdraw it at any time.

--The Superintendent may modify, suspend, or revoke a shelf charter.

The act authorizes the Superintendent to adopt rules and issue interpretive guidelines the Superintendent considers necessary and appropriate for the implementation of this provision.

## **Chapter 1116. – Mutual Holding Companies**

### **Definitions**

(R.C. 1116.01)

"**Acquiree mutual bank**" means any state bank, savings association, or savings bank that (1) is acquired by a mutual holding company as part of, and concurrently with, mutual holding company reorganization and (2) is in the mutual form immediately prior to the acquisition.



**"Reorganization plan"** means the plan to reorganize into a mutual holding company structure as described under R.C. Chapter 1116.

**"Reorganizing mutual state bank"** means a mutual state bank that proposes to reorganize into a mutual holding company structure in accordance with R.C. Chapter 1116.

**"Resulting mutual holding company"** means a bank holding company organized in mutual form under R.C. Chapter 1116. and, unless otherwise indicated, a subsidiary holding company controlled by a mutual holding company organized under R.C. Chapter 1116.

**"Resulting stock state bank"** means a stock state bank that is organized as a subsidiary of a reorganizing mutual state bank to receive a substantial part of the assets and liabilities, including all deposit accounts, of the reorganizing mutual state bank upon consummation of the reorganization.

**"Stock bank"** means a bank that has an ownership structure in the form of shares of stock and is doing business under authority granted by the Superintendent of Financial Institutions or the bank regulatory authority of another state or the United States.

**"Subsidiary holding company"** means a stock company that is controlled by a mutual holding company and that owns the stock of a stock state bank whose depositors have membership rights in the parent mutual holding company.

### **General Corporation Law applies**

(R.C. 1116.02)

Under the act, a mutual holding company and any subsidiary of a mutual holding company must be created, organized, and governed, and its business must be conducted, in all respects in the same manner as is provided under the General Corporation Law, to the extent that it is not inconsistent with the Banking Law or the rules adopted under the Banking Law. However, a nonbank subsidiary of a mutual holding company may be organized under the general corporate laws of another state of the United States.

A mutual holding company and any subsidiary of a mutual holding company organized under R.C. Chapter 1116. are subject to all powers, remedies, and sanctions provided to the Superintendent and the Division of Financial Institutions under the Banking Law.



## **Mutual state bank reorganization as mutual holding company**

(R.C. 1116.05(A) and (B))

The act permits a mutual state bank to reorganize to become a mutual holding company with approval from the Superintendent and in one of the following manners:

--By organizing one or more subsidiary stock state banks, one or more of which may be an interim stock state bank, the ownership of which must be evidenced by shares of stock to be owned by the reorganizing mutual state bank and by transferring a substantial portion of its assets, all of its insured deposits, and part or all of its other liabilities to one or more subsidiary stock state banks;

--By organizing a first tier subsidiary stock state bank, causing that subsidiary to organize a second tier subsidiary stock state bank, and transferring, by merger of the reorganizing mutual state bank with the second tier subsidiary, a substantial portion of its assets, all of its insured deposits, and part or all of its other liabilities to the resulting stock state bank at which time the first tier subsidiary stock state bank becomes a mutual holding company;

--In any other manner approved by the Superintendent.

As part of its reorganization, a mutual state bank may organize as a subsidiary holding company of the mutual holding company, which subsidiary holding company owns all of the outstanding voting stock of the resulting stock state bank.

### **Board and member approval of reorganization; application**

(R.C. 1116.05(C))

Before reorganizing into a mutual holding company, a reorganizing mutual state bank must do all of the following:

(1) Obtain approval of a reorganization plan by a two-thirds vote of the board of directors of the reorganizing mutual state bank and any acquiree mutual bank;

(2) Obtain approval of the reorganization plan by a two-thirds vote, or such other proportion not less than a majority as the reorganizing mutual state bank's or any acquiree mutual bank's articles of incorporation or code of regulations provide, of the members' votes cast in person or by proxy at the annual meeting or at a special meeting of members called by the board of directors for the purpose of approving the reorganization plan;



(3) File a reorganization application in the form prescribed by the Superintendent that includes (a) an officers' certification that the reorganization plan has been approved by the directors and members in accordance with applicable state law, articles of incorporation, code of regulations, or bylaws, (b) a copy of the plan, and (c) any other information the Superintendent requires.

### **Reorganization plan**

(R.C. 1116.07)

The act requires that each reorganization plan contain a description of all significant terms of the proposed reorganization and include all of the following:

- Any proposed stock issuance plan;
- An opinion of counsel, or a ruling from the U.S. Internal Revenue Service and the Ohio Department of Taxation, as to the federal and state tax treatment of the proposed reorganization;
- A copy of the articles of incorporation and code of regulations of the proposed mutual holding company, the resulting stock state bank, and any affiliate organizations in the holding company structure;
- A description of the method of reorganization under the act;
- A statement that, upon consummation of the reorganization, certain assets and liabilities, including all deposit accounts of the reorganizing mutual state bank, will be transferred to the resulting stock state bank, which bank will immediately become a stock state bank subsidiary of the mutual holding company or subsidiary holding company;
- A summary of the expenses to be incurred in connection with the reorganization;
- Any other information required by the Superintendent.

### **Approval of application**

(R.C. 1116.06 and 1116.08)

Within ten business days after receipt of an application for a mutual holding company reorganization, the Superintendent must either accept the application for processing, request additional information to complete the application, or return the application if it is substantially incomplete.



Within 180 days after an application is accepted for processing, the Superintendent must approve or disapprove the application and, if approved, impose any conditions the Superintendent determines appropriate. In approving or disapproving an application, the Superintendent, after conducting an appropriate examination or investigation, must consider whether:

(1) The reorganizing mutual state bank and any acquiree mutual bank will operate in a safe, sound, and prudent manner;

(2) The applicant has demonstrated that the reorganization plan is fair to the members of the reorganizing mutual state bank and any acquiree mutual bank;

(3) The interests of the reorganizing mutual state bank's depositors and creditors and the general public will not be jeopardized by the proposed reorganization into a mutual holding company;

(4) The proposed reorganization will result in a reorganizing mutual state bank or any acquiree state bank that has adequate capital, satisfactory management, and good earnings prospects;

(5) A stock issuance proposed in connection with the mutual holding company reorganization plan meets the standards established by the Superintendent and any applicable state and federal securities laws; and

(6) The reorganizing mutual state bank or any acquiree mutual bank has furnished all information required in the reorganization plan and any other information requested by the Superintendent regarding the proposed reorganization.

If the application is approved, the Superintendent must – to effect the reorganization – forward the articles of incorporation to the Secretary of State for filing.

### **Membership rights**

(R.C. 1116.09(A) and (B))

A mutual holding company is required to confer:

--Upon existing and future depositors of the resulting stock state bank the same membership rights in the mutual holding company that were granted to depositors by the articles of incorporation or code of regulations of the reorganizing mutual state bank in effect immediately prior to the reorganization;

--Upon existing and future depositors of any acquiree mutual bank or any bank that is in the mutual form when acquired by the mutual holding company, the same



membership rights in the mutual holding company that were granted to depositors by the articles of incorporation or code of regulations of the acquired mutual bank in effect immediately prior to the acquisition, provided that if the acquired mutual bank is merged into another subsidiary state bank from which the mutual holding company draws members, the depositors of the acquired mutual bank must receive the same membership rights as the depositors of the subsidiary state bank into which the acquired mutual bank is merged;

--Upon the borrowers of the resulting stock state bank who are borrowers at the time of reorganization the same membership rights in the mutual holding company that were granted to them by the articles of incorporation or code of regulations of the reorganizing mutual state bank in effect immediately prior to the reorganization, but not any membership rights in connection with any borrowings made after the reorganization;

--Upon the borrowers of any acquiree mutual bank or any bank that is in the mutual form when acquired by the mutual holding company who are borrowers at the time of the acquisition, the same membership rights in the mutual holding company that were granted to them by the articles of incorporation or code of regulations of the acquired mutual bank in effect immediately prior to the acquisition, but not any membership rights in connection with any borrowings made after the acquisition. However, if the acquired mutual bank is merged into another bank from which the mutual holding company draws members, the borrowers of the acquired mutual bank must instead receive the same grandfathered membership rights as the borrowers of the subsidiary state bank into which the acquired mutual bank is merged.

The act prohibits a mutual holding company that acquires a bank in the stock form, other than a resulting stock state bank or an acquiree mutual bank, from granting any membership rights to the depositors and borrowers of the stock bank *unless* the stock bank is merged into a subsidiary stock state bank from which the mutual holding company draws its members. In that case, the depositors of the stock bank are to receive the same membership rights as other depositors of the subsidiary stock state bank into which the stock bank is merged.

### **Governance by board of directors**

(R.C. 1116.10)

A mutual holding company and any subsidiary holding company are to be governed by a board of directors and in accordance with the articles of incorporation and code of regulations adopted in connection with the reorganization, or as amended in accordance with law or rule after the reorganization. The board of the mutual



holding company and any subsidiary holding company must have at least five members who, initially, are to consist of the board of directors of the reorganizing mutual state bank. These members, after the formation of the mutual holding company and any subsidiary holding company, are to continue to serve as directors for the balance of the terms to which they were elected.

#### **Reorganization plan: amendment or termination**

(R.C. 1116.13)

A reorganization plan adopted by the board of directors of the reorganizing mutual state bank or any acquiree mutual bank may be amended by those boards as a result of any regulator's comments before any solicitation of proxies from the members to vote on the reorganization plan or, with the written consent of the Superintendent, at any later time. Additionally, it may be terminated by either board at any time before the meeting at which the members vote on the reorganization plan or, with the written consent of the Superintendent, at any later time.

#### **Transfer of assets and liabilities**

(R.C. 1116.11)

The act states that all assets, rights, obligations, and liabilities of a reorganizing mutual state bank that are not expressly retained by the mutual holding company are to be transferred to the resulting stock state bank.

#### **Deposit accounts**

(R.C. 1116.12)

Under the act, each person who holds a deposit account in a reorganizing mutual state bank or any acquiree mutual state bank immediately before the reorganization must receive, upon consummation of the reorganization, without payment, an identical deposit account in the resulting stock state bank or acquiree mutual state bank.

#### **Conversion of mutual holding companies**

(R.C. 1116.16)

The act permits a mutual holding company organized under federal law or the laws of another state to convert to a mutual holding company organized under R.C. Chapter 1116. by submitting an application to, and obtaining the approval of, the Superintendent. State banks existing as of January 1, 2018, that are affiliates of a mutual holding company organized under federal law or the laws of another state and that



submit an application within one year after that date are eligible for an expedited review process.

### **Powers and duties**

(R.C. 1116.18)

Subject to all necessary regulatory notices or approvals, a mutual holding company organized under R.C. Chapter 1116. may:

--Acquire a bank organized in mutual or stock form by merger of such bank with the subsidiary stock state bank, interim subsidiary stock bank, or subsidiary stock holding company of the mutual holding company;

--Merge with or acquire another holding company provided that holding company has, as one of its subsidiaries, a subsidiary banking corporation;

--Exercise any power of, or engage in any activity permitted for, a mutual state bank;

--Engage directly or indirectly only in such activities as are permissible activities for bank holding companies under applicable state and federal law or regulations;

--Invest in the stock of a bank;

--Exercise any rights, waive any rights, or take or waive any other action with respect to any securities of any subsidiary stock state bank or subsidiary stock holding company that are held by the mutual holding company.

### **Surplus distribution**

(R.C. 1116.19)

The act permits the board of directors of a mutual holding company, by a majority vote of the directors, to divide equitably any surplus that is in excess of the amount required for the operations of the mutual holding company or to maintain the safety and soundness of the mutual holding company, and to distribute that surplus to the respective depositors of its subsidiary stock state banks in accordance with their membership rights. In addition, if the Superintendent determines that the surplus held by a mutual holding company is excessive, the Superintendent may order the board of directors to make such a distribution.



## **Subsidiary holding company; issuance of securities**

(R.C. 1116.20)

A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its subsidiary stock state bank, provided the subsidiary holding company is not formed and operated as a means of evading or frustrating the purposes of R.C. Chapter 1116. Subject to the approval of the Superintendent, the subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date.

Any subsidiary stock state bank or subsidiary holding company may, with the prior approval of the Superintendent and subject to any rules the Superintendent may prescribe, issue one or more classes of securities, including one or more classes of common stock or preferred stock, and take any action with respect to the securities. However, the mutual holding company must hold at least 25% of the combined voting power of all classes of securities of the subsidiary stock holding company or stock state bank that have voting power in the election of directors of such stock state bank.

A subsidiary stock state bank or subsidiary stock holding company may issue, in connection with an employee stock option or other employee benefit plan or with the mutual holding company reorganization or subsequent to the reorganization, different classes of common stock to the mutual holding company and subsidiary stock state bank or subsidiary stock holding company. An issuance of securities may be made at the time of the mutual holding company reorganization or after it, and may be made in connection with the merger or acquisition of another bank whether organized in mutual or stock form.

## **Converting to a stock holding company**

(R.C. 1116.21)

The act permits a mutual holding company organized under R.C. Chapter 1116. to convert to a stock holding company by submitting an application to, and obtaining the approval of, the Superintendent.

## **Chapter 1117. – Bank Offices**

### **Notice of proposed banking office**

(R.C. 1117.02)

Under continuing law, changed in part by the act, a bank having its principal place of business in Ohio that proposes to establish a banking office must submit an



application to the Superintendent of Financial Institutions. The Superintendent is required to consider certain factors in determining whether to approve a proposed banking office. The act eliminates "the adequacy of the bank's paid-in capital" as one of those factors.

### **Relocation procedures**

(R.C. 1117.04)

In the case of a bank proposing to relocate a banking office, current law provides the following:

(1) If the banking office is to be relocated *within the banking office's current service area*, the bank must notify the Superintendent and comply with the relocation procedures the Superintendent establishes.

(2) If the banking office is to be relocated *outside the banking office's current service area*, the bank must obtain the Superintendent's approval and comply with the banking office closing procedures established by the Superintendent.

The act modifies (1), above, by replacing the italicized language with "within a one-mile radius of the banking office's current location." It modifies (2), above, by replacing the italicized language with "outside a one-mile radius of the banking office's current location."

### **Providing services to the bank's customers at another institution**

(R.C. 1117.05)

Under continuing law, changed in part by the act, a bank may, with the Superintendent's approval, contract with one or more other banks, savings banks, and savings associations to provide services to the contracting bank's customers at any of the offices of the other institutions as if those offices were offices of the contracting bank. In determining whether to approve such a contract, the Superintendent must consider certain factors. The act eliminates "the adequacy of the paid-in capital" of both the contracting bank and the other institutions as one of those factors.

### **Nonobservance of banking hours**

(R.C. 1117.07)

Continuing law generally permits the closing of a bank's banking office in the event of natural disaster, power failure, fire, strike, robbery, or any other reason the Superintendent approves, or in the event of the declaration of an emergency by the



Governor. Prior law prohibited a banking office from remaining closed for more than 48 *consecutive hours, excluding legal holidays*, without obtaining the approval of the Superintendent or, in the case of a national bank, the Comptroller of the Currency.

Under the act, a banking office cannot remain closed for more than "two consecutive days, excluding weekends and legal holidays," without the approval of the Superintendent. The approval of the Comptroller of the Currency is no longer required.

### **Chapter 1119. – Foreign Banks**

The only revisions made in R.C. Chapter 1119. are conforming changes.

### **Chapter 1121. – Superintendent's Powers**

#### **Definitions**

(R.C. 1121.01(B))

For purposes of R.C. Chapter 1121., the definition of "**regulated person**" includes a director, officer, or employee of or agent for a bank or trust company or a controlling shareholder of a state bank, foreign bank, or trust company. The act replaces *controlling shareholder of* with *person who controls a* state bank, foreign bank, or trust company. And it defines "**control**" as (1) power, directly or indirectly, to direct the management or policies of a bank or (2) ownership or control of or power to vote 25% or more of any class of the bank's voting securities.

#### **Parity rules**

(R.C. 1121.05)

Under continuing law, the Superintendent must adopt rules granting state banks any right, power, privilege, or benefit possessed, by virtue of statute, rule, regulation, interpretation, or judicial decision, by certain entities, including (1) banks, savings associations, and savings banks doing business under authority granted by federal regulators or the regulatory authority of another state and (2) any other person having an office or other place of business in Ohio and engaging in the business of lending money, or buying or selling bullion, bills of exchange, notes, bonds, or other evidences of indebtedness with a view to profit.

The act provides that, in addition to granting these rights and power to state banks, they also must be granted to trust companies. The act also expands the list of entities described in (1), above, to include trust companies and the persons described in (2), above, to include the following: any other persons *engaging in the business of banking, offering financial products and services, soliciting or accepting deposits, lending money, or*



buying or selling bullion, bills of exchange, notes, bonds, or other evidences of indebtedness *whether through an office or other place of business in Ohio or via the Internet, advertising, or other form of solicitation.*

The Superintendent is permitted by the act to require a state bank or trust company that has acted in reliance on a rule adopted and later revoked or lapsed in accordance with the parity rules to bring its affected activities in compliance with the law. Unless the activities will or may result in harm to the bank or trust company as determined by the Superintendent, the bank or trust company must be granted a reasonable period of time of not less than one year nor more than two years from the date the rule is revoked or lapsed, to bring its affected activities in compliance with the law. Upon the written request of a bank or trust company, the Superintendent may grant a longer period of time.

### **Reduction of disadvantage to a state bank or trust company**

(R.C. 1121.06)

If any regulation, interpretation, or guideline of the Office of the Comptroller of the Currency, FDIC, Federal Reserve Board, or the bank regulatory authority of another state puts an Ohio bank or trust company at a disadvantage to a national bank, the Superintendent is authorized under continuing law to adopt a rule to reduce or eliminate the disadvantage. The act expands this provision to include any regulation, interpretation, or guideline of the Consumer Financial Protection Bureau, National Credit Union Administration, or any other bank regulatory authority of the United States that puts an Ohio bank or trust company at a disadvantage to *any other type of financial institution.*

Pursuant to continuing law, any such rule is to be adopted under R.C. 111.15. If the rule is not revoked by the Superintendent, it lapses and has no effect 30 months after its effective date. The act permits the Superintendent to adopt the rule under R.C. 111.15 for an additional 30-month period. It also permits the Superintendent to require a bank or trust company that has acted in reliance on a rule adopted and later revoked or lapsed to bring its affected activities in compliance with the law. Unless the activities will or may result in harm to the bank or trust company as determined by the Superintendent, the bank or trust company must be granted a reasonable period of time of not less than one year nor more than two years from the date the rule is revoked or lapsed, to bring its affected activities in compliance with the law. Upon the written request of a bank or trust company, the Superintendent may grant a longer period of time.



## **Examination authority**

### **Examination of bank records**

(R.C. 1121.10)

Continuing law requires the Superintendent, or any deputy or examiner appointed by the Superintendent, to examine the records and affairs of each bank at least once every 24-month cycle. The examination is to include a review of compliance with the law and other matters the Superintendent determines.

The act clarifies that this examination authority applies to *state* banks and specifies that the examination is to also include a review of a bank's safety and soundness. It also reduces, from 20 to 10 years, the period of time that a bank's examination report and all related correspondence must be preserved by the Superintendent.

### **Examination of controlling shareholder**

(R.C. 1121.12 and 1121.13)

Continuing law also provides that an examination of a bank may include the examination of a controlling shareholder of the bank that is a bank holding company registered with the Federal Reserve. The act replaces the term "controlling shareholder" with "person who, directly or indirectly, controls," and includes the examination of such a person that is (1) a savings and loan holding company or (2) a corporation that is not a savings and loan holding company, as its affairs relate to the bank.

In addition to the reasons specified under continuing law for conducting such an examination, the act adds that an examination can be made if the Superintendent has reasonable cause to believe there is a significant risk of imminent material harm to any subsidiary or nonbank affiliate as its affairs relate to the bank and the examination is necessary to fully determine the risk to the bank.

### **Prohibited acts; remedies**

(R.C. 1121.16(A) and (B))

Continuing law prohibits a regulated person from: (1) refusing to allow an authorized examination, (2) refusing to give information required by the Division of Financial Institutions in relation to an examination, or (3) providing false or misleading information in relation to an examination. Under the act, state banks and trust companies are also prohibited from taking any of these actions. In addition, (3), above,



is modified to require that the regulated person, bank, or trust company providing the false or misleading information *knows* that it is false or misleading.

In the event of a violation of this prohibition, the Superintendent is authorized to:

- Issue a cease and desist order, a removal or prohibition order, or a suspension or temporary prohibition order. The act also permits the Superintendent to assess a civil penalty.
- Appoint a conservator. Under the act, this applies only to a *state* bank.
- Initiate civil or criminal proceedings.

### **Execution of documents**

(R.C. 1121.17)

Under continuing law, documents that are required by the Superintendent may be signed and sworn to on behalf of a bank by any officer authorized by the bank to do so. The act applies this as well to trust companies, and specifies that the persons signing the documents are to be any officer *or director* authorized to do so by *the bank's or trust company's board of directors*.

### **Assessments and examination fees**

(R.C. 1121.10(C), 1121.24, and 1121.29)<sup>40</sup>

The act reinstates the authority of the Superintendent to (1) charge banks application fees and the costs of the Division's special or follow-up examinations and visitations and (2) annually assess banks, savings and loan associations, and savings banks for purposes of funding the operations of the Division.<sup>41</sup>

Under the act, the Superintendent is to assess, on an annual or periodic basis, each bank, savings and loan association, and savings bank that is subject to inspection and examination by the Superintendent. The assessment is to be based on the total assets of the particular institution as of December 31 of the prior year and is to be used to fund the operations of the Division.

To establish the schedule of assessments, the Superintendent is to determine the Division's budget for examination and regulation of the institutions and take into

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<sup>40</sup> Both R.C. 1121.24 and 1121.29 have a 90-day effective date.

<sup>41</sup> This authority was repealed in 2015 by H.B. 340 of the 131st General Assembly.

consideration any cash reserves and amounts collected by not yet expended or encumbered in the previous fiscal year's budget and remaining in the Banks Fund. The Superintendent must present the actual schedule to the Banking Commission for confirmation. If, prior to the end of the fiscal year, the Commission determines additional money is needed to adequately fund the Division's operations, it may increase the assessment for that fiscal year.

With respect to the charging of bank fees, the act requires the Superintendent to periodically establish a schedule of fees for examinations and applications, for certifying copies of documents filed with the Division, and for publication or serving of required notices. The fees must be reasonable considering the Division's direct and indirect costs. Fees may be waived to protect the interests of depositors and for other fair and reasonable purposes determined by the Superintendent.

The act permits the Superintendent to charge a bank for any (1) special examination requested by the bank's board of directors or a majority of its shareholders and (2) additional examination and follow-up visitations within the 24-month examination schedule that the Superintendent believes is necessary due to the condition or conduct of the bank. The Superintendent may also charge a bank for *any* examination of its operations as a trust company and data processing facility.

All assessments and fees charged by the Superintendent, and any forfeitures required to be paid to the Superintendent, must be deposited into the Banks Fund.

### **Confidentiality of information; disclosure**

(R.C. 1121.18(A) to (C) and (E))

Under prior law, information leading to, arising from, or obtained in the course of an authorized examination was privileged and confidential. The act, instead, requires the Superintendent and the Superintendent's agents and employees to keep privileged and confidential all information obtained by the Superintendent, agent, or employee as a result of or arising out of the examination or supervision of a bank or another authorized examination, from required reports, or because of their official position. The act prohibits any person, including any person to whom the information is disclosed under the authority of this provision, from disclosing the information, except as specifically provided in this provision.

The act modifies the law with respect to the circumstances under which this information may be disclosed by the Superintendent or the Superintendent's agents and employees, as follows:



--The information may also be released to auditors, attorneys, or similar professionals retained by the bank or trust company to assist in conducting the business of the bank or trust company, or other person examined, in a safe and sound manner and in compliance with the law.

--The information may be released to law enforcement authorities *in connection with criminal investigations or referrals made by the Superintendent.*

--The information may also be released to other state and federal agencies or, in the case of a state bank, to the federal home loan bank to which the bank belongs, as the Superintendent determines necessary and appropriate, but only under such conditions and limitations as the Superintendent, in the Superintendent's sole discretion, may require.

The act adds – as an additional circumstance under which such information may be introduced into evidence – "when penalties or an enforcement action has been initiated by the Superintendent." And it permits the Superintendent to adopt rules, in accordance with the Administrative Procedure Act, to permit a bank, trust company, or other person to disclose the information in limited circumstances other than as otherwise specified by law.

### **Self-assessment privilege**

(R.C. 1121.19)

The act provides that a self-assessment report of a bank, any contents of the report, and any data, analyses, or other information generated, created, produced, developed, or prepared as part of the self-assessment process, are privileged and not admissible or subject to discovery in any civil or administrative litigation, proceeding, or investigation. A "self-assessment report" includes (1) an evaluation of the bank's loan underwriting standards, asset quality, financial reporting to federal or state regulatory agencies, and compliance with its policies and with federal or state statutory or regulatory requirements, and (2) any communication related to the report, including emails or telephone logs.

This self-assessment privilege granted to a bank and its affiliates applies regardless of whether a bank regulator or any other governmental authority in possession of a self-assessment report or any contents of it subsequently discloses it or any contents of it to a third party as required or permitted by state or federal law. A bank regulator or any other governmental authority in possession of a self-assessment report or any content of it is prohibited from disclosing the report or contents to any person in response to a public records request.



## **Report of condition and income**

(R.C. 1121.21)

Each bank and trust company is required under continuing law to report its condition and income to the Division of Financial Institutions at the times, in the form, and including the information prescribed by the Superintendent. The act eliminates the penalty for failure to comply with this requirement.

The act also eliminates the requirement that a bank or trust company maintain a summary of its most recent report of condition and income in each of its offices, post notice of the availability of the summary in each office, and make the summary available to the public without charge.

## **Criminal records checks: conditional approval**

(R.C. 1121.23)

Continuing law requires the Superintendent to request a criminal records check whenever the Superintendent's approval is required for a person to serve as an organizer, incorporator, director, executive officer, or controlling shareholder of a bank, or to otherwise have a substantial interest in or participate in the management of a bank. The act allows the Superintendent to conditionally approve such a person, subject to receiving satisfactory results of the criminal records check. If the Superintendent does not receive the results within 90 days after the criminal records check was requested, the Superintendent may extend the conditional approval for not more than 90 days.

## **Banks Fund**

(R.C. 1121.30)<sup>42</sup>

Continuing law creates the Banks Fund in the state treasury. Money in the Fund is used to defray the operational costs of the Division. The act states that the money cannot be used for any other purpose.

## **Orders relative to a regulated person**

(R.C. 1121.33(D) and 1121.34(B) and (D))

Under continuing law, a regulated person who has been suspended, removed from office, or temporarily or otherwise prohibited from further participation in the affairs of a bank or trust company by order of the Superintendent cannot continue to

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<sup>42</sup> This section has a 90-day effective date.



hold any office or participate in any manner in the affairs of the bank or trust company, except as specifically permitted by the Superintendent pursuant to a modification of the order. Under the act, this prohibition applies also in situations in which the suspension, removal, or prohibition order is issued by the bank regulatory authority of another state or the United States.

If a regulated person is charged in any indictment or complaint authorized by a prosecuting attorney or a U.S. attorney with the commission of a felony involving dishonesty or breach of trust or involving a depository institution, the Superintendent is permitted by continuing law to suspend the regulated person from office or temporarily prohibit the person's further participation in the conduct of the affairs of a bank or trust company, or both. The act expands the crimes for which the Superintendent can take such actions. Under the act, those crimes are "a felony or a crime involving an act of fraud, dishonest, breach of trust, theft, or money laundering involving a depository institution."

### **Administrative hearings; appeals**

(R.C. 1121.38)

The act specifies that administrative hearings authorized under continuing law, *other than those regarding regulated persons*, are confidential, unless the Superintendent determines that holding an open hearing would be in the public interest. Within 20 days after service of the notice of a hearing, a respondent may file with the Superintendent a written request for a public hearing. A respondent's failure to file the request constitutes a waiver of any objections to a confidential hearing.

Administrative hearings regarding a regulated person are to be open. Within 20 days after service of the notice of a hearing, the respondent may file with the Superintendent a written request for a confidential hearing. If such a request is made, the hearing is to be confidential unless the Superintendent determines it would be in the public interest to have an open hearing.

The act also provides that, at certain administrative hearings the records of which may be the basis of an appeal to court, a stenographic record of the testimony and other evidence submitted is to be taken at the Division's expense. The record must include all of the testimony and other evidence, and any rulings on the admissibility of the evidence, that is presented at the hearing.

Under continuing law, a bank, trust company, or regulated person against whom the Superintendent issues an order upon the record of an administrative hearing may file a notice of appeal in the court of common pleas. The clerk of court must transmit a copy of the notice to the Superintendent, who must then file the record of the hearing.



The act instead requires the Superintendent, within 30 days after receiving the notice of appeal, to file a certified copy of the record with the clerk of court. In the event of a private hearing, the record of the hearing must be filed under seal.

### **Supervision order**

(R.C. 1121.41)

Under continuing law, if the Superintendent issues an order placing a bank or trust company under supervision and appointing a supervisor, the order may prohibit the bank or trust company from taking certain actions during the period of supervision without the prior approval of either the Superintendent or the supervisor. Those actions include disposing of assets, lending any of its funds, and incurring debt. The act authorizes the Superintendent to specify other prohibited actions in the order.

### **Publication of orders and agreements**

(R.C. 1121.43)

Continuing law requires the Superintendent to "publish and make available" to the public on a monthly basis:

(1) Any written agreement or other writing for which a violation may be enforced by the Superintendent;

(2) Any final (a) cease and desist order, (b) order removing or suspending a regulated person from office or prohibiting or temporarily prohibiting further participation in the affairs of a bank or trust company, (c) assessment of a civil penalty, or (d) supervision order;

(3) Any modification or termination of an agreement, other writing, or order made public in accordance with this provision.

This requirement does not apply, however, if the Superintendent determines that publishing a written agreement and making it available to the public would be contrary to the public interest. If the Superintendent determines that publishing a final order and making it available to the public would seriously threaten the safety and soundness of a bank or trust company, the Superintendent may delay the publication for a reasonable period of time.

The act eliminates the requirement that any of this information be *published*.



## **Order and subpoena powers**

(R.C. 1121.47)

Under continuing law, the Superintendent may summon and compel, by order or subpoena, witnesses to appear before the Superintendent, deputy superintendent, examiner, or attorney examiner, and testify under oath regarding the affairs of a bank or trust company or, in relation to matters concerning a state bank, foreign bank, or trust company, a regulated person.

The act replaces the term "attorney examiner" with "attorney," and authorizes the Superintendent to designate other persons to whom the witnesses may be required to appear before and testify.

## **Suits and court proceedings**

(R.C. 1121.48)

Continuing law requires that all suits and court proceedings brought by the Superintendent be conducted by the Attorney General. Under the act, they also may be conducted by a designee of the Attorney General.

## **Audit by independent auditor**

(R.C. 1121.50)

The Superintendent is authorized under continuing law to require a bank, when circumstances warrant, to have an independent auditor conduct agreed upon procedures prescribed by the Superintendent. The act authorizes the Superintendent to do the same with respect to a trust company. It also defines "independent auditor" as an external, unaffiliated auditor who has a certified public accounting designation that qualifies the person to provide an auditor's report.

## **Proceedings when capital of bank is impaired**

(R.C. 1121.52)

Prior law set forth the procedures that must be followed when the capital of a bank is impaired, including the assessment of shareholders. The act repeals those provisions and, instead, provides for the following if a state bank is undercapitalized:

--The Superintendent must notify the bank of the undercapitalization, and may require the bank to submit a written capital restoration plan within 45 days after the bank receives that notice, unless the Superintendent authorizes a longer period of time.



--A capital restoration plan is to specify:

- The steps the bank will take to become adequately capitalized;
- The levels of capital to be attained during the timeframe in which the plan will be in effect;
- The types and levels of activities in which the bank will engage; and
- Any other information the Superintendent may require.

--The Superintendent is required to approve a capital restoration plan if the Superintendent determines that the plan (1) is based on realistic assumptions and is likely to succeed in restoring the bank's capital and (2) would not appreciably increase the risk (including credit risk and interest-rate risk) to which the bank is exposed. If the plan is not approved, the Superintendent must notify the bank and require it to submit a revised plan within a specified time period. Upon serving that notice, the Superintendent may immediately appoint a conservator for the bank or take any other action authorized by law or rule.

--If a state bank has submitted and is operating under an approved capital restoration plan:

- It is not to be required to submit an additional capital restoration plan based on a revised calculation of its capital measures unless specifically required by the Superintendent to do so. A bank that is notified it must submit a new or revised plan must file a written plan within 30 days after receiving the notice, unless the Superintendent authorizes a different period of time.
- It may, after prior written notice to and approval by the Superintendent, amend the plan to reflect a change in circumstance. Until a proposed amendment is approved by the Superintendent, the bank must implement the plan in its current form.

--If an undercapitalized bank fails to submit a capital restoration plan within the designated period of time, upon the expiration of that period, the Superintendent may immediately appoint a conservator for the bank or take any other action authorized by law or rule.

--If an undercapitalized bank fails, in any material respect, to implement a capital restoration plan, the Superintendent may immediately appoint a conservator for the bank or take any other action authorized by law or rule.



--Lastly, the act does not prohibit the Superintendent from requiring a state bank to submit a capital restoration plan at any other time the Superintendent considers necessary.

### **Immunity of Superintendent and employees**

(R.C. 1121.56)

Under continuing law, neither the Superintendent nor any employee of the Division is liable in any civil, criminal, or administrative proceeding for any mistake of judgment or discretion in any action taken, or omission made in good faith. The act extends this immunity to any agent or contractor of the Division and any supervisor appointed by the Superintendent under R.C. Chapter 1121. It also clarifies that the action taken or omission made must be "within the scope of the person's official capacity as assigned by the Superintendent."

## **Chapter 1123. – Banking Commission**

### **Overview**

(R.C. 1181.16 and 1181.17)<sup>43</sup>

In connection with the repeal of the chapters governing Savings and Loan Associations and Savings Banks, the act eliminates the Savings and Loan Associations and Savings Banks Board. It provides, however, for a transition period in which the memberships of the Board and the Banking Commission are combined. Thereafter, the membership of the Banking Commission is increased from seven to nine members.

### **Transition period**

(Section 130.24)

On January 1, 2018 – the date the new Banking Law becomes effective – the Banking Commission is to additionally consist of the six members appointed to the Savings and Loan Associations and Savings Banks Board. Each such member is to serve until the end of the term for which the member was appointed. Likewise, the appointed members serving on the Banking Commission as of that date are to serve until the end of the term for which that member was appointed.

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<sup>43</sup> R.C. 1181.16 and 1181.17 were also repealed in Section 105.01 of the act, giving the repeal a 90-day effective date.



The act's changes to the terms of office of the Banking Commission, and the qualifications for membership, first apply to the members appointed on or after January 1, 2018.

### **Commission membership and qualifications**

(R.C. 1123.01)<sup>44</sup>

The act increases the membership of the Banking Commission from seven to nine members. One of the members is the Deputy Superintendent for Banks, and the remaining eight members are to be appointed by the Governor, with the advice and consent of the Senate.

After the second Monday in January of each year, the Governor is to appoint two members. Members serve four-year terms (increased from three years) commencing on February 1 and ending on January 31. No appointee may serve more than two consecutive full terms.

At least six of the eight appointed members must be, at the time of appointment, executive officers of state banks and all of the appointed members must have banking experience as a director or officer of a bank, savings bank, or savings association insured by the FDIC, a bank holding company, or a savings and loan holding company. The membership must be representative of the banking industry as a whole, including representatives of banks of various asset sizes and ownership structures, as determined by the Governor after consultation with the Superintendent of Financial Institutions. No one who has been convicted of, or has pleaded guilty to, a felony involving an act of fraud, dishonesty, breach of trust, theft, or money laundering can hold office as a member.

The members do not receive a salary but do receive payment for their expenses incurred in the performance of their duties. The Governor may remove any of the eight appointed members whenever in the Governor's judgment the public interest requires removal.

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<sup>44</sup> Parallel amendments were made to R.C. 1123.01 in Section 101.01 of the act, resulting in a 90-day effective date. However, the appointment date remains unchanged



## **Duties**

(R.C. 1123.03)<sup>45</sup>

In addition to its duties under continuing law, the Banking Commission is required to (1) consider the annual schedule of assessments proposed by the Superintendent of Financial Institutions and determine whether to confirm it and (2) determine whether to increase the assessments during a fiscal year.

## **Chapter 1125. – Liquidations and Conservatorships**

### **Application**

The act clarifies that R.C. Chapter 1125. applies to *state* banks.

### **Conservatorships: powers**

(R.C. 1125.12(A)(9))

Continuing law sets forth the powers of a conservator while under the supervision of the Superintendent. One of those powers is to sell assets, compromise any debt or claim due the bank, discontinue any pending action, and implement a restructuring of the bank, if done within the ordinary course of business of the bank and according to ordinary business terms. The act adds that is also must be done *in good faith*.

### **Involuntary liquidations**

#### **Payment of claims**

(R.C. 1125.24)

Continuing law sets forth the order in which claims against a bank's estate and expenses are to be paid. Included are wages and salaries of officers and employees earned during the one-month period preceding the date of the bank's closing in an amount not exceeding \$1,000 per person. The act adds "commissions, including vacation, severance, and sick leave pay," of those officers and employees.

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<sup>45</sup> R.C. 1123.03 has a 90-day effective date.



## **Destruction of records**

(R.C. 1125.30)

Under continuing law, a receiver may destroy the records of the bank, subject to the approval of the court, after the receiver determines there is no further need for them. The act adds that the records are to be destroyed in the manner authorized for banks to destroy their records.<sup>46</sup>

## **Chapter 1133. – Societies for Savings**

The act repeals this chapter.

## **Chapters 1151. to 1157. – Savings and Loan Associations**

The act repeals these chapters.

## **Chapters 1161. to 1165. – Savings Banks**

The act repeals these chapters.

## **Chapter 1181. – Division of Financial Institutions**

### **Deputy superintendents**

(R.C. 1181.01)

The act eliminates the requirement that the Superintendent of Financial Institutions appoint a Deputy Superintendent for Savings and Loan Associations and Savings Banks.

With respect to the Deputy Superintendent for Banks and the Deputy Superintendent for Credit Unions, prior law required each one to have at least five years of experience in that particular industry or at least five years of experience in the examination or regulation of banks, savings and loan associations, savings banks, or credit unions.

Under the act, the *Deputy Superintendent for Banks* must possess at least one of the following qualifications prior to the Deputy Superintendent's appointment:

(1) Not less than five years of experience as (a) a senior level officer in a bank, savings and loan association, or a savings bank, a bank holding company, or a savings and loan holding company or (b) a senior level manager or senior professional with a

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<sup>46</sup> See R.C. 1109.69.



primary business of, or professional focus on, auditing or providing professional advice to such institutions;

(2) Not less than five years of experience as a senior level supervisor in the examination or regulation of banks, savings and loan associations, or savings banks; or

(3) Not less than a total of five years of experience in any combination of the positions described in (1) and (2), above.

Additionally, the *Deputy Superintendent for Credit Unions* must possess at least one of the following qualifications prior to the Deputy Superintendent's appointment:

(1) Not less than five years of experience as (a) a senior level officer in a credit union or (b) a senior level manager or senior professional with a primary business of, or professional focus on, auditing or providing professional advice to credit unions;

(2) Not less than five years of experience as a senior level supervisor in the examination or regulation of credit unions; or

(3) Not less than a total of five years of experience in any combination of the positions described in (1) and (2), above.

With respect to the *Deputy Superintendent for Consumer Finance*, prior law required the Deputy Superintendent to have at least five years of experience in one or more of the consumer finance companies regulated by the Division of Financial Institutions or in the examination or regulation of banks, savings and loan associations, savings banks, credit unions, or consumer finance companies. Under the act, the Deputy Superintendent must possess at least one of the following qualifications prior to the Deputy Superintendent's appointment:

(1) Not less than five years of experience as (a) an owner, officer, or senior level manager of one or more consumer finance companies, (b) a senior level manager of a mortgage banking affiliate of a bank, savings and loan association, savings bank, bank holding company, or savings and loan holding company, or (c) a senior level manager or senior professional with a primary business of, or professional focus on, auditing or providing professional advice to consumer finance companies;

(2) Not less than five years of experience as a senior level supervisor in the examination or regulation of consumer finance companies; or

(3) Not less than a total of five years of experience in any combination of the positions described in (1) and (2), above.



## **Employees; bonds**

(R.C. 1181.02 and 1181.03)

In addition to the employees authorized under continuing law, the act permits the Superintendent to appoint and employ such professionals and agents as the prompt execution of the duties of the Superintendent's office requires.

Under continuing law, the Superintendent must require a bond of each employee of the Division, conditioned on the faithful performance of each employee's duties, in an amount not less than \$5,000 that the Superintendent determines to be acceptable. The act extends this bonding requirement to each agent of the Division.

## **Immunity of Superintendent and employees**

(R.C. 1181.04)

Under continuing law, neither the Superintendent nor any employee of the Division is liable in any civil, criminal, or administrative proceeding for any mistake of judgment or discretion in any action taken, or any omission made by the Superintendent or employee in good faith. The act extends this immunity to agents and contractors of the Division. It also limits it to actions taken or omissions made in good faith *within the scope of the person's official capacity as assigned by the Superintendent*.

## **Conflicts of interest**

(R.C. 1181.05)

Continuing law prohibits the Superintendent and any other employee of the Division from having certain connections to, or affiliations with, banks, savings and loan associations, savings banks, credit unions, or consumer finance companies under the supervision of the Superintendent, including: (1) being interested, directly or indirectly, in any such financial institution or company and (2) owning an equity interest in any such financial institution or company. The act does the following:

--It clarifies that the prohibition applies with respect to *state* banks.

--It removes the reference to savings and loan associations and savings banks and adds trust companies.

--With respect to (1), above, it replaces "being interested" in with *having a business or investment interest* in;



--In (1) and (2), above, it adds *or any affiliate of* any such financial institution or company;

--It amends the definition of "consumer finance company" to include only those persons who are licensed or registered under the relevant statutes administered by the Superintendent, rather than any person *required to be* licensed or registered under those statutes, as provided in law.

Continuing law permits an employee, under certain circumstances, to retain the ownership of or beneficial interest in the securities of a financial institution or consumer finance company under the supervision of the Division. The employee must provide written notice of the retention and, thereafter, is disqualified from participating in any decision or examination that may affect the issuer of the securities. If the disqualification impairs the employee's ability to perform the employee's duties, the employee may be ordered to divest himself or herself of the ownership or beneficial interest. The act adds that, as an alternative, the employee may be ordered to resign.

Continuing law specifies that, for purposes of this provision, the interest of an employee's spouse or dependent child arising through the ownership or control of securities is considered the interest of the employee, unless certain conditions are met. Under the act, the employee *must demonstrate to the satisfaction of the Superintendent* that the conditions are met.

### **Financial Institutions Fund**

(R.C. 1181.06)

The Financial Institutions Fund receives assessments on the Banks Fund, the Savings Institutions Fund, the Credit Unions Fund, and the Consumer Finance Fund in accordance with procedures prescribed by the Superintendent and approved by the Director of Budget and Management. All operating expenses of the Division are to be paid from the Financial Institutions Fund.

The act specifies that money in the Fund can be used *only* for that purpose. It also eliminates the reference to the Savings Institutions Fund (see below).

### **Office space for the Superintendent**

(R.C. 1181.07)

Under continuing law, modified by the act, the state is required to furnish the Superintendent suitable facilities for conducting business at the seat of government and in any other city of the state where it is necessary to keep a resident examiner. The act replaces "in any other city of the state" with *in any other location within the state*.



## **Seal of the Superintendent**

(R.C. 1181.10)

The act eliminates the requirement that the seal of the Superintendent be one and three-fourths inches in diameter.

## **Copies of records as evidence**

(R.C. 1181.11)

Continuing law provides that copies of certificates or records in the office of the Superintendent that are duly certified by the Superintendent and authenticated by the Superintendent's seal of office constitute evidence in any state court of every matter that could be proved by producing the original. Under the act, those certificates and records may, in the absence of the Superintendent, be certified by a deputy superintendent having jurisdiction over the records.

## **Savings and Loan and Savings Banks Board; Savings Institutions Fund**

(R.C. 1181.16, 1181.17, 1181.18; Section 512.120)

The act repeals the sections that establish the Savings and Loan Associations and Savings Banks Board and set forth the Board's powers and duties. It also terminates the Savings Institutions Fund and transfers the Fund's cash balance to the Banks Fund.

## **Regulation of consumer finance companies**

(R.C. 1181.21)

Under continuing law, the Deputy Superintendent for Consumer Finance is the principal supervisor of consumer finance companies. In that position, the Deputy is responsible for conducting examinations under the specific statutes regulating consumer finance companies. The act expressly includes the Ohio Credit Services Organization Act (R.C. Chapter 4712.) as one of those statutes.

## **Introduction into evidence or disclosure of nonpublic information**

(R.C. 1181.25)

The Superintendent is permitted under continuing law to introduce into evidence or disclose information that otherwise is deemed privileged, confidential, or not a public record, provided the Superintendent does so as permitted under the relevant statute or in specified circumstances. Under the act, those circumstances are as follows:



(1) In connection with any civil, criminal, or administrative investigation or examination conducted by the Superintendent or by any other financial institution regulatory authority, any state or federal attorney general or prosecuting attorney, or any local, state, or federal law enforcement agency;

(2) In connection with any civil or criminal litigation or administrative enforcement action initiated or to be initiated by the Superintendent in furtherance of the powers and duties imposed upon the Superintendent;

(3) To administer licensing and registration through the Nationwide Mortgage Licensing System and Registry.<sup>47</sup>

If the Superintendent has reason to believe that any privileged, confidential, or other nonpublic information provided may be disclosed by the intended recipient, the act requires the Superintendent to seek a protective order or enter into an agreement to protect that information.

The act also states that all reports and other information made available under R.C. Chapter 1181. remain the property of the Superintendent. Except as otherwise provided, a person, agency, or other authority to whom the information is made available, or any officer, director, or employee of that person, agency, or other authority, cannot disclose the information except in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the affairs of any individual or entity.

Lastly, the act states that the Superintendent is not to be considered as having waived any privilege that applies to any information by transferring that information to, or permitting it to be used by, any federal or state agency or any other person as permitted by this chapter (R.C. Chapter 1181. (Division of Financial Institutions)) or R.C. Chapter 1121. (Superintendent's Powers).

## **Other related changes made by the act**

### **Authority to govern in the absence of the Superintendent**

(R.C. 121.07)

Prior law provided that, in the absence of the Superintendent of Financial Institutions, the Director of Commerce could perform the duties vested by law in the Superintendent. The act instead requires that the Director either perform those duties **or**

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<sup>47</sup> For the definition of "Nationwide Mortgage Licensing System and Registry," see R.C. 1322.01, not in the act.



authorize the Deputy Superintendent for Banks to perform the duties under the laws governing banking and the Deputy Superintendent for Credit Unions to perform the duties under the laws governing credit unions.

## **Uniform Depository Law**

### **Public depository eligibility**

(R.C. 135.032 and 135.321)

Under prior law, changed in part by the act, a bank or savings and loan association was not eligible to receive public deposits if the institution, or any of its directors, officers, employees, or controlling persons, was a party to an active final or temporary cease-and-desist order issued by the Superintendent. The act expands this restriction to any national bank, federal savings association, or bank, savings bank, or savings and loan association doing business under the authority granted by the regulatory authority of another state, if the institution or any of its directors, officers, employees, or controlling persons is currently a party to an active final or temporary cease-and-desist order issued to ensure the safety and soundness of the institution.

### **Pooled Collateral Program: confidentiality of information**

(R.C. 135.182)<sup>48</sup>

Continuing law requires the Treasurer of State to have created the Ohio Pooled Collateral Program by July 1, 2017. Under the Program, a public depository may pledge to the Treasurer a single pool of securities to secure the repayment of all uninsured public deposits at that public depository. The total market value of the pledged securities must equal at least:

- (1) 102% of the total amount of uninsured public deposits; or
- (2) An amount determined by rules adopted by the Treasurer that set forth criteria for determining the necessary aggregate market value, such as prudent capital and liquidity management by the public depository and its safety and soundness.

The act states that the following information is confidential and not a public record:

- All reports or other information obtained or created about a public depository for purposes of the determination made under (2), above;

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<sup>48</sup> This section has a 90-day effective date. This amendment duplicates the amendment to R.C. 135.182 in section 101.01 of the act.



- The identity of a public depositor's public depository;
- The identity of a public depository's public depositors.

The act does not, however, prevent the Treasurer from releasing or exchanging such confidential information as required by law or for the operation of the Pooled Collateral Program.

### **Corrections and updates**

The act removes outdated references (such as references to "Federal Savings and Loan Insurance"), eliminates provisions that no longer apply, and makes corrections required by the termination of the Office of Thrift Supervision and the resulting transfer of regulatory authority over federal savings associations to the Office of the Comptroller of the Currency, as well as other corrections.

### **Conforming changes in the Revised Code**

The act makes numerous conforming changes in other statutes, such as the Uniform Depository Law (R.C. Chapter 135.), due primarily to the elimination of "savings and loan associations" and "savings banks" as well as the laws governing those institutions.

### **Chart locating renumbered sections**

UNDER PRIOR LAW	UNDER THE ACT
1103.01	1113.01
1103.06	1113.04
1103.08	1113.12
1103.09	1113.13
1103.11	1113.11
1103.13	1113.14
1103.14	1113.15
1103.15	1113.16
1103.16	1113.17
1103.21	1117.07
1113.01	1113.02



UNDER PRIOR LAW	UNDER THE ACT
1109.44(E)	1109.441

### **Good Funds Law: disbursement from escrow accounts**

(R.C. 1349.21)

The Ohio "Good Funds Law" regulates disbursements made in residential real estate escrow transactions. An escrow or closing agent may not knowingly disburse funds from an escrow account on behalf of another person unless certain conditions are satisfied relating to the receipt of good funds.

Before disbursing the funds, the escrow or closing agent must determine the funds (1) have been transferred electronically or deposited into the escrow account of the agent and are immediately available for withdrawal (continuing law), (2) were in an aggregate amount not exceeding \$1,000, had been physically received by the agent prior to disbursement, and were intended for deposit no later than the next banking day after the date of disbursement (prior law), or (3) are funds drawn on a special or trust bank account (continuing law). The act increases the dollar amount in (2), above, from \$1,000 to \$10,000.

Continuing law also requires that the funds transferred or deposited as described above be of certain types. Under prior law, if the funds were in the form of cash, personal checks, certain business checks, certified checks, cashier's checks, or money orders, they could not exceed – in the aggregate – \$1,000. The act increases that amount to \$10,000.

Continuing law also permits electronically transferred funds via the automated clearing house system initiated by, or a check issued by, the federal government, the state, or a political subdivision of the state.

Prior law permitted electronically transferred funds via the real-time gross settlement system provided by the Federal Reserve Bank. The act eliminates this method and instead permits "any other electronically transferred funds."

### **Bedding and toy tests**

(R.C. 3713.04)

The act explicitly authorizes private laboratories that are designated by the Superintendent of Industrial Compliance within the Department of Commerce as being qualified to conduct tests and analysis of materials used in the manufacture of bedding



and stuffed toys. It also removes language authorizing the Superintendent to designate these laboratories in "various sections of the state," the effect of which is unclear.

### **State Fire Marshal vacancy**

(R.C. 3737.21)

The act eliminates two requirements that applied when a vacancy occurred in the position of the State Fire Marshal: (1) that the State Fire Council notify all known or discoverable fire chiefs and fire protection engineers of the vacancy and (2) that the Council, no earlier than 30 days after mailing the notification, make a list of all qualified applicants for the position. The act maintains the requirement that the Council submit the names of at least three qualified applicants to the Director of Commerce. But there is no longer an explicit requirement that the Council's recommended applicants be taken from a previously compiled list of all qualified applicants. Under continuing law, the Director will appoint a State Fire Marshal from the Council's recommendations or may request the Council to submit additional names.

### **Boiler certificates and fees**

(R.C. 4104.15 and 4104.18)

Under prior law, if, after inspecting a newly installed or operating boiler, an inspector found the boiler to be in safe working order, the inspector reported this finding to the Superintendent of Industrial Compliance. Under continuing law, if the Superintendent finds that the Administrative Code's boiler provisions have been complied with and the appropriate fees have been paid, the Superintendent must issue or renew a certificate of operation for the boiler.

The act generally eliminates from this procedure the requirement that the inspector, after finding that a newly installed or operating boiler to be in safe working order, report to the Superintendent. This eliminated duty to report applied to:

- (1) Power boilers;
- (2) High pressure, high temperature water boilers;
- (3) Low pressure boilers; and
- (4) Process boilers.

The act, however, appears to maintain the inspection report requirement for certain operating boilers used to control corrosion. The act additionally requires the Superintendent to find that the owner or user of these types of boilers both:



- Did not operate the boiler at pressures exceeding the safe working pressure; and
- Kept a record that:
  - Will show that boiler water samples were taken at required intervals;
  - Will show that the water conditions in the boilers met required standards;
  - Will show the times and reasons the boilers were out of service;
  - Was made available to the boiler inspector for examination.<sup>49</sup>

In addition, under continuing law if the inspector finds that a boiler is not in safe working order, the inspector must report the findings to the Superintendent who may revoke, suspend, or deny the certificate of operation and not renew the certificate until the boiler is made safe.

The act additionally distinguishes between an initial certificate of operation fee and an annual certificate renewal fee. This distinction does not change the fees charged.

The act replaces the Director of Commerce with the Superintendent of Industrial Compliance as the person who may increase the fees for licensing, inspections, and issuing certificates of operation. It also authorizes the Superintendent to establish fees to pay the costs necessary to fulfill the duties of the Division of Industrial Compliance in relation to boilers.

## **Elevator fees**

(R.C. 4105.17)

The act limits the fees that the Superintendent of Industrial Compliance may charge in relation to the required inspection of elevators, escalators, and moving walks to fees charged for failed inspection attempts. Under continuing law, the Superintendent charges a fee when a general inspector (an inspector hired by the state, as opposed to a special inspector, who is not hired by the state) inspects an elevator, escalator, or moving walk.<sup>50</sup> The act eliminates the fee associated with these inspections generally, but continues to impose a fee for an inspection that was attempted but was not successfully completed through no fault of the inspector or the Division of

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<sup>49</sup> R.C. 4104.13, not in the act.

<sup>50</sup> R.C. 4105.08, not in the act.



Industrial Compliance. Accordingly, the act eliminates the authority of the Superintendent to charge an additional fee for reinspection in such situations. The act maintains the missed inspection fee for elevators of \$120 plus \$10 for each floor where the elevator stops. Similarly, the missed inspection fee for escalators and moving walks is \$300.

The act requires any person who fails to pay a certificate of operation fee within 45 days after the certificate's expiration to pay a late fee equal to 25% of the inspection fee.

The act allows the Superintendent to increase the inspection fees and the fees for issuing and renewing certificates of operation. The act also allows the Superintendent to establish fees to pay Division costs incurred in connection with the Elevator Law. The fees must bear some reasonable relation to the cost of administering and enforcing the Elevator Law.

### **Real estate brokers and salespersons**

(R.C. 4745.01)

The act removes licensed real estate brokers and salespersons from the application of the standard license renewal procedures, which require a licensee to send any license renewal materials to the State Treasurer. Continuing law requires the Division of Real Estate, not the State Treasurer, to process license renewals for real estate brokers and salespersons.

### **Fireworks license moratorium**

(R.C. 3743.75)

The act extends the moratorium on issuing a fireworks manufacturer or wholesaler license and approving the geographic transfer of those licenses from December 15, 2017, to September 15, 2018.

### **A-5 liquor permit**

(R.C. 4303.051)

The act creates the A-5 liquor permit that authorizes a manufacturer of ice cream to manufacture and sell ice cream containing between 0.5% and 6% alcohol by volume. The fee for the permit is \$1,000 per plant. The Division of Liquor Control may issue an A-5 permit to an ice cream manufacturer only if the sale of beer or intoxicating liquor for on- and off-premises consumption is authorized in the election precinct in which the manufacturer is located.



An A-5 permit holder may sell ice cream for on-premises consumption or in sealed containers for off-premises consumption only by in-person transaction at the permit premises. An A-5 permit holder cannot do either of the following:

(1) Use a liquor transport permit holder (H permit holder) to deliver ice cream to a personal consumer; or

(2) Sell more than four pints of ice cream for off-premises consumption to a personal consumer in any calendar day.

### **D-5j liquor permit**

(R.C. 4303.181)

The act modifies the following conditions for certain community entertainment districts in which a D-5j liquor permit may be issued:

(1) Decreases the minimum population of a municipal corporation in which the district may be located from 5,000 to 3,000; and

(2) Increases the minimum investment in development and construction in the district from \$100 million to \$150 million.

This modification allows the D-5j permit to be issued in Orange Village in Cuyahoga County and potentially other municipalities in Ohio. The D-5j permit may be issued to food service operations and retail food establishments for on-premises sales of beer and intoxicating liquor.

### **F-9 liquor permit**

(R.C. 4303.209 and 4301.62)

The act expands the eligibility criteria for the issuance of an F-9 liquor permit by allowing it to be issued to a nonprofit that operates, or manages entertainment for, a city park if:

(1) The park property is the subject of an agreement between a municipal corporation, a national nonprofit that is a foundation, and an Ohio-based nonprofit; and

(2) The agreement is for the purposes of hosting outdoor performing arts events or orchestral performances.

This provision allows an F-9 permit to be issued for the Levitt Pavilion in Dayton and potentially for other locations in Ohio.



In conjunction with the above expansion, the act exempts a person attending an outdoor performing arts event or orchestral performance on an F-9 permit premises from the Opened Container Law if:

(1) The person has in the person's possession an opened or unopened container of beer or intoxicating liquor that was not purchased from the F-9 permit holder;

(2) The event or performance is free; and

(3) The F-9 permit holder annually hosts at least 25 other free events or performances on the permit premises.

### **Tasting samples of alcohol**

(R.C. 4301.22)

The act allows a casino (D-5n liquor permit) and a restaurant in a casino (D-5o liquor permit) to offer free tasting samples of beer, wine, or spirituous liquor. The permit holder may provide a paying customer with up to four free tasting samples of beer, wine, or spirituous liquor in any 24-hour period, provided that:

(1) The permit holder's permit authorizes the sale of the particular alcoholic beverage;

(2) The tasting samples are limited to two ounces of beer or wine or ¼ ounce of spirituous liquor per sample and are provided at the permit holder's expense; and

(3) The customer is 21 or older and consumes the tasting samples on the premises of the permit holder.

### **Reports by H liquor permit holders**

(R.C. 4303.22)

The act requires a person who transports beer or intoxicating liquor into Ohio for delivery (H liquor permit holder) to an individual or entity, other than a liquor permit holder, to prepare and submit a monthly report to the Division of Liquor Control. The report must contain:

(1) The name of the person preparing and submitting the report;

(2) The period of time covered by the report;

(3) The name and business address of each consignor of the beer or intoxicating liquor;



- (4) The name and address of each consignee of the beer or intoxicating liquor;
- (5) The weight of, and unique tracking number assigned for, each delivery of beer or intoxicating liquor to each consignee; and
- (6) The date of delivery.

The Division must make a report available to the public upon request.

Within 30 days of the Division's request, a person who submits a report must provide the documents used to prepare the report to the Division. The person must maintain the documents for two years after submitting the report, unless the Division authorizes the destruction of the documents at an earlier date. The person must allow the Division, any other state regulatory body, or any law enforcement agency to inspect the documents at any time during regular business hours.

The act prohibits a person from violating the reporting requirements. If a person willfully violates the reporting requirements, the Liquor Control Commission may suspend or revoke any liquor permit issued to the person by the Division.

## **Merger of Manufactured Homes Commission into Department**

(Sections 137.10 to 137.15; R.C. Chapter 4781.; repealed R.C. 4781.02, 4781.03, 4781.05, 4781.13, 4781.54, and 4781.55; conforming changes in R.C. 1923.02, 3781.06, and 4505.181)

### **Transfer to Department of Commerce**

The act abolishes the Manufactured Homes Commission effective January 21, 2018, and transfers its duties to the Department of Commerce and the Director of Commerce, dividing those duties between the Divisions of Industrial Compliance and Real Estate. The act transfers most of the Commission's duties to the Division of Industrial Compliance, in particular the following provisions relating to the installation of manufactured homes:

- Licensure of manufactured housing installers, including issuance of fees for license applications and renewals;
- Establishment of uniform standards for installing manufactured housing;
- Review of design plans and periodic inspection of manufactured homes and manufactured home installation;



- Investigation of complaints concerning violations of Ohio's Manufactured Homes Law; and
- Adoption of rules to administer the Law.

The act transfers to the Division of Real Estate duties regarding manufactured housing dealers, brokers, and salespersons.

## **Funds and fees**

### **Industrial Compliance Operating Fund**

The act abolishes the Manufactured Homes Commission Regulatory Fund and instead directs that the following fees that previously were deposited into it be instead deposited into the Industrial Compliance Operating Fund:

- Fees collected for violations of the rules adopted by the Manufactured Homes Commission; and
- Fees for annual licenses to operate a manufactured home park.

The act directs that the following fees be deposited into the Industrial Compliance Operating Fund, instead of the Occupational Licensing and Regulatory Fund:

- Fees for reviewing plans;
- Fees for conducting inspections; and
- Fees for issuance of permits and inspections for manufactured home parks located within a 100-year flood plain.

### **Manufactured Homes Regulatory Fund**

The act directs that the following fees be deposited into the Manufactured Homes Regulatory Fund, instead of the Occupation Licensing and Regulatory Fund:

- License fees for a manufactured housing broker, dealer, or salesperson; and
- All licensing, administration, and enforcement fees collected by the Division of Real Estate related to the licensure of manufactured housing brokers, dealers, and salespersons.



## **Duties eliminated**

The act eliminates the authority to adopt rules to govern the training, experience, and education requirements for manufactured housing dealers, brokers, and salespersons. It appears that no rules of this nature were in effect.

Although the act repeals R.C. 4781.55, which required the Manufactured Homes Commission to comply with the law requiring the suspension of licenses upon learning of a conviction of the offense of human trafficking, it appears that law would still operate with regard to the licenses issued by Department of Commerce under the Manufactured Homes Law.<sup>51</sup>

## **Transition**

Under the act, the Department is successor to, assumes the rights and obligations, and assumes the authority of the Manufactured Homes Commission. The formal actions of the Commission continue in effect as the actions of the Department until modified, rescinded, or replaced.

The Department must designate the positions and employees of the Commission to be transferred to the Department. Any transferred employee retains the employee's classification, but the Department may reassign and reclassify the employee's position and compensation. In addition, the Department may establish a retirement incentive plan for eligible Commission employees who are members of the Public Employees Retirement System. Such a plan must remain in effect until January 20, 2018.

Whenever the term "Manufactured Homes Commission" is used or referred to in any statute, rule, contract, or other document, the use or reference is deemed to mean the Department of Commerce. Similarly, the term "Executive Director of the Manufactured Homes Commission" is deemed to mean the Director of Commerce.

## **Manufactured Homes Advisory Council**

(R.C. 4781.02)

The act creates the Manufactured Homes Advisory Council within the Department of Commerce. The Council must advise the Director of Commerce concerning the Director's duties in regulating manufactured housing. The Council is to consist of seven members, with five appointed by the Director, as follows:

- One member who possesses either:

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<sup>51</sup> R.C. 4776.20.



- A class I water supply operator certification;
- A class I wastewater works operator certification.
- One member who has expertise and background in public health;
- One member who has been appointed as a local fire chief;
- One member who is a manufactured home park operator; and
- One member who is either a manufactured housing dealer or a salesperson.

The remaining two members are appointed by legislative leaders: one member by the Speaker of the House and one by the President of the Senate. These members must be public members and have no pecuniary or fiduciary interest in the Ohio manufactured housing industry. They must not be a part of the Ohio Manufactured Homes Association or any successor entity.

The Director must consider any recommendations for appointments made by the Ohio Manufactured Homes Association or any successor entity. Unless otherwise provided by law, a public official or employee may be appointed to the Council.

Initial terms for the Council end December 31, 2021. Each term thereafter will be for four years and end on December 31 of the fourth year. A member will hold office from the date of appointment until the end of the term. No member may serve more than two consecutive four-year terms. Any member appointed to fill a vacancy that occurs prior to the expiration of a term holds office until the end of that term. A member must continue to hold office after the expiration of the member's term until the member's successor takes office or for 60 days, whichever occurs first.

The Director may remove any member from the Council for incompetence, neglect of duty, misfeasance, nonfeasance, malfeasance, or unprofessional conduct in office. Vacancies must be filled in the same manner as the original appointment.

## **Removal of manufactured homes from manufactured home parks**

(R.C. 1923.12, 1923.13, and 1923.14)

### **Overview**

When a person stops paying rent, engages in unlawful behavior on the leased property, or abandons a manufactured home, mobile home, or recreational vehicle, the park operator where the home or vehicle is located can begin proceedings to evict the



person (the resident or a deceased resident's estate) and remove the home or vehicle in which the person lives.

To start the eviction process, continuing law requires the park operator to first get a judgment of restitution in an eviction action. If the resident fails to remove the home or vehicle within three days after the judgment, the park operator may provide the titled owner of the home or vehicle written notice to remove the home or vehicle within 14 days.

If the home or vehicle has not been removed by the end of the 14-day period, continuing law establishes a process by which the park operator may obtain a writ of execution to enforce that judgment. A writ of execution is a court order to a levying officer (sheriff, police officer, constable, or bailiff) to enforce the judgment. The writ may include related orders to other persons as well.

The process for removal may vary if there are outstanding titles, rights, or interest in the home or vehicle, if the person dies before an eviction is complete, or if the home or vehicle is abandoned. What can be done regarding the home or vehicle or the personal property inside also varies based on the value of the home or vehicle. The act delves into detail about what takes place at each step.

## **Prior to requesting the writ of execution**

### **Generally**

Before requesting a writ of execution, under continuing law, the park operator must make diligent inquiries to determine if there is anyone with a right, title, or interest in the home or vehicle.

If the search is fruitful, the act requires that the park owner provide the person who has the right, title, or interest a written notice to remove the home or vehicle from the park or arrange for its sale within 21 days from the delivery of the notice. The act requires the park operator to deliver the notice in person or by ordinary mail to the person's last known address. If the home or vehicle is sold, the sale proceeds must be used to pay the rent due the park operator during the pendency of the sale.

If the search is not fruitful, or if the person with right, title, or interest in the home or vehicle does not remove it or arrange for its sale within the 21-day period, the act permits the park operator to seek the writ of execution to remove the home or vehicle from the manufactured home park and potentially sell, destroy, or transfer ownership of the home or vehicle.



## **Deceased residents**

Continuing law provides procedures governing situations in which a deceased resident or the deceased resident's estate is evicted. Generally, the removal of the home or vehicle and any personal property abandoned on the property is conducted in the manner prescribed by the probate court.

But, if a resident is in the process of being evicted, is the titled owner of the home or vehicle, and dies prior to the removal of the home or vehicle, a different procedure applies. Under both continuing law and the act, the park operator must store the vehicle for a period of time. If an estate executor or administrator is appointed within a specified period of time, the general procedure applies; if no executor or administrator is appointed within this time period, the park operator may seek a writ of execution. The act shortens the general procedure time period from one year, under former law, to 90 days and imposes some additional duties before the park operator may seek the writ.

The act requires the park operator to make diligent inquiries to identify any person with right, title, or interest in the home or vehicle. If the search reveals a person who has right, title, or interest, the park operator must provide written notice to the person to remove or arrange for sale of the home or vehicle within 21 days. Notice must be delivered by personal delivery or ordinary mail to the person's last known address. If the home or vehicle is to be sold, the person must pay rent to the park operator while the sale is pending. If the removal or sale does not take place within 21 days, the park operator may seek the writ of execution to remove the home or vehicle from the park and potentially sell, destroy, or transfer ownership of the home or vehicle.

If the search reveals no person with a right, title, or interest, the act requires the park operator to publish a notice of a petition for a writ of execution for two consecutive weeks in a newspaper of general circulation in the county where the home or vehicle was abandoned. The park operator must provide the court written certification of the dates of publication and an affidavit attesting to the publication.

## **Requesting the writ of execution**

The act eliminates the requirement that a park operator include all of the following with the request for the writ of execution:

- The name and last known address of each person with a right, title, or interest in the home or vehicle to be removed;
- The items of abandoned personal property and the name and last known address of each person that the park operator knows has a right, title, or interest in the personal property;



- A certification that the park operator provided the required written notice.

The act also eliminates the authority of the court clerk to require the park operator to pay an advance deposit sufficient to secure payment of the appraisal of the home or vehicle and the advertisement of the sale.

### **Content of the writ of execution**

If the park operator requests a writ of execution on the eviction judgment and has met the requirements for issuance, the court must issue a writ of execution on the judgment. The act revises the required contents of the writ.

### **Holdover tenant**

The act expressly sets out in the writ authority for the levying officer to remove and set out from a manufactured home park a person who remains on the premises after losing an eviction judgment. In accordance with continuing law, the act also requires the writ to order the park operator to post a 14-day notice to the person to sell or remove the home or vehicle at the person's cost three days after the judgment is entered (note – this may have already been done, as it is required before the writ can be requested). The writ must declare that if the person fails to remove the home or vehicle at the end of the 14-day period, the person forfeits the person's rights to the home or vehicle and the park operator may exercise the park operator's rights in regards to removal or destruction of the home or vehicle.

### **Abandoned homes or vehicles**

The act expands the procedure for abandoned homes and vehicles. If the home or vehicle has been abandoned, the act requires the writ to order the park operator to submit a notarized affidavit to the county auditor listing the titled owner, address, serial number, and value of the home or vehicle. The auditor must confirm within 15 days of receipt whether the auditor agrees or disagrees with the stated value.

If the auditor agrees, the auditor must return the affidavit, signed, to the park operator. If the auditor disagrees, the auditor must notify the park operator within 15 days. The park operator may submit additional information in favor of the stated value. Upon receipt of the additional information, the auditor has ten days to respond. If the auditor agrees, the auditor must return the signed affidavit. If the auditor still disagrees, the auditor must notify the park operator. The park operator may appeal to the court issuing the writ for a ruling on the disagreement.

The act requires the writ to order the park operator to submit a signed copy of the affidavit to the court stating the value of the home or vehicle, which will be deemed



to be the park operator's sworn testimony. If the park operator knowingly includes false information in the affidavit, the park operator is guilty of the offense of falsification.

Under continuing law, the treatment of abandoned vehicles depends on the home's or vehicle's value. The act changes this threshold in a minor way. Under former law, the brackets were: (1) less than \$3,000 and (2) \$3,000 or more. Under the act, the brackets are: (1) \$3,000 or less and (2) more than \$3,000.

As under continuing law, if the abandoned home or vehicle is in the upper bracket, the writ must order the levying officer to cause the sale of the home or vehicle and the personal property within it. The act removes the former requirement that the writ list persons with an interest in the home, vehicle, or property.

If the abandoned home or vehicle is in the lower bracket, continuing law requires the writ to order the levying officer to present the writ of execution to the court of common pleas for issuance of a certificate of title to the park operator. That certificate of title transfers title of the home or vehicle to the park operator free and clear in accordance with continuing law. The act removes a provision of law that permitted, in the alternative, the writ to order the levying officer to cause the sale or destruction of the home or vehicle.

## **Execution of the writ**

### **Notice**

After the writ of execution is granted, continuing law requires the clerk of the court issuing the writ to send notice to the last known address of specified persons informing them that the home or vehicle may be sold, destroyed, or have its title transferred. Under the act, the notice must be given to each person (other than the titled owner of the home or vehicle) listed in the writ as having a right, title, or interest in the home or vehicle or personal property in it, and to the county auditor and county treasurer. The act provides that the person's consent is not required in order for the writ to be executed. The act removes the clerk's duty, as it existed under former law, to also send the notice to the titled owner of the home or vehicle.

### **Execution**

Continuing law states that after receiving a writ of execution, the levying officer may cause the home or vehicle and all personal property to be retained at their current location until claimed by the owner or disposed of in accordance with continuing law. The act eliminates the option of causing the home or vehicle and all personal property to be removed and if necessary placed in storage.



## **Immunity**

The act eliminates a provision that provides civil immunity to the levying officer for any damage caused to the home or vehicle or personal property in the *levying officer's removal* or the home, vehicle, or personal property. Instead, the act provides immunity to the levying officer regarding damage caused by the *park operator's removal* of the home or vehicle or the removal of personal property from the premises, or any damage to the home, vehicle, or personal property during the time the home or vehicle remains abandoned or stored in the park.

## **Payment of costs**

Under continuing law, if an abandoned home or vehicle or personal property is sold, the levying officer must pay from the sale proceeds: (1) certain costs regarding the removal and movement of a home or vehicle and personal property, (2) any unpaid court costs assessed against the resident, and (3) costs of the sale. The act adds that the levying officer must pay any advertising costs the park operator paid for related to the sale. The act also removes the deposit a park operator is required to pay the clerk of courts, and consequently, the requirement that law enforcement reimburse the park operator for the deposit.

As part of executing the writ, continuing law requires the levying officer to collect costs. The act limits these costs to reasonable costs that do not exceed the standard motion fee. Prior law merely authorized the levying officer to collect costs.

## **Certificate of title**

The act eliminates the requirement that the clerk of the court of common pleas issue a new certificate of title to a purchaser of the home or vehicle regardless of whether the writ was issued by the court of common pleas, a municipal court, or a county court. Instead, the court that issues the writ is authorized to order the title division of the court of common pleas to issue the certificate of title.

The act makes parallel changes relating to the provisions transferring certificate of title to the park operator if an abandoned home or vehicle has been offered for sale at least twice and cannot be sold. The act requires the park operator, in accordance with continuing law, to notify the county auditor of the transfer of title. If the home or vehicle is destroyed or removed, the park operator must provide the county auditor with notice of removal or destruction of the home or vehicle.

If an abandoned home or vehicle is in the lower bracket (\$3,000 or less under the act), continuing law requires the levying officer to provide notice of a potential action to any person who has a right, title, or interest within 60 days of receiving the writ.



Continuing law requires the levying officer to cause the title to be transferred to the park operator within 30 days after receiving the writ. The act removes provisions that permitted the levying officer to, in the alternative, have the abandoned home or vehicle destroyed (if no one other than the titled owner) has an interest in it, or proceed with its sale. The act requires the park operator to notify the county auditor of the transfer of title. If the home or vehicle is destroyed or removed, the park operator must provide the county auditor with notice of removal or destruction of the home or vehicle.

### **Removal by titled owner before issuance of a writ of execution**

If, prior to the issuance of a writ of execution, a titled owner wants to remove the home or vehicle, the act allows the owner to remove the home or vehicle upon payment of all costs incurred by the levying officer and a series of other fees required under continuing law.

### **Nuisances in manufactured home parks**

(R.C. 4781.56)

The act authorizes the Division to contract with the board of health of a city or general health district to permit the Division to exercise the board's authority to abate and remove an abandoned or unoccupied home or vehicle that constitutes a nuisance and that is located in a manufactured home park within the board's jurisdiction. Under the contract, the Division may receive complaints of abandoned or unoccupied homes or vehicles that constitute a nuisance and may, by order, compel the park operator to abate and remove the nuisance. The park operator is required to pay any costs for the removal.

The act also grants the sheriff, police officer, constable, or bailiff civil immunity in relation to the abatement or removal of any abandoned or unoccupied home or vehicle pursuant to this provision.

### **Manufactured home installation standards**

(R.C. 4781.04)

The act eliminates the option of the Division to adopt rules that establish, as the uniform standards for the design and installation of manufactured housing, manufacturers' standards that are equal to or not less stringent than the federal model standards, leaving as the only option standards that are consistent with and not less stringent than the model standards adopted by the U.S. Secretary of Housing and Urban Development.



## Manufactured home inspections

(R.C. 4781.07 and 4781.281)

### Designating other building department

The act permits a township, municipal corporation, or county that does not have a building department that is certified regarding manufactured homes to designate the building department of another political subdivision, that is certified, to do the following on behalf of that township, municipal corporation, or county:

- Exercise the Division's enforcement authority;
- Accept and approve plans and specifications for manufactured home foundations, support systems, and installations; and
- Inspect manufactured housing foundations, support systems, and manufactured housing installations.

A park owner or operator may request an inspection and obtain required approvals from any building department so designated by the township, municipal corporation, or county in which the manufactured home park is located.

### Certification fee

Continuing law authorizes the Division to certify municipal, township, and county building departments and their personnel, or any private third party, to exercise the authority described in "**Designating other building department**," above. Inspector certification is valid for three years. The act establishes the following nonrefundable fees for manufactured home inspector certification and renewal:

- (1) A certification or renewal fee of not greater than \$50;
- (2) A late fee for renewal of not greater than \$25, in addition to the renewal fee.

### Condition of manufactured home park

(R.C. 4781.57)

The act requires a park operator to ensure that all buildings, lots, streets, walkways, homes, and other facilities located in the park are maintained in satisfactory condition at all times.



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## OHIO CONSUMERS' COUNSEL

- Permits the Ohio Consumers' Counsel to assist consumers with utility complaint calls or forward the calls to the PUCO's call center.

### Consumer complaints

(R.C. 4911.021)

The act permits the Ohio Consumers' Counsel (OCC) to assist consumers who call with utility complaints **or** to forward the calls to the Public Utilities Commission's (PUCO's) call center. Under former law, the OCC was required to forward consumer complaint calls to the PUCO's call center.



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## CONTROLLING BOARD

### Approval of purchases

- Would have required that any state agency purchase of automatic data processing, computer services, electronic publishing services, or electronic information services, or any consulting services related to information technology, the aggregate cost of which would exceed \$50,000 over five years, be made by competitive selection and subject to Controlling Board approval (VETOED).
- Would have required that any state agency contract for the procurement of energy, the aggregate cost of which would exceed \$50,000 over five years, be made by competitive selection and subject to Controlling Board approval (VETOED).
- Requires Controlling Board approval of any advertising purchased with public money by an official elected to a statewide office or a member of the General Assembly for the same purpose that, in the aggregate, exceeds \$50,000 during the fiscal year.

### Authority regarding unanticipated revenue

- Prohibits the Controlling Board from approving the expenditure of certain federal and nonfederal funds that (1) are received in excess of the amount appropriated or (2) are not anticipated in the current biennial appropriations act if the expenditure exceeds 0.5% of GRF appropriations for that fiscal year (VETO OVERRIDDEN).

### Approval of purchases

#### ADP, computer, and electronic services (VETOED)

(R.C. 125.03(A))

The Governor vetoed a provision that would have required any state agency wanting to purchase automatic data processing, computer services,<sup>52</sup> electronic publishing services, or electronic information services, or any consulting services related to information technology to make the purchase by competitive selection *and* with Controlling Board approval, if the aggregate cost would exceed \$50,000 over the next five-year period. In its request for approval, the agency was to provide the Board with a comparative analysis of the cost of similar systems utilized by other states and a

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<sup>52</sup> For the definition of "computer services" see R.C. 2913.01, not in the act.



description of the measures it took to find the most cost-effective system. The comparative analysis would not have been a public record unless the request was approved by the Board and the agency made the purchase.

### **Energy (VETOED)**

(R.C. 125.03(B))

The Governor vetoed a provision that would have required any state agency wanting to enter into a contract for the procurement of energy to make the purchase by competitive selection *and* with Controlling Board approval, if the aggregate cost would exceed \$50,000 over the next five-year period.

### **Advertising**

(R.C. 125.051)

The act subjects any advertising purchased with public money by a state official for the same purpose to Controlling Board approval, if the advertising, in the aggregate, exceeds \$50,000 during the fiscal year. For this purpose, "state official" means an official elected to a statewide office or a member of the General Assembly and "advertising" includes advertising in print or electronic newspapers, journals, or magazines and advertising broadcast over radio or television or placed on the Internet.

### **Authority regarding unanticipated revenue (VETO OVERRIDDEN)**

(R.C. 131.35)

The act imposes a limitation on the Controlling Board's authority to approve the expenditure of certain federal and nonfederal funds. The General Assembly overrode the Governor's veto of this item.

### **Federal funds**

The federal funds to which the limitation applies are those received into any state fund from which transfers may be made by the Controlling Board under continuing law. Under the continuing law:

(1) If the federal funds received are greater than the amount of those funds appropriated by the General Assembly for a specific purpose, the Controlling Board may authorize the expenditure of those excess funds.

(2) If the federal funds received are not anticipated in an appropriations act for the biennium in which the new revenues are received, the Controlling Board may create



additional funds to receive those revenues and authorize expenditures from those additional funds during that biennium.

The act stipulates that the amount of any expenditure authorized by the Controlling Board under (1) or (2), above, for a specific or related purpose or item in any fiscal year cannot exceed 0.5% of GRF appropriations for that fiscal year.

### **Nonfederal funds**

The nonfederal funds to which the limitation applies are those received into any state fund from which transfers may be made by the Controlling Board, as well as the Waterways Safety Fund and the Wildlife Fund. Under the continuing law:

(1) If the nonfederal funds received are greater than the amount of those funds appropriated, the Board may authorize the expenditure of those excess funds.

(2) If the nonfederal funds received are not anticipated in an appropriations act for the biennium in which the new revenues are received, the Controlling Board may create additional funds to receive those revenues and authorize expenditures from those additional funds during that biennium.

The act stipulates that the amount of any expenditure authorized by the Controlling Board under (1) or (2), above, for a specific or related purpose or item in any fiscal year cannot exceed 0.5% of GRF appropriations for that fiscal year.



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## STATE COSMETOLOGY AND BARBER BOARD

- Combines the State Board of Cosmetology and the Barber Board into the State Cosmetology and Barber Board.
- Increases several cosmetology law fees the Board may charge subject to a limit, changes other cosmetology law fees from a set fee to a fee that may not exceed the continuing fee amount, and requires the Board to adjust the fees every two years, subject to those limits, to provide sufficient revenues to meet expenses.

### Merger of the Cosmetology and Barber Boards

(R.C. Chapter 4709. and 4713.; repealed R.C. 4709.04, 4709.06, 4709.26, and 4709.27; Sections 120.10 to 120.12 and 515.40; conforming change in R.C. 107.56 and 125.22)

The act combines the Barber Board and the State Board of Cosmetology into the State Cosmetology and Barber Board, effective January 21, 2018. Under prior law the Barber Board had three members and the State Board of Cosmetology had 11 members. The act combines the membership of the two boards, adding two barbers to the membership of the State Board of Cosmetology, an employer barber and an employee barber. The act permits the Governor to remove any member of the Board for cause.

On January 21, 2018, the Barber Board is abolished and all of its powers, duties, assets, and employees are transferred to the State Cosmetology and Barber Board. Between January 21, 2018, and June 30, 2019, the Executive Director of the combined Board may establish, change, and abolish positions of the Board and assign, reassign, classify, reclassify, transfer, reduce, promote, or demote all Board employees who are not subject to the Public Employees Collective Bargaining Law. This authority includes assigning or reassigning an exempt employee to a bargaining unit classification, but includes provisions if the new position is in a lower classification. These actions are not subject to appeal to the State Personnel Board of Review.

In addition, the Barber Board may establish a retirement incentive plan for eligible employees of the Barber Board who are members of the Public Employees Retirement System. The plan must remain in effect until January 20, 2018.

Under the act, anywhere the State Board of Cosmetology or State Barber Board is used, that terminology should be replaced with the State Cosmetology and Barber Board or the Executive Director of the State Cosmetology and Barber Board depending on the context. Similarly, anywhere Executive Director of the State Board of



Cosmetology or State Barber Board is used, that terminology should be replaced with the Executive Director of the State Cosmetology and Barber Board.

### Cosmetology Law fees

(R.C. 4713.10)

Continuing law permits the Board to charge a variety of fees. For some of these fees, the act establishes that the statutory amount is the ceiling for that fee. For other fees, the act increases the amount the Board may charge, subject to a ceiling. The returned check fee remains unchanged.

The fees that potentially increase under the act are as follows:

Type of fee	Prior fee	Under the act
Temporary pre-examination work permit	\$7.50	Not more than \$15
Initial application to take an examination	\$31.50	Not more than \$40
Application to take an examination - applicant previously applied but did not show up to take the examination	\$40	Not more than \$55
Application to retake examination - applicant previously failed the examination	\$31.50	Not more than \$40
Issuance of a practicing license, advanced license, or instructor license	\$45	Not more than \$75
Renewal of a practice license, advanced license, instructor license, or reciprocal license	\$45	Not more than \$70
Issuance of a salon license	\$75	Not more than \$100
Change the name or ownership of a salon license	\$75	Not more than \$100
Renewal of a salon license	\$60	Not more than \$90
Issuance of a duplicate of a license	\$20	Not more than \$30

For the following fees, the act does not increase the statutory fee but limits the amount that the Board may charge to *not more than* that amount:

Type of fee	Cap
Issuance of a reciprocal license	\$70
Issuance or renewal of a cosmetology school license	\$250
Lapsed renewal fee for restored practicing, advanced, or instructor license	\$45 per license renewal period



Type of fee	Cap
Prepare and mail licensee records to another state	\$50

Under the act, the Board must adjust the fees every two years within the limits established above in order to provide sufficient revenue to meet its expenses.



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## COURT OF CLAIMS

- Requires that the filing fees collected by the Court of Claims for complaints alleging a denial of access to public records be deposited into the Public Records Fund, which the act creates, and used by the Court to defray its costs.

### Public Records Fund

(R.C. 2743.75)

The act directs that the filing fees collected by the Court of Claims for complaints alleging a denial of access to public records be deposited into the Public Records Fund, which it creates in the state treasury. The Court is to use the money to defray the costs it incurs in resolving the complaints. And all investment earnings of the Fund must be credited to the Fund.

Prior law only stipulated that the fees be "kept" by the Court for that purpose.



## OHIO STATE DENTAL BOARD

- Increases various fees paid by dentists, dental hygienists, and other dental professionals.
- Increases, from \$20 to \$40, the amount of a dentist's biennial registration fee allocated to the Dentist Loan Repayment Fund.

### Dental professionals' fees

(R.C. 4715.13, 4715.14, 4715.16, 4715.21, 4715.24, 4715.27, 4715.362, 4715.363, 4715.369, 4715.37, 4715.53, 4715.62, and 4715.63)

The act increases the following fees paid by licensed dentists and individuals seeking licenses or permits related to the practice of dentistry:

Type of fee	Former law	The act
License to practice dentistry (issued in odd-numbered year)	\$210	\$267
License to practice dentistry (issued in even-numbered year)	\$357	\$454
Biennial registration as a licensed dentist	\$245	\$312
Fee for late biennial registration as a licensed dentist	\$100 + biennial registration fee	\$127 + biennial registration fee
Reinstatement of a dentist's license suspended for failure to timely register	\$300 + biennial registration fee	\$381 + biennial registration fee
Limited resident's license	\$10	\$13
Limited teaching license	\$101	\$127
Temporary limited continuing education license	\$101	\$127
Renewal of a temporary limited continuing education license	\$75	\$94
Oral health access supervision permit (issuance/renewal)	\$20	\$25



The act also increases the following fees paid by practicing dental hygienists, individuals seeking a license, certificate, or permit related to the practice of dental hygiene, and other dental professionals:

Type of fee	Former law	The act
Dental hygienist license (issued in odd-numbered year)	\$96	\$120
Dental hygienist license (issued in even-numbered year)	\$147	\$184
Biennial dental hygienist registration	\$115	\$144
Reinstatement of a dental hygienist's license suspended due to failure to timely register	\$31 + biennial registration fee	\$39 + biennial registration fee
Dental hygiene teacher's certificate	\$58	\$73
Permit to practice under the oral health access supervision of a dentist (issuance/renewal)	\$20	\$25
Dental x-ray machine operator certificate (issuance/renewal)	\$25	\$32
Expanded function dental auxiliary registration (issuance/renewal)	\$20	\$25

The act increases, from \$20 to \$40, the amount of a dentist's biennial registration fee paid to the Dentist Loan Repayment Fund. It also eliminates the express requirement that biennial registration fees for practicing dentists be paid to the Treasurer of State. The act eliminates the express option for a dental hygienist to pay the fee for a permit to practice under the oral health access supervision of a dentist with a personal check.

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## DEVELOPMENT SERVICES AGENCY

- Authorizes the Chief Investment Officer of JobsOhio to designate an individual to serve on the Officer's behalf on the TourismOhio Advisory Board.
- Relaxes an eligibility criterion for the Lakes in Economic Distress Loan Program and specifies that any materials submitted by a loan applicant are confidential and not a public record.
- Renames the Office of Small Business within the Development Services Agency the "Office of Small Business and Entrepreneurship" and requires it to inform the public about job placement resources available from OhioMeansJobs.
- Creates a statutory definition of "microbusiness."
- Changes the deadline for the Ohio Aerospace and Aviation Technology Committee to submit its annual report from July 1 to December 31.
- Would have permitted the Director of Development Services to waive the cooperating contribution requirement for a project to receive a grant under the Thomas Alva Edison grant program if the project will enable Ohio companies to access new technology applications (VETOED).
- Would have defined "Edison Center Network" for purposes of the administration of the Thomas Alva Edison grant program (VETOED).

### TourismOhio Advisory Board

(R.C. 122.071)

The act authorizes the Chief Investment Officer (CIO) of JobsOhio to designate an individual to serve on the CIO's behalf on the TourismOhio Advisory Board. Unchanged by the act are the other members of the Board serving with the CIO or the designee. They include the Director of the Office of TourismOhio and nine members, appointed by the Governor, representing various tourism-related industries. Under continuing law, the TourismOhio Advisory Board advises the Director of Development Services and the TourismOhio Director on strategies for promoting tourism in the state.



## **Lakes in Economic Distress Loan Program**

(R.C. 122.641)

The act alters an eligibility criterion for the Lakes in Economic Distress Program. Under continuing law, the program provides loans for working capital or facility improvement for businesses adversely affected by circumstances that have resulted in a lake community being declared in economic distress by DNR and a disaster area by the U.S. Small Business Administration (i.e., Buckeye Lake). The loans are awarded in accordance with administrative guidelines established by the Director of Development Services and are financed through the Lakes in Economic Distress Revolving Loan Fund.

The act requires the Director to extend eligibility for loans to businesses and entities that have incurred a reduction in gross revenue of at least 10% measured between 2014 and 2015, 2015 and 2016, or 2014 and 2016.<sup>53</sup> The administrative guidelines for the program formerly limited eligibility to businesses and other entities that had incurred a 40% reduction in gross revenue. The act also expressly states that any materials a loan applicant submits to DSA are confidential and not a public record.

## **Office of Small Business and Entrepreneurship**

(R.C. 122.08 and 122.081)

The act renames the Office of Small Business within the Development Services Agency the "Office of Small Business and Entrepreneurship." It also requires the Office to inform the public about the job search and placement resources available through the OhioMeansJobs website and local OhioMeansJobs one-stop systems. Under continuing law, the Office is responsible, generally, for acting as a liaison between the state and the small business community, assisting individuals in establishing and operating small businesses, disseminating information on rules that affect small businesses, and addressing complaints from small businesses.

## **Definition of "microbusiness"**

(R.C. 166.50)

The act creates a statutory definition of "microbusiness." Under the act, a "microbusiness" is an independently owned and operated for-profit business entity,

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<sup>53</sup> O.A.C. 122:27-1-01; "Lakes in Economic Distress Program: Program Guideline," available at: [https://development.ohio.gov/bs/bs\\_ledrlp.htm](https://development.ohio.gov/bs/bs_ledrlp.htm).



including any affiliates, that is located in Ohio and has fewer than 20 full-time employees or full-time equivalent employees.

For this purpose, a "full-time employee" is an employee who, with respect to a calendar month, is employed an average of at least 30 hours of service per week. The number of full-time equivalent employees for a calendar month is to be determined by calculating the aggregate number of hours of service for that calendar month for employees who were not full-time employees, and dividing that number by 120.

## **Ohio Aerospace and Aviation Technology Committee**

(R.C. 122.98)

The act changes the deadline for the Ohio Aerospace and Aviation Technology Committee to submit its annual report to December 31 of each year. Former law required the Committee to submit its report by July 1 of each year. Under continuing law, the Committee report must include information about the Committee's activities, findings, and recommendations regarding research and development of aviation, aerospace, and technology products and ideas.

## **Edison grant program changes (VETOED)**

(R.C. 122.01 and 122.33)

The Governor vetoed a provision that would have permitted the Director of Development Services to waive the cooperating contribution requirement for a project to receive a grant under the Thomas Alva Edison grant program if the project will enable Ohio companies to access new technology applications. Under continuing law (except with regard to these new technology applications), grants under the program must be made in conjunction with a contribution from a cooperating enterprise which maintains or proposes to maintain a relevant research, development, or manufacturing facility in Ohio.

"New technology applications" would have been defined to mean providing existing technology proven in at least one commercial environment to companies that have not: (1) used the technology, or (2) used the technology for the purpose it was originally created. "Ohio companies" would have been defined to mean companies in which the principal place of business is in Ohio or that propose to be engaged in research and development, manufacturing, or provisioning of products or services in Ohio.



The Governor vetoed a provision that would have defined "Edison Center Network" to mean the six cooperative, industry-connected, nonprofit organizations that have met all of the following criteria:

- Historically received funding under the Thomas Alva Edison grant program;
- Been in existence at least 15 years as of September 29, 2017 (the act's 90-day effective date);
- Experience delivering technical and networking services to Ohio manufacturers.



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## DEPARTMENT OF DEVELOPMENTAL DISABILITIES

### Community facility sale proceeds

- Permits a county board of developmental disabilities or board of county commissioners to use the proceeds from the sale of a community adult facility or a community early childhood facility to renovate or make accessible housing for individuals with developmental disabilities.
- Permits the Director of Developmental Disabilities to establish and extend a deadline by which the county board or board of county commissioners must use sale proceeds.

### Medicaid payments

- Provides for the FY 2018 Medicaid rates for intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) in peer groups 1 and 2 to be determined in accordance with a formula in continuing law, with certain modifications.
- Provides for the FY 2018 Medicaid rate for all ICFs/IID in peer groups 1 and 2 to be adjusted if the mean total per Medicaid day rate for all such ICFs/IID is other than a certain amount, which cannot be less than \$290.10.
- States the General Assembly's intent to enact legislation establishing a new formula to determine the rates beginning not sooner than July 1, 2018, and not later than January 1, 2019.
- Requires the Department of Developmental Disabilities to work in collaboration with certain organizations to finalize recommendations for the new formula.
- Requires that the recommendations include certain features, including a feature that establishes a method to transition ICFs/IID to the new formula during a 36-month period.
- Provides for an ICF/IID's rate for the part of FY 2019 that is before the new formula takes effect to be determined in the same manner that its FY 2018 rate is determined, except that data for a subsequent fiscal or calendar year is to be used to determine certain parts of the rate.
- Provides for an ICF/IID's rate for the part of FY 2019 that begins when the new formula takes effect to be determined in accordance with the new formula and be



subject to (1) a maximum of \$295.90 per Medicaid day and (2) the transition that must be included in the Department's recommendations for the new formula.

- Eliminates a requirement that an ICF/IID resident be under age 22 to qualify for outlier ICF/IID services available to certain Medicaid recipients dependent on a ventilator.
- Provides for the Medicaid rate for each 15 minutes of routine homemaker/personal care services provided to a qualifying enrollee of the Individual Options waiver program to be, for 12 months, 52¢ higher than the rate for such services provided to an Individual Options enrollee who is not a qualifying enrollee.

### **County board share of expenditures**

- Modifies a county board's responsibility to pay the nonfederal share of Medicaid expenditures for residents of ICFs/IID.
- Requires the Director to establish a methodology to estimate in FY 2018 and FY 2019 the quarterly amount each county board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible.

### **Developmental centers**

- Permits a developmental center to provide services to persons with developmental disabilities living in the community or to providers of services to these persons.

### **Innovative pilot projects**

- Permits the Director to authorize, in FY 2018 and FY 2019, innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county boards.

### **Use of county subsidies**

- 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 boards' waiting lists**

- Requires a county board to establish a waiting list for Medicaid-funded home and community-based services if resources are insufficient to enroll all individuals assessed as needing the services.
- Replaces statutory criteria for emergency or priority placement on a county board waiting list with a requirement that the Director adopt rules regarding how



individuals are placed on or removed from a waiting list or enrolled in a Medicaid waiver administered by the Department.

### **County board employment restrictions**

- Limits to spouses, sons, and daughters the members of a county commissioner's immediate family who are prohibited from being employed by the county board of developmental disabilities.

### **Stakeholder workgroup**

- Requires the Department to convene a stakeholder workgroup to evaluate services provided to individuals with developmental disabilities living in the community and to develop recommendations related to the provision of such services.
- Requires the workgroup to submit a report with the recommendations to the Department and General Assembly.

### **Community facility sale proceeds**

(R.C. 5123.377 and 5123.378)

The act expands the conditions under which the Director of Developmental Disabilities may change the terms of an agreement with a county board of developmental disabilities or board of county commissioners regarding the construction, acquisition, or renovation of a community adult facility or a community early childhood facility. Under continuing law, agreements for such a facility must include, if the facility is sold, a commitment from the county board or board of county commissioners to use the sale proceeds for housing for individuals with developmental disabilities or to reimburse the outstanding balance owed to the Department of Developmental Disabilities under the agreement. The act permits a county board or a board of county commissioners to also use sale proceeds for the renovation or accessibility modification of housing for individuals with developmental disabilities. The renovation or modification must comply with the requirements established by the Director.

The act permits the Director to establish a deadline by which the county board or board of county commissioners must use the sale proceeds. The Director may extend the deadline as many times as the Director determines necessary.



"Renovation," as defined by the act, is work to restore a building to an acceptable condition and to make it functional for use with individuals with developmental disabilities. It includes architectural and structural changes and the modernization of mechanical and electrical systems, but it does not include work consisting primarily of maintenance repairs and replacements that are necessary due to normal use, wear and tear, or deterioration.

## **FY 2018 Medicaid rates for ICF/IID services**

(Sections 261.165, 261.167, 261.168, and 261.1695)

The act requires Medicaid rates for services provided during FY 2018 by intermediate care facilities for individuals with intellectual disabilities (ICFs/IID) in peer groups 1 and 2 to be determined in accordance with a formula established in continuing law, with certain modifications. It establishes separate modifications for existing ICFs/IID and for new ICFs/IID that begin to participate in Medicaid during the fiscal year.

Peer group 1 consists of ICFs/IID with a Medicaid-certified capacity exceeding eight. Peer group 2 consists of those with a Medicaid-certified capacity not exceeding eight, except for facilities in peer group 3. Peer group 3 consists of ICFs/IID that (1) are certified as an ICF/IID after July 1, 2014, (2) have a Medicaid-certified capacity not exceeding six, (3) have a contract with the Department that is for 15 years and includes a provision for the Department to approve all admissions and discharges, and (4) have residents who are admitted directly from a developmental center or have been determined by the Department to be at risk of admission to a developmental center.<sup>54</sup> These provisions do not apply to ICFs/IID in peer group 3.

### **FY 2018 modifications for existing ICFs/IID**

Under the act, the following modifications are to be made in determining the Medicaid rates for each existing ICF/IID in peer group 1 or 2:

(1) The ICF/IID's efficiency incentive for capital costs is to be reduced by 50%.

(2) The facility's maximum cost per case-mix score is to be the amount the Department determined for the peer group for FY 2016.

(3) An inflation adjustment of 1.4% is to be used in place of the inflation adjustment otherwise calculated as part of the process of determining the ICF/IID's rate for *direct* care costs.

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<sup>54</sup> R.C. 5124.01, not in the act.



(4) In place of the efficiency incentive otherwise calculated when determining the rate for indirect care costs, the facility's efficiency incentive for indirect care costs is to be not more than \$3.69 if the facility is in peer group 1 or not more than \$3.19 if it is in peer group 2.

(5) In place of the maximum rate for indirect care costs otherwise established for the peer group, the maximum rate for indirect care costs for the ICF/IID's peer group is to be an amount the Department is to determine. In determining the maximum rate, the Department must strive to the greatest extent possible to (a) avoid rate reductions under the act's provision concerning maximum and minimum rates (see "**FY 2018 maximum and minimum rate adjustment**," below) and (b) result in payment of all desk-reviewed, actual, allowable indirect care costs for the same percentage of Medicaid days for ICFs/IID in peer group 1 as for those in peer group 2 as of July 1, 2017, based on Medicaid days for May 2017. Medicaid days are all days (1) during which a resident who is a Medicaid recipient occupies a bed in an ICF/IID that is part of the facility's Medicaid-certified capacity and (2) for which a Medicaid payment is made to reserve an ICF/IID bed for a Medicaid recipient temporarily absent from the facility.<sup>55</sup>

(6) An inflation adjustment of 1.4% is to be used in place of the inflation adjustment otherwise calculated when determining the ICF/IID's rate for *indirect* care costs.

(7) In place of the inflation adjustment otherwise made when determining the rate for other protected costs, the facility's desk-reviewed, actual, allowable, per Medicaid day other protected costs, excluding the cost of the ICF/IID franchise permit fee, from calendar year 2016 is to be increased by 1.4%.

(8) After all modifications discussed above are made, the facility's total per Medicaid day rate is to be increased by a direct support personnel payment equal to 3.04% of the facility's allowable per Medicaid day direct care costs from calendar year 2016.

#### **FY 2018 modifications for new ICFs/IID**

Under the act, the following modifications are to be made in determining the Medicaid payment rates for each new ICF/IID in peer group 1 or 2:

(1) The new facility's initial per Medicaid day rate for capital costs is to be the median rate for all existing ICFs/IID determined using the modifications discussed above.

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<sup>55</sup> R.C. 5124.01, not in the act.



(2) If there is no cost or resident assessment data for the new ICF/IID, its initial per Medicaid day rate for direct care costs is to be determined by (a) determining the median of the costs per case-mix units of each peer group, (b) multiplying that median by the median annual average case-mix score for the new facility's peer group for calendar year 2016, and (c) inflating that product by 1.4%.

(3) The new facility's initial per Medicaid day rate for indirect care costs is to be the maximum rate for indirect care costs that the Department determines for its peer group. The maximum rate is to be determined in the same manner such a maximum rate is to be determined under the act for existing ICFs/IID (see above).

(4) The new facility's initial per Medicaid day rate for other protected costs is to be 115% of the median rate for all existing ICFs/IID determined using the modifications discussed above.

(5) After all modifications discussed above are made, the new facility's initial total per Medicaid day rate is to be increased by the median direct support personal payment made for existing ICFs/IID (see above).

A new ICF/IID's initial rate for FY 2018 is to be adjusted in accordance with continuing law governing the adjustment of initial rates. If the adjustment affects the new facility's FY 2018 rate, the modifications made under the act to the rates of existing ICFs/IID are to apply to the new facility's adjusted rate.

### **FY 2018 maximum and minimum rate adjustment**

The act provides for all ICFs/IID in peer groups 1 and 2 to have their total per Medicaid day rate for FY 2018 adjusted up or down if the mean total per Medicaid day rate for all such facilities (as determined under the act as of July 6, 2017, and weighted by Medicaid days for May 2017) is other than a certain amount. The adjustment is to be the percentage by which the mean total per Medicaid day rate is greater or less than the amount. The amount used for this adjustment may not be less than \$290.10, but the Department, in its sole discretion, may use a larger amount. In determining whether to use a larger amount, the Department may consider any of the following:

(1) The reduction in the total Medicaid-certified capacity of all ICFs/IID that occurs in FY 2017, and the reduction that is projected to occur in FY 2018, as a result of (a) a downsizing in an ICF/IID's Medicaid-certified capacity pursuant to a Department-approved plan or (b) a conversion of ICF/IID beds to providing home and community-based services under the Individual Options Medicaid waiver;

(2) The increase in Medicaid payments made for ICF/IID services provided during FY 2017, and the increase that is projected to occur in FY 2018, as a result of the



modifications made to Medicaid payments under continuing law that encourages ICFs/IID to downsize or partially convert to providing home and community-based services;

(3) The total reduction in the number of ICF/IID beds that occurs pursuant to continuing law that requires the Department to strive to achieve a statewide bed reduction by July 1, 2018;

(4) Other factors the Department determines to be relevant.

### **FY 2018 rate reduction if franchise permit fee is reduced or eliminated**

If the federal Centers for Medicare and Medicaid Services requires that the ICF/IID franchise permit fee be reduced or eliminated, the Department must reduce the amount it pays ICFs/IID in peer groups 1 and 2 for FY 2018 as necessary to reflect the loss of the revenue and federal financial participation generated from the franchise permit fee.

### **General Assembly's intent to enact new ICF/IID formula**

The act states the General Assembly's intent to enact legislation establishing a new formula to determine Medicaid rates for ICF/IID services beginning not sooner than July 1, 2018, and not later than January 1, 2019.

The Department must work in collaboration with the following organizations to finalize recommendations for the new formula to be submitted to the General Assembly: the Ohio Association of County Boards, the Ohio Health Care Association, the Ohio Provider Resource Association, the Values and Faith Alliance, and the Academy of Senior Health Services. The Department is prohibited from submitting recommendations for the new formula unless all of those organizations support the recommendations.

The act requires that all of the following be included in the recommendations for the new formula:

(1) Using the Ohio Developmental Disabilities Profile as the assessment instrument for determining case-mix scores used to calculate rates for the direct care costs of ICFs/IID;

(2) Determining rates for capital using an ICF/IID's current asset value and a rate of return;

(3) Including all of the following in the calculation of an ICF/IID's current asset value: the facility's age, the date and cost of capital improvements made to the facility,



the facility's current Medicaid-certified capacity, an RS Means Construction Cost Index, a rate of depreciation, estimated equipment value, and estimated land value;

(4) Establishing a quality incentive rate component to take effect July 1, 2019, and having the initial rate determined using data from calendar year 2018;

(5) Establishing new peer groups that are differentiated by Medicaid-certified capacity;

(6) Considering the changing acuity level of ICF/IID residents, including residents with intensive behavioral and intensive medical needs;

(7) Establishing a method to transition ICFs/IID to the new formula for the first 36 months that it is in effect. Specifically, the Department must compare each facility's Medicaid rate under the new formula with its rate under the existing formula as modified for a fiscal year by law (i.e., its current formula rate) and do the following:

(a) Pay the facility its current formula rate instead of the new formula rate, if the new rate is less than its current formula rate;

(b) Subject to a possible rate increase limit (discussed next), pay the facility the new formula rate if that rate is greater than its current formula rate; and

(c) Specify, to the extent the Department determines necessary, a maximum percentage by which an ICF/IID's new formula rate may exceed its current formula rate, and adjust the new rate in accordance with the maximum percentage if the percentage difference between the new and current formula rates exceeds the maximum percentage. If the Department specifies a maximum percentage, it must strive to the greatest extent possible to ensure that the mean per Medicaid day rate for FY 2019 under the new formula equals the rate cap the Department establishes. (See "**FY 2019 rates under new formula**," below.)

#### **FY 2019 rates under current formula**

The formula established in continuing law is to be used with certain modifications to determine the Medicaid rates for services provided by ICFs/IID in peer groups 1 and 2 during the period beginning July 1, 2018, and ending on the date that rates begin to be determined using the new formula. The same modifications and limitations that apply to the FY 2018 formula must be made for this period, except that data for a subsequent fiscal year or calendar year is to be used for certain of the modifications. For example, an ICF/IID's per Medicaid day other protected costs, excluding its franchise permit fee, from calendar year 2017, instead of calendar year



2016, is to be used in determining the inflation adjustment made as part of the process of determining the rate for other protected costs.

### **FY 2019 rates under new formula**

Medicaid rates for ICF/IID services are to cease being determined in accordance with the current formula beginning on the date the new formula begins to be used. The rates for the remainder of FY 2019 are to be determined in accordance with the new formula, but will be subject to an adjustment described below and the transition methodology described above.

An adjustment is to be made if the mean total per Medicaid day rate for ICFs/IID under the new formula, weighted by May 2018 Medicaid days, is other than an amount that the Department is to determine, which may not exceed \$295.90. If the adjustment is to be made, the Department must adjust the rate by the percentage by which the rate determined under the new formula and in accordance with the transition methodology, is greater or less than the amount determined by the Department.

The Department must reduce the rate if the federal Centers for Medicare and Medicaid Services requires that the franchise permit fee imposed on ICFs/IID be reduced or eliminated. The reduction must reflect the loss of the revenue and federal match generated by the franchise permit fee.

### **Ventilator-dependent ICF/IID residents**

(R.C. 5124.25 with a conforming change in R.C. 5124.15)

The act eliminates a requirement that a Medicaid recipient be under age 22 to qualify to receive outlier ICF/IID services. The recipient must continue to be dependent on a ventilator and meet all other eligibility requirements established in rules to qualify. The Department is permitted by continuing law to pay a Medicaid rate add-on to a facility for outlier ICF/IID services provided to qualifying Medicaid recipients. However, it may not pay the add-on unless the Department of Medicaid has approved the amount of the add-on or the method by which the amount is to be determined.

### **Medicaid rates for homemaker/personal care services**

(Section 261.210)

The act requires that the total Medicaid payment rate for each 15 minutes of routine homemaker/personal care services that a Medicaid provider provides to a qualifying enrollee of the Individual Options Medicaid waiver program be 52¢ higher than the rate for services that a Medicaid provider provides 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 provider provides the services to the qualifying enrollee during the period beginning July 1, 2017, and ending June 30, 2019.

An Individual Options enrollee is a qualified enrollee if all of the following apply:

(1) The enrollee resided in a developmental center, converted ICF/IID,<sup>56</sup> or public hospital immediately before enrolling in the Individual Options Medicaid waiver program.

(2) 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.

(3) The Director of Developmental Disabilities has determined that the enrollee's special circumstances (including diagnosis, service needs, or length of stay at the developmental center, converted ICF/IID, or public hospital) warrant paying the higher Medicaid rate.

### **Nonfederal share of Medicaid expenditures for ICFs/IID**

(R.C. 5123.38)

The act modifies the law making a county board of developmental disabilities responsible for the nonfederal share of Medicaid expenditures for certain individuals' care in a state-operated ICF/IID. Under prior law, a county board was responsible for the nonfederal share if the individual had been involuntarily committed to a state-operated ICF/IID and received supported living or home and community-based services funded by the county board. The act removes the condition regarding supported living or home and community-based services, thereby making a county board responsible for the nonfederal share of all expenditures for individuals who have been involuntarily committed from the county served by the county board.

The act eliminates an exemption to the requirement that applied to a county board that began funding supported living or home and community-based services within 90 days of an individual's commitment to the facility. Instead, it exempts a county board from the requirement if, within 180 days of an individual's commitment, the county board arranges for the provision of alternative services for the individual, and the individual is discharged from the ICF/IID.

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<sup>56</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 Medicaid waiver program.



## **County board share of nonfederal Medicaid expenditures**

(Section 261.130)

The act requires the Director of Developmental Disabilities to establish a methodology to estimate in FY 2018 and FY 2019 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 county board to pay this share for waiver services provided to an individual who the board determines is eligible for its services.

Each quarter, the Director must submit to the county board written notice of the amount for which the board is responsible. The notice must specify when the payment is due.

## **Developmental center services**

(Section 261.150)

The act permits a residential center for persons with developmental disabilities operated by the Department of Developmental Disabilities (i.e., a developmental center) to provide services to persons with developmental disabilities living in the community or to providers of services to these persons. The Department may develop a method for recovery of all costs associated with the provision of the services.

## **Innovative pilot projects**

(Section 261.160)

For FY 2018 and FY 2019, the act permits the Director 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.



## **Use of county subsidies to pay nonfederal share of ICF/IID services**

(Section 261.200)

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 a Medicaid recipient who is eligible for them and the recipient does not occupy a bed that used to be 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 of the services has a valid Medicaid provider agreement for the services for the time that they are provided.

### **County board waiting lists**

(R.C. 5126.042, 5126.054, and 5166.22)

#### **When a waiting list is required**

The act revises the law governing waiting lists that county boards establish for home and community-based services available under Medicaid waivers administered by the Department. Under prior law, a county board had to establish a waiting list if it determined that available resources were insufficient to meet the needs of all individuals who requested the services. The act requires instead that a county board establish a waiting list for the services if it determines that available resources are insufficient to enroll all individuals who are assessed as needing the services.

#### **Waiting list policies to be established in rules**

Prior law specified that an individual's date of placement on a waiting list was the date a request was made to a county board for the services. It also specified when an individual was to receive priority when placed on a waiting list, which included when an individual was at risk of substantial self-harm or substantial harm to others if action was not taken within 30 days. The act eliminates these provisions and instead requires county boards to establish waiting lists in accordance with rules the Director is required to adopt. The rules must establish:

(1) Procedures a county board is to follow to transition individuals from the current waiting list to the new waiting list;

(2) Procedures by which a county board is to ensure that due process rights of individuals placed on the waiting list are observed;



(3) Criteria a county board is to use to determine (a) an individual's eligibility to be placed on the waiting list, (b) the date an individual was assessed as needing the services, (c) the order in which individuals on the waiting list are to be offered enrollment, and (d) the Medicaid waiver in which an individual on the waiting list is to be offered enrollment; and

(4) Grounds for removing an individual from the waiting list.

The Director must consult with the following when adopting the rules:

(1) Individuals with developmental disabilities;

(2) Associations representing individuals with developmental disabilities and their families;

(3) Associations representing providers; and

(4) The Ohio Association of County Boards Serving People with Developmental Disabilities.

### **County board plans regarding home and community-based services**

Continuing law requires each county board to develop a three-calendar-year plan regarding home and community-based services available under Medicaid waivers administered by the Department. The plan must include the following three components: an assessment component, a preliminary implementation component, and implementation component for new recipients.

The assessment component must contain certain information. Under prior law, the information included the number of individuals with developmental disabilities residing in the county who were given priority on a waiting list for home and community-based services. The act instead requires that the information include the number of such individuals who are placed on a county board's waiting list.

Prior law required that the preliminary implementation component specify the number of individuals to be provided home and community-based services pursuant to the waiting list priority given to them during the first year that the plan was in effect. The act requires instead that the component specify the number of individuals to be provided home and community-based services pursuant to their placement on the waiting list.

The implementation component for new recipients must specify how Medicaid case management services and home and community-based services are to be phased in over the period the plan covers. Under prior law, this had to include how the county



board would serve individuals with priority on the waiting list. The act requires instead that this include how the county board will serve individuals placed on the waiting list.

### **County board allocations for home and community-based services**

The Department must consider certain information when allocating to county boards enrollment numbers for home and community-based services. Under prior law, this included information regarding individuals *with priority status* on the county waiting lists. The act eliminates this reference to priority status because it eliminates the priority requirements for waiting lists.

### **County board employment restrictions**

(R.C. 5126.0221)

Under continuing law, certain members of a county commissioner's immediate family<sup>57</sup> are prohibited from being employed by the county board of developmental disabilities for the county the commissioner serves. The act narrows this prohibition so that it applies only to a spouse, son, or daughter. The following, however, are no longer prohibited from employment: a parent, grandparent, brother, sister, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

### **Stakeholder workgroup**

(Section 261.230)

The act requires the Department to convene a stakeholder workgroup to evaluate services provided to individuals with developmental disabilities living in the community and to develop recommendations related to those services. The workgroup must convene by July 29, 2017, and must develop and submit a report with its recommendations within one year after it first convenes.

### **Report**

The workgroup must develop a report with recommendations addressing the following topics:

(1) Determining whether immediate action is necessary to ensure the health and safety of an individual with a developmental disability or a group of such individuals, including through the use of standardized protocols;

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<sup>57</sup> R.C. 5126.01, not in the act.



(2) Supporting quality services beyond those necessary for minimum compliance;

(3) Monitoring the health and safety of individuals with developmental disabilities, including through onsite monitoring and monitoring conducted or arranged for by the Department;

(4) Clarifying the roles and responsibilities of the Department, county boards of developmental disabilities, and service providers, including when adverse actions are taken.

The workgroup may include any other recommendations in the report it determines necessary. The report must be submitted to the Department and General Assembly. On submission of the report, the workgroup ceases to exist.

### **Rulemaking**

The act permits the Director to adopt rules implementing the workgroup's recommendations. If the Director does not have authority to adopt a particular rule or a workgroup recommendation requires a statutory change, the workgroup's report must include a recommendation that the General Assembly grant the Director that authority or enact legislation making the statutory change.

### **Membership**

The workgroup must include as members representatives of the Department, county boards, service providers, and individuals with developmental disabilities and their families. Workgroup members serve without compensation or reimbursement, except to the extent that serving on the workgroup is part of their usual job duties. A representative of the Department is to serve as chairperson. The Department is responsible for providing the workgroup with administrative assistance.

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## DEPARTMENT OF EDUCATION

### I. School financing

#### Generally

- Specifies a formula amount of \$6,010 for FY 2018 and \$6,020 for FY 2019.
- Adjusts the valuation index used in the "state share index" calculation for FY 2018 or FY 2019 for school districts that satisfy specified criteria related to total taxable value of public utility personal property and total taxable value of power plants.
- Maintains the dollar amounts from FY 2017 for the calculation of all categorical payments for both years of the biennium.
- Increases a multiplier used in the formula for computing capacity aid funds for each city, local, and exempted village school district.
- Provides an additional payment of a "third-grade reading bonus" to each STEM school based on how many of its third grade students score at a proficient level or higher on the English language arts assessment.
- Revises the multiplier used in the transportation funding formula.

#### Caps and guarantees

- For each city, local, and exempted village school district, imposes a cap that restricts the increase in the district's aggregate core foundation funding (excluding career-technical education and associated services funding, graduation bonus, and third grade reading bonus) plus transportation funding as follows:

--If a district has an increase in total ADM between FY 2014 and FY 2016 that is 5.5% or greater in FY 2018 or 6% or greater in FY 2019, restricts the increase to no more than 5.5% of the previous year's state aid for FY 2018 or no more than 6% of the previous year's state aid for FY 2019;

--If a district has an increase in total ADM between FY 2014 and FY 2016 that is between 3% and 5.5% in FY 2018 or between 3% and 6% in FY 2019, restricts the increase to no more than a scaled amount between 3% and 5.5% for FY 2018 or between 3% and 6% for FY 2019;

--For all other districts, restricts the increase to 3% of the previous year's state aid for each fiscal year of the biennium.



- Modifies the cap described above for districts that satisfy specified criteria related to the total taxable value of public utility personal property and the total taxable value of power plants.
- Provides a "cap offset payment" for FY 2018 for districts that are subject to the cap for FY 2018 and receive a combined amount of foundation funding, transportation funding, and fixed rate operating direct reimbursements for FY 2018 that is less than that combined funding for FY 2017.
- For each city, local, and exempted village school district, guarantees an amount of aggregate core foundation funding (excluding career-technical education and associated services funding) plus transportation funding equal to the following for each year of the biennium:
  - If a district has a decrease in total ADM between FY 2014 and FY 2016 that is 10% or greater, 95% of the district's state aid for FY 2017;
  - If a district has a decrease in total ADM between FY 2014 and FY 2016 that is between 5% and 10%, a scaled amount between 95% and 100% of the district's state aid for FY 2017;
  - For all other districts, at least the same amount of state aid for each fiscal year of the biennium as for FY 2017.
- Separately guarantees that each city, local, and exempted village school district receives, for each year of the biennium, at least 100% of the district's career-technical education and associated funding for FY 2017.
- For each joint vocational school district, adjusts the district's aggregate core foundation funding (excluding career-technical education and associated services funding and, in the case of the cap, the graduation bonus) in substantially the same manner as for city, local, and exempted village school districts.

### **Other adjustments**

- Requires the Department of Education to recompute the state funding for each district with a 10% (rather than 5% as under prior law) increase or decrease in the taxable value of all utility tangible personal property subject to taxation in the preceding tax year when compared to the second preceding tax year.
- Repeals two provisions that allow for the recomputation of a school district's state funding due to reductions in the district's property tax base made after the funding was initially computed.



- Requires the Department annually to recommend to the General Assembly a structure to compensate each school district that experiences at least a 50% decrease in public utility personal property valuation from one year to the next for a percentage of the effect that decrease has on the district's foundation funding.

### **Miscellaneous funding provisions**

- Specifies procedures for concluding the operations of the former Straight A Program.
- Requires the Department to submit a report by December 31, 2017, regarding the Straight A Program's operation in FY 2017 and recommendations on projects funded by the Program that warrant consideration for future replication.
- Repeals sections that prescribe the calculation of school districts' capacity measures for the tangible personal property (TPP) reimbursement in the tax code.
- Requires the Department to conduct a study of appropriate funding levels for gifted students and methods of funding for gifted courses and programs and to report its findings and recommendations by May 1, 2018.

## **II. Early childhood education**

### **Preschool program funding and operation**

- Prioritizes early childhood education funding for children who are four years old, but permits remaining funds after October 1 to be used for three-year-old children, upon approval of the Department.
- Permits the Department to create an early childhood education parent choice demonstration pilot program.
- Requires the Department to implement a pilot preschool program in not more than two counties in the state's Appalachian region that funds a total of 125 eligible children in each fiscal year and to collect and review data from the program.

### **Special education preschool staffing**

- Requires a ratio of one full-time staff member for every eight full-day or 16 half-day preschool children eligible for special education enrolled in a center-based preschool special education program.



### **III. College Credit Plus and Early College High School**

#### **Student eligibility**

- Beginning with the 2018-2019 school year, requires a student, as a condition of eligibility for the College Credit Plus (CCP) Program, to either (1) be "remediation-free" on at least one specified assessment, or (2) score within a specified range of the remediation-free threshold and have at least a 3.0 GPA or an advisor's recommendation.
- Requires the college to which a student applies to pay for one assessment used to determine that student's eligibility for the CCP Program.
- Requires the Chancellor of Higher Education, in consultation with the Superintendent of Public Instruction, to adopt rules specifying conditions under which "underperforming" participants may continue participating in CCP.

#### **Payments**

- Permits, rather than requires as under prior law, the Chancellor to approve CCP payments made by the Department of Education under an alternative payment structure to be below the default floor amount.
- Specifies that, under the default payment structure for CCP, the Department must pay the lesser of (1) the default amount or (2) the college's standard rate for an undergraduate course.
- Prohibits payments made by the Department for a CCP course under an alternative payment structure from exceeding the college's standard rate for an undergraduate course.
- Prescribes January 31, for fall participants, and July 31, for spring participants, as the dates by which the Department must make CCP payments to colleges.

#### **Course eligibility**

- Requires the Chancellor, in consultation with the state Superintendent, to adopt rules specifying which courses under the CCP Program are eligible for funding from the Department of Education, and specifies that only courses eligible for funding may be taken under 'Option B' of the Program.



## **Course credit (VETOED)**

- Would have required CCP participants to receive a grade of "C" or better in a CCP course to (1) receive credit for that course, and (2) apply the course toward the high school's graduation and curriculum requirements (VETOED).

## **Appeals and information**

- Changes to whom a student may appeal a principal's decision, with regard to the student's participation in CCP, from the State Board to the district superintendent or governing entity.
- Changes to whom a participant may appeal a dispute, with regard to the granting of credit for CCP courses, from the State Board to the Department of Education.
- Moves the annual deadline, from March 1 to February 1, by which high schools must provide CCP Program information to students in grades 6 through 11.
- Eliminates provisions requiring colleges to notify the state Superintendent of a participant's (1) admission to the college under CCP, (2) courses and hours of enrollment, and (3) chosen participation option ('Option A' or 'Option B').

## **Reports**

- Beginning in 2018 and ending in 2023, requires the Chancellor and state Superintendent to submit an annual report by December 31 to the Governor, Senate President, Speaker of the House, and chairpersons of the House and Senate Education Committees on specified outcomes of the CCP Program.
- Makes the CCP biennial report permissive, rather than mandatory, and limits the data that may be included in the biennial report to only data available through the Higher Education Information System.

## **Early College High School**

- Exempts all Early College High School (ECHS) programs from the requirements of the CCP program, so long as the program meets the modified statutory definition of ECHS programs and is approved by the Chancellor and state Superintendent.
- Revises the definition of ECHS programs and specifies that the programs "prioritize," rather than only include, students who are (1) underrepresented in higher education, (2) economically disadvantaged, or (3) first-generation.



## **IV. Educator licensure and preparation**

### **Elimination of Ohio Teacher Residency Program (VETOED)**

- Would have eliminated the Ohio Teacher Residency Program and would have prohibited current participants from being required to complete the Program or its components (VETOED).

### **Substitutes for educational assistants**

- Authorizes a district superintendent to allow an employee who does not hold an educational aide permit or paraprofessional license to work as a substitute for an educational assistant, so long as the employee's application materials indicate that the employee is qualified to obtain the permit or license.
- Specifies that the employee must (1) apply to the State Board for the permit or license prior to starting work as a substitute and (2) complete a criminal records check for nonlicensed school employees.
- Limits the maximum amount of time that an employee may work as a substitute under this provision to 60 days following the starting date.

### **Other licensure provisions**

- Requires the Department to request fingerprints from licensed educators and applicants for licensure who are not enrolled in the Retained Applicant Fingerprint Database in order to enroll them, and to inactivate a license or reject an application of an educator who does not comply.
- Requires instruction in opioid and other substance abuse prevention to be included in all teacher and school personnel preparation programs.

## **V. Curriculum and graduation credentials**

### **Alternative graduation requirements for Class of 2018**

- Creates the following two alternative graduation pathways for students enrolled in public or chartered nonpublic schools who entered the ninth grade for the first time on or after July 1, 2014, but prior to July 1, 2015 (Class of 2018) in lieu of the continuing law graduation requirements.

--Take all applicable state tests, retake certain low-score end-of-course exams, complete the school district's or school's curriculum, and satisfy two of several



prescribed conditions, including completing a capstone project during the 12th grade and having a 93% attendance rate during the 12th grade.

--Take all applicable state tests, complete the district's or school's curriculum, complete an approved career-technical education training program, and satisfy one of several prescribed conditions, including obtaining an industry-recognized credential.

### **Credit for integrated course content**

- Permits public and chartered nonpublic schools to integrate academic content in subject areas for which the State Board has adopted standards into a course in a different subject area, and to allow a student to receive credit for both subject areas that were integrated into the one course.
- Permits a school to administer a related end-of-course exam to a student upon completion of the integrated course.
- By July 1, 2018, requires the Department of Education, in consultation with the Department of Higher Education and the Governor's Office of Workforce Transformation, to develop guidance on granting integrated credit.

### **Credit through subject area competency**

- Requires the Department to develop a framework for school districts and community schools to use in granting units of high school credit to students who demonstrate subject area competency through work-based learning experiences, internships, or cooperative education.
- Requires each district and community school to comply with the framework, beginning with the 2018-2019 school year.

### **Industry-recognized credentials and licenses for graduation**

- By January 1, 2018, requires the state Superintendent, in collaboration with the Governor's Office of Workforce Transformation and business organizations, to establish a committee to develop and update a list of industry-recognized credentials and licenses for high school graduation and state report card purposes.
- Eliminates the State Board's responsibility to approve industry-recognized credentials and licenses.



## **OhioMeansJobs-Readiness Seal**

- Requires the state Superintendent to establish the OhioMeansJobs-Readiness Seal which must be attached or affixed to the diplomas and transcripts of students enrolled in a public or chartered nonpublic school who satisfy specified requirements.

## **Regional workforce collaboration model**

- Requires the Governor's Office of Workforce Transformation, the Department, and the Chancellor to develop a regional workforce collaboration model to provide career services to students by December 31, 2017.
- Requires the Office to oversee the creation of regional workforce collaboration partnerships.

## **Pre-apprenticeship training programs**

- Requires the Departments of Education and Job and Family Services to establish an option for career-technical education students to participate in pre-apprenticeship training programs that impart skills and knowledge for successful participation in a registered apprenticeship occupation course.

## **VI. State assessments**

### **Elementary social studies assessments**

- Eliminates the state fourth- and sixth-grade social studies assessments.
- Requires each school district or school to teach and assess social studies in at least the fourth and sixth grades.
- Requires any social studies assessment to be determined by the district or school and permits the assessment to be formative or summative in nature.
- Prohibits reporting to the Department the results of any social studies assessment used by a district or school.

### **Exemption from state testing and graduation requirements (VETOED)**

- Would have conditionally exempted from the requirements to (1) take state high school assessments and (2) complete a graduation pathway, students who are enrolled in a chartered nonpublic school in which at least 75% of students are children with disabilities receiving special education services (VETOED).



## **Release of achievement test questions**

- Beginning with the 2017-2018 school year, requires that 40% of questions from each state elementary achievement assessment and high school end-of-course exam become public records.
- Prohibits the release in 2017 of any questions from the elementary English language arts and math assessments administered in the 2015-2016 school year.

## **Paper and online administration of state assessments (VETOED)**

- Would have permitted public and chartered nonpublic schools to administer the state achievement assessments in a paper format or a combination of online and paper formats (VETOED).

## **Kindergarten readiness diagnostic assessments**

- Permits school districts to administer the selected response and performance task items portion of the kindergarten readiness diagnostic assessment up to two weeks prior to the first day of the school year.

## **VII. Community schools**

### **Community school sponsor evaluation system (PARTIALLY VETOED)**

- Would have prohibited the Department from assigning an automatic overall rating to a community school sponsor based solely on the sponsor receiving an equivalent score of "0" points on one or more individual components not including academic performance (VETOED).
- Would have specified that a sponsor's overall rating is a cumulative score of the individual components of the evaluation system, unless a sponsor receives a "0" on the academic performance component (VETOED).
- Would have required the Department to weight the "Progress" component of the state report card at 60% of the total score for the academic performance component that comprises the community school sponsor evaluation system (VETOED).
- Requires the Department annually, by July 15, to post a description of the evaluation system and specifies that any changes after that date take effect the following rating period.
- Requires the Department to make the annual training on the evaluation system available by July 15.



- Changes, from October 15 to November 15, the final date by which the sponsor ratings must be published.

### **Review process for community school sponsor ratings**

- Establishes a process by which community school sponsors may review and request adjustments to the calculations of specified components that comprise the community school sponsor evaluation system.

### **Exception to revocation of sponsorship authority (VETOED)**

- Would have permitted a sponsor whose sponsorship authority was revoked because it received an overall rating of "poor" on its 2015-2016 evaluation, but who received at least a score of "3" or a "B" for that evaluation's academic performance component, to renew sponsorship of its schools for the 2017-2018 school year (VETOED).
- Would have permitted that sponsor to continue sponsoring its schools for the 2018-2019 school year, if, for 2017-2018, the sponsor received at least a score of "3" or a "B" (or an equivalent score) on the academic performance component and an overall rating of at least "ineffective" (VETOED).

### **ESC community school sponsors (VETOED)**

- Would have permitted an educational service center (ESC) that sponsors community schools and has a sponsor rating of "effective" or higher to sponsor a community school regardless of whether the school is located in a county within the ESC's territory or a contiguous county (VETOED).

### **Access to community school student data codes**

- Permits the Department to have access to information that would enable student data verification codes to be matched to personally identifiable student data for the purpose of making per-pupil payments to community schools under the school funding formula.

### **Dividing an e-school**

- Beginning in the 2018-2019 school year, authorizes the governing authority of an Internet- or computer-based community school (e-school) meeting specified criteria to divide the school into two or three separate schools and establishes limitations and requirements for each.
- Requires that all resulting schools be included in the calculation of the academic performance component for sponsor ratings.



- Requires the Department to issue a report card for each resulting school, which counts toward closure of the school and any other matter based on report card ratings or measures without the two-year grace period that applies to other new community schools.

### **Automatic withdrawals from online public schools**

- Revises a provision requiring that a public online school, including an e-school, to withdraw from its enrollment a student who fails to take any state achievement assessment for two consecutive school years to specify the consecutive years are of the student's enrollment in that particular school.

## **VIII. STEM and STEAM schools**

### **STEAM schools, equivalents, and programs of excellence**

- Authorizes the creation of science, technology, engineering, arts, and mathematics (STEAM) schools, equivalents, and programs of excellence, which are types of STEM schools, equivalents, or programs of excellence.
- Permits STEM and STEAM schools and equivalents to offer all-day kindergarten in the same manner as school districts, to conform with provisions of continuing law that permit STEM schools and equivalents to offer any of grades K-12.

### **Tuition for out-of-state students**

- Permits a STEM or STEAM school to determine the tuition to charge a student who is not an Ohio resident, so long as the tuition is at least the minimum amount the school receives for a student who is an Ohio resident.

### **Access to school district property**

- Adds STEM schools (and, by reference, STEAM schools) to the list of those public schools that must be offered the right of first refusal when a school district decides to sell real property or is required to offer for sale or lease unused property.

## **IX. Scholarship programs**

### **Application periods for Ed Choice income-based scholarships**

- By May 31 each year, requires the Department to determine whether funds remain available for income-based scholarships under the Educational Choice (Ed Choice) Scholarship Program after the first application period.



- Specifies that the Department need not conduct a second application period for the income-based expansion of the Program if the scholarships awarded in the first application period use the entire amount appropriated for that school year.

### **Jon Peterson Scholarship deadline**

- Removes the application periods and deadlines under the Jon Peterson Special Needs Scholarship Program, and instead requires the Department to prescribe a procedure whereby scholarships are awarded "upon application."
- Prohibits the Department from adopting specific deadline dates for the Peterson Scholarship.

### **Cleveland Scholarship maximums**

- Increases the maximum amount that may be awarded under the Cleveland Scholarship Program for students in grades K-8 to \$4,650 and for students in grades 9-12 to \$6,000.

## **X. Other education provisions**

### **Adult Diploma Pilot Program**

- Requires an entity other than the Department to make full or partial payments for a student participating in the Adult Diploma Pilot Program, if the state Superintendent and the Chancellor determine that it is appropriate for that entity to make those payments.

### **Auxiliary Services funds**

- Adds to the list of permitted uses of Auxiliary Services funds (1) language and academic support services for English language learners and (2) procurement of certain security services.
- Requires the Department to pay Auxiliary Services funds directly to each chartered nonpublic school that does not have: (1) a religious affiliation, or (2) a curriculum or mission that contains any religious content or activities.

### **Chartered nonpublic school reporting**

- Requires each chartered nonpublic school to publish on its website the number of enrolled students and its policy regarding background checks for employees and for volunteers who have direct contact with students.



## **Review of FTE manual (VETOED)**

- Would have required the Department's manual for review and audit of full-time equivalency enrollment reporting by public schools to be approved by the Joint Education Oversight Committee before it could be used (VETOED).

## **Payments for students in residential facilities**

- For a special education student served by a school district other than the one in which the student's parent resides because the student is placed in a residential facility, permits a tuition payment in the same manner as for a nondisabled student under continuing law.
- Permits the district educating a special education student in the residential facility to choose whether to receive a tuition payment for the student (as authorized under the act) or to receive an excess costs payment (as authorized under continuing law).

## **Unvoted debt for alternative fuel vehicles**

- Permits a school district, subject to approval of the Facilities Construction Commission, to incur unvoted debt to finance the purchase of new alternative fuel vehicles or vehicle conversions, in an amount up to  $\frac{1}{10}$  of 1% of the district's tax valuation.

## **Summer food service**

- Requires a school district that provides summer academic intervention services and that opts out of offering summer food service in a school in which at least half of the students are eligible for free lunches to allow an approved summer food service program sponsor to use the school's facilities.

## **Reporting victims of student violence**

- Beginning July 1, 2018, requires the guidelines for the statewide education management information system (EMIS) to require the data maintained by the system to include an identification of the person or persons at whom a student's violent behavior that resulted in discipline was directed.
- Requires the Department to prepare a report of this information for the first two school years and submit it to the General Assembly by October 1, 2020.
- Eliminates the requirement to include this information in the system or guidelines beginning two years following the submission of the Department's report.



## **International students in interscholastic athletics**

- Authorizes international students who attend certain elementary or secondary schools in Ohio and who hold an F-1 U.S. visa to participate in interscholastic athletics on the same basis as Ohio residents.
- Prohibits the international students from being denied the opportunity to participate in interscholastic athletics solely because the student's parents do not reside in Ohio.

## **Sudden cardiac arrest in youth athletics**

- Reduces the frequency with which a student or youth athlete must submit the consent form regarding sudden cardiac arrest guidelines to once each year, instead of once for each activity in which the athlete participates each year.

## **Sunscreen in schools**

- Prohibits a school district from requiring in its medication policy written authorization from a health care provider in order to administer sunscreen to a student.
- Permits a student to possess and self-administer sunscreen without written authorization from a health care provider while on school property or at a school-sponsored event.
- Permits a school to include in its policy the requirement for parental authorization for the possession or administration of sunscreen.

## **Betel nut substances in schools**

- Prohibits the use or possession of any substance containing betel nut in any area under the control of, or at any activity supervised by, a school district or educational service center.

## **Other provisions**

- Permits the Governor, President of the Senate, and Speaker of the House to each nominate three individuals to apply to be participants in the Bright New Leaders for Ohio Schools Program.
- Removes a provision that specified that state financial support for the nonprofit corporation that implements the Bright New Leaders for Ohio Schools Program would cease June 30, 2018.



- Prohibits a school district that has not entered into an agreement with an educational service center as of June 30, 2017, from doing so until June 30, 2019.
- Indefinitely extends the authority of the mayor who appoints a municipal school district board (Cleveland) to establish and retain the district's transformation alliance.
- From September 29, 2017, to October 1, 2021, prohibits transfer of nonresidential territory from one school district to another without approval of both district boards, if they are parties to an annexation ("win/win") agreement, unless one of the district's territory overlaps with a "new community authority" created before 1993.
- Extends to December 31, 2019, the expiration of a provision that permits a school district to offer priority to purchase an athletic field to the chartered nonpublic school that is the field's current leaseholder.
- Requires the Joint Education Oversight Committee to develop legislative recommendations for creating a joint transportation district pilot program.
- Repeals a law that required the Department to establish a clearinghouse of information regarding the identification of and intervention for at-risk students.
- Specifies that bid bonds are not required for the purchase of school buses.
- Exempts the following from the requirement to complete school employee training in the use of an automated external defibrillator:
  - Substitute teachers;
  - Adult education instructors who are scheduled to work less than the full-time equivalent of 120 days per school year; and
  - Persons who are employed on an as-needed, seasonal, or intermittent basis, so long as they are not employed to coach or supervise interscholastic athletics.
- Specifies that the employers of minors participating in a STEM program approved by the Department or any eligible classes through the College Credit Plus Program that meet specified requirements are exempt from the state minor labor law.
- Requires the state Superintendent, in consultation with the Governor's Executive Workforce Board, to establish standards for the operation of school district and educational service center business advisory councils.



- Limits the ability of an unclassified Department employee to receive payment on separation of employment for sick leave accumulated while employed by a school district to an employee who began employment with the Department before October 1, 2017.
- Permits the Department's Supervisor of Agricultural Education to serve as the chair of the board of trustees of the Ohio FFA Association and to assist with the Association's programs and activities.
- Requires the state Superintendent to establish a workgroup on related services personnel for improving coordination of state, school, and provider efforts to address the related services needs of students with disabilities.

## **I. School financing**

(R.C. 3314.08, 3316.20, 3317.01, 3317.013, 3317.014, 3317.017, 3317.02, 3317.021, 3317.022, 3317.025, 3317.028, 3317.0212, 3317.0218, 3317.16, 3317.27, 3326.33, 3326.41, and 5709.92; repealed R.C. 3317.018, 3317.019, 3317.026, and 3317.027; Sections 265.210, 265.220, 265.230, 265.480, and 265.511)

H.B. 59 of the 130th General Assembly (the general operating budget act for the FY 2014-2015 biennium) enacted a new system of financing for school districts and other public entities that provide primary and secondary education, which was subsequently amended by H.B. 64 of the 131st General Assembly (the general operating budget act for the FY 2016-2017 biennium). This system specifies a per-pupil formula amount and then uses that amount, along with a district's "state share index" (which depends on valuation and, for some districts, on median income), to calculate a district's base payment (called the "opportunity grant"). The system also includes payments for targeted assistance (based on a district's property value and income) and supplemental targeted assistance (based on a district's percentage of agricultural property), categorical payments, a capacity aid payment, and payments for a graduation bonus, a third-grade reading bonus, and student transportation.

The act makes changes to the financing system as described below and applies these changes to the core foundation funding formulas for city, local, and exempted village school districts, joint vocational school districts, community schools, and STEM schools. For a more detailed description of the act's school funding system, see the LSC Greenbook for the Department of Education and the LSC Comparison Document for the act. From the LSC home page, [www.lsc.ohio.gov](http://www.lsc.ohio.gov), click on "Budget Central," then on



"Main Operating – HB 49," and then on "EDU" under "Greenbooks" or on "Comparison Document."

Note, as used below, "ADM" means average daily membership. The Department of Education uses the student enrollment that a district must report three times during a school year to calculate a district's average daily membership for the specific purposes or categories required for the funding system, including a district's "formula ADM" and "total ADM."<sup>58</sup>

## **Formula amount**

(R.C. 3317.022)

The act specifies a formula amount of \$6,010 for FY 2018 and \$6,020 for FY 2019. That amount is used to calculate a district's base payment (the "opportunity grant") and various other payments. (The formula amount for FY 2017 was \$6,000.)

## **State share index**

(R.C. 3317.017)

For FY 2018 or 2019, the act adjusts the valuation index used in the "state share index" calculation for eligible school districts by replacing a district's "three-year average valuation" with its total taxable value for the most recent tax year for which data is available, if that value is less than the three-year average valuation. For purposes of this adjustment, an "eligible school district" is one that satisfies all of the following:

(1) The total taxable value of public utility personal property in the district is at least 10% of the district's total taxable value for the tax year immediately preceding the most recent tax year for which data is available.

(2) The total taxable value of public utility personal property in the district for the most recent tax year for which data is available is at least 10% less than the total taxable value of public utility property in the district for the tax year immediately preceding the most recent tax year for which data is available.

(3) The total taxable value of power plants in the district for the most recent tax year for which data is available is at least 10% less than the total taxable value of power plants in the district for the tax year immediately preceding the most recent tax year for which data is available.

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<sup>58</sup> R.C. 3317.03, not in the act.



If a district satisfies this criteria for FY 2018 but does not satisfy it for FY 2019, the act requires the district's "state share index" for FY 2019 to be the same as it was for FY 2018.

The "state share index" is an index that depends on valuation and, for districts with relatively low median income, on median income. Continuing law adjusts the index for school districts where 30% or more of the potential taxable valuation is exempted from taxation, which reduces the qualifying districts' three-year property valuation in the formula, and, thereby, increases their calculated core funding. The "state share index" is a factor in the calculation of the opportunity grant, special education funds, catastrophic cost for special education students, kindergarten through third grade literacy funds, limited English proficiency funds, career-technical education and associated services funds, the graduation bonus, the third-grade reading bonus, and transportation funds for city, local, and exempted village school districts.

### **Categorical payments**

(R.C. 3314.08, 3317.013, 3317.014, 3317.02, 3317.022, 3317.16, and 3326.33)

The act maintains, for both years of the biennium, the dollar amounts from FY 2017 for the calculation of all categorical payments (special education, kindergarten through third grade literacy, economically disadvantaged students, limited English proficiency students,<sup>59</sup> gifted identification, gifted coordinator and intervention specialist units,<sup>60</sup> and career-technical education and associated services).

School districts, community schools, and STEM schools receive all of these payments with the exception of kindergarten through third grade literacy funding (which is not paid to joint vocational school districts) and gifted identification and unit funding (which is not paid to joint vocational school districts, community schools, and STEM schools).

### **Capacity aid**

(R.C. 3317.0218)

The act increases a multiplier used in the formula for capacity aid for city, local, and exempted village school districts to 4.0 (from 3.5 under prior law). This payment is based on how much revenue one mill of taxation will generate for the district.

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<sup>59</sup> R.C. 3317.016, not in the act.

<sup>60</sup> R.C. 3317.051, not in the act.



## Third-grade reading bonus for STEM schools

(R.C. 3326.41(B)(2))

The act provides an additional payment of a "third-grade reading bonus" to each STEM school based on how many of its third grade students score at a proficient level of skill or higher on the school's most recent administration of the English language arts assessment. This change corresponds with amendments to the law at the end of the 131st General Assembly that authorized STEM schools to enroll students in any of grades K-12, rather than any of grades 6-12. By reference, it also will apply to STEAM schools as newly authorized by the act. (Law unchanged by the act also provides for the payment of this bonus to each city, local, and exempted village school district<sup>61</sup> and community school.<sup>62</sup>)

## Transportation funding

(R.C. 3317.0212)

The act specifies that a school district's transportation funding must be calculated using the following multiplier:

- (1) For FY 2018, the greater of 37.5% or the district's state share index;
- (2) For FY 2019, the greater of 25% or the district's state share index.

Under prior law, this multiplier was the greater of 50% or the district's state share index.

The multiplier reduces a district's total transportation funding to account for the amount attributable to the district's contribution to the total.

Additionally, the act maintains the formula used for calculating a district's transportation supplement payment for FY 2017, which is based on the district's rider density (the total ADM per square mile).

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<sup>61</sup> R.C. 3317.0216, not in the act.

<sup>62</sup> R.C. 3314.085(B)(2), not in the act.



## **Payments prior to the act's effective date**

(Section 265.210)

As with the past two biennial budget acts, the act requires the Superintendent of Public Instruction, prior to September 29, 2017, to make operating payments in amounts "substantially equal" to those made in the prior year, "or otherwise," at the Superintendent's discretion.

## **Payment caps and guarantees**

(Sections 265.220, 265.230, and 265.233)

### **Cap for city, local, and exempted village school districts**

The act adjusts a city, local, or exempted village school district's aggregate amount of core foundation funding and transportation funding by imposing a cap that restricts the increase in the aggregate funding over the previous year's state aid to no more than 3% of the previous year's state aid for each fiscal year of the biennium, except as follows:

--If the district has an increase in total ADM between FY 2014 and FY 2016 that is 5.5% or greater in FY 2018 or 6.0% or greater in FY 2019, the district's increase in aggregate funding is restricted to no more than 5.5% of the previous year's state aid for FY 2018 or no more than 6% of the previous year's state aid for FY 2019;

--If the district has an increase in total ADM between FY 2014 and FY 2016 that is between 3% and 5.5% in FY 2018 or between 3% and 6% in FY 2019, the district's increase in aggregate funding is restricted to no more than a scaled amount between 3% and 5.5% of the previous year's state aid for FY 2018 or no more than a scaled amount between 3% and 6% of the previous year's state aid for FY 2019.

For purposes of this computation, "core foundation funding" does not include career-technical education and associated services funding, the third-grade reading bonus, and the graduation bonus.

### **Modification of cap for eligible districts**

If a district is an "eligible school district" for purposes of the state share index adjustment described above, the act modifies that district's cap so that the district receives the greater of the following:

- (1) The amount calculated for the district under the cap described above; or
- (2) The lesser of:



(a) The district's aggregate core foundation funding and transportation funding for the current fiscal year; or

(b) The district's previous year's state aid plus the district's taxes charged and payable on all real and public utility property for tax year 2015 minus the district's taxes charged and payable on all real and public utility property for tax year 2016.

#### **Cap offset for certain districts**

The act provides a "cap offset payment" for FY 2018 for city, local, and exempted village school districts that are subject to the cap for FY 2018 and receive a combined amount of foundation funding, transportation funding, and fixed rate operating direct reimbursements for FY 2018 that is less than that combined funding for FY 2017. This payment is equal to the lesser of the following:

(1) The amount by which the district's foundation funding is capped for FY 2018;  
or

(2) The difference between the district's combined amount of foundation funding, student transportation funding, and fixed rate operating direct reimbursements for FYs 2017 and 2018.

#### **Guarantee for city, local, and exempted village school districts**

A district's core foundation funding and student transportation funding is further adjusted by guaranteeing that the district receives at least the same amount of state aid for each fiscal year of the biennium as for FY 2017, except as follows:

--If the district's percentage change in total ADM between FY 2014 and FY 2016 is a decrease of 10% or more, the district is guaranteed, for each fiscal year of the biennium, 95% of the district's state aid for FY 2017;

--If the district's percentage change in total ADM between FY 2014 and FY 2016 is a decrease between 5% and 10%, the district is guaranteed, for each fiscal year of the biennium, a scaled amount between 95% and 100% of the district's state aid for FY 2017.

For purposes of this computation, "core foundation funding" does not include career-technical education and associated services funding.

However, the act separately guarantees that a city, local, and exempted village school district receives, for each year of the biennium, at least 100% of the district's career-technical education and associated funding for FY 2017.



## **Cap and guarantee for joint vocational school districts**

The act adjusts a joint vocational school district's aggregate amount of core foundation funding (excluding career-technical education and associated services funding and, in the case of the cap, the graduation bonus) in substantially the same manner as it does for city, local, and exempted village school districts. The act does not, however, provide a cap offset payment or separately guarantee career-technical education funding for JVSDs.

## **Newly established joint vocational school districts**

The act also requires the Department to adjust, as necessary, the transitional aid guarantee and cap bases of school districts that participate in the establishment of a joint vocational school district that first begins receiving core foundation funding in FY 2018 or FY 2019 and to establish, as necessary, the guarantee and cap bases of the new joint vocational school district as an amount equal to the absolute value of the sum of the associated adjustments for the participant school districts.

## **School funding adjustments**

(R.C. 3317.028; repealed R.C. 3317.026 and 3317.027; conforming changes in R.C. 3316.20, 3317.01, 3317.021, and 3317.025)

## **Recomputations due to utility TPP increases or reductions**

The act requires the Department to recompute, for each fiscal year, the state aid of each city, local, and exempted village school district with a 10% (rather than 5% under prior law) increase or decrease in the taxable value of all utility tangible personal property (TPP) subject to taxation in the preceding tax year when compared to the second preceding tax year. The recomputation must occur after the Tax Commissioner determines, no later than May 15 of each calendar year, which districts satisfy this criterion and certifies specified information regarding each district's increase or decrease to the Department and the Office of Budget and Management.

In performing the recomputation, the Department must replace the "three-year average valuations" used throughout the school funding formula with the "total taxable value for the district in the preceding tax year," as certified by the Commissioner. The act also specifies that, for purposes of the recomputation, the Department must not apply any funding limitations enacted by the General Assembly. (Formerly, the practice of the Department was to adjust the three-year average valuation by decreasing or increasing the total taxable value of one tax year, recompute the three-year average valuation, and use that three-year average valuation for the recomputation of the funding formula.)



Under the act, the Department must pay to or deduct from each district for which a recomputation is performed the *lesser* of the following:

(1) The difference between the district's state aid prior to the recomputation and the district's recomputed state aid; or

(2) The increase or decrease in taxes charged and payable on the district's total taxable value for the preceding tax year and the second preceding tax year.

However, the Department is prohibited from either making a payment to a district that experiences an increase in the taxable value of the utility TPP or deducting funds from a district that experiences a decrease in the taxable value of the utility TPP. Under prior law, this payment or deduction was equal to one-half of the difference between the district's state education aid prior to the recomputation and the district's recomputed state aid.

### **Recomputations due to property tax base reductions**

The act also repeals two provisions that allow for the recomputation of a school district's state funding due to adjustments made in the district's property tax base after the funding was initially computed. The recomputations take into account reductions in property value that (a) result in tax refunds of more than 3% of a district's current expense tax revenue and (b) arise from property owner complaints, late current agricultural use value (CAUV) determinations, and retroactive tax exemptions. The act eliminates a certification by the Tax Commissioner of changes in the taxable value of public utility property made for the purposes of the recomputation described in (a).

### **Recommendations for compensating districts for valuation losses**

(R.C. 3317.27)

The act requires the Department, on an annual basis, to recommend to the General Assembly a structure to compensate each city, local, exempted village, and joint vocational school district that experiences at least a 50% decrease in public utility personal property valuation from one year to the next for a percentage of the effect that decrease has on the district's state funding. This payment structure must consider the effect the valuation decrease has on the amount of state funding received by the district and any temporary transitional aid or payment limitations imposed by the General Assembly that apply to the district.



## **Straight A Program**

(Section 265.511)

The act specifies procedures for concluding the operations of the Straight A Program created by the 2013 budget act and reauthorized in 2015. Those procedures include requirements for spending the remaining grant funds, oversight of that spending by the Department, and transferring records to the Department.

Additionally, the Department must submit a report on the Program by December 31, 2017, to the Governor, Speaker of the House, President of the Senate, and chairpersons of the House and Senate Education committees regarding the types of grants awarded, the grant recipients, and the effectiveness of the Program in FY 2017. This report must include recommendations on projects previously funded by the Program that warrant consideration for future replication.

## **School district TPP reimbursement**

(Repealed R.C. 3317.018 and 3317.019)

The act repeals sections of the school funding law that prescribe the calculation of school districts' capacity measures for the tangible personal property (TPP) reimbursement in the tax code. These calculations were performed once, in FY 2016, for purposes of the TPP reimbursement. (These sections are no longer used for any calculations in the school financing system.)

## **Gifted funding study**

(Section 265.480)

The act requires the Department to conduct a study to determine the appropriate amounts of funding for each category and sub-category of students identified as gifted, as well as the most appropriate method for funding gifted education courses and programs. The study must include costs for effective and appropriate identification, staffing, professional development, technology, materials, and supplies at the district level. In conducting the study, the Department must emphasize adequate funding and delivery of services for smaller, rural school districts, including statewide support needed for this population.

The Department must report its findings and recommendations by May 1, 2018, to the Governor, the President of the Senate, the Speaker of the House, the Director and members of the Joint Education Oversight Committee, and the members of the House and Senate primary and secondary education committees of the Senate and House.



## **II. Early childhood education**

### **Preschool funding and operation**

(Section 265.20)

The act appropriates from the GRF \$68.1 million in each of FY 2018 and 2019 to fund early childhood programs at public and private schools for children whose family incomes are not more than 200% of the federal poverty guidelines. Under the act, the Department must distribute funds directly to providers on behalf of eligible children. Qualifying providers are school districts (including joint vocational school districts), educational service centers, community schools sponsored by "exemplary" sponsors, chartered nonpublic schools, and licensed childcare providers that meet at least the third highest tier of the Step Up to Quality Program developed by the Department of Job and Family Services.

The act prioritizes funding for children who are at least four years old but not yet eligible for kindergarten. However, on October 1 of each fiscal year, providers with funds remaining may seek approval from the Department to consider qualified three-year-old children eligible for funding.

The act permits the Department to use up to 2% of the appropriated amount for program support and technical assistance.

#### **Early childhood education parent choice pilot**

The act permits the Department to designate one or more geographical areas in which to operate the parent choice demonstration pilot program. The Department may consider designating areas with multiple providers of high-quality early childhood education programs that have a capacity to serve additional eligible children to identify potential obstacles to implementing a parent choice model. Parents may choose a program from among all providers within the pilot project area.

The act allows the Department to expand the definition of "eligible child" for purposes of the pilot program to include a child who is at least three years old as of the district entry date for kindergarten and has one or more additional risk factors including, but not limited to (1) "exited Help Me Grow Home Visiting," (2) "exited Early Intervention and not eligible for preschool special education," or (3) currently placed in foster care.

Finally, the act requires the Department of Education to collaborate with the Departments of Job and Family Services, Developmental Disabilities, Health, and Mental Health and Addiction Services in establishing the pilot program. The



Department of Education may select a nonstate entity, including an educational service center, a county department of job and family services, a childcare resource and referral agency, or a county family and children first council, to partner with on the pilot program.

### **Early childhood education pilot in Appalachia**

The act requires the Department to implement an early childhood education pilot program in not more than two counties in the state's Appalachian region. A portion of the funding for early childhood education is to be distributed to existing or new providers to serve a total of 125 eligible children in each fiscal year. The Department must collect and review data from the participating programs on at least the following: (1) the number of eligible children served under the pilot program and the amount of funding distributed under the program that was not used, (2) the developmental progress of eligible children served under the program, and (3) the program's identified challenges and successes in enrolling and serving preschool children.

### **Special education preschool staffing**

(R.C. 3323.022)

The act requires the rules of the State Board of Education regarding staffing ratios for preschool children with disabilities to require one full-time staff member for every eight full-day or 16 half-day preschool children enrolled in a center-based preschool special education program. That ratio must be maintained at all times for a program with a center-based teacher and a second adult must be present when there are nine or more children, including nondisabled children enrolled in a class session.

## **III. College Credit Plus and Early College High School**

### **College Credit Plus (CCP) Program**

(R.C. 3365.01, 3365.02, 3365.03, 3365.04, 3365.05, 3365.06, 3365.07, 3365.091, 3365.10, 3365.12, and 3365.15; Section 733.20; conforming change in R.C. 3301.0712)

The act makes several changes to the College Credit Plus (CCP) Program. The CCP Program allows high school students to enroll in nonsectarian college courses to receive high school and college credit. CCP courses may be taken at any state institution of higher education or participating private or out-of-state college or university.



## **Student eligibility**

(R.C. 3365.03; Section 733.20)

Students enrolled in public and nonpublic high schools, as well as home-instructed students, are eligible to participate in the CCP Program. Additionally, seventh and eighth grade students may participate in the same manner as high school students.

Beginning with students seeking to participate in the Program for the 2018-2019 school year, the act requires that a student, as a condition of eligibility and prior to participation, either:

(1) Be considered "remediation-free" on one of the assessments established by the college presidents for the purpose of determining a student's remediation-free status; or

(2) Score within one standard error of measurement below the remediation-free threshold for one of those assessments *and* either (a) have a cumulative GPA of at least 3.0 or (b) receive a recommendation from a school counselor, principal, or career-technical program advisor.

Additionally, the act requires the student to meet the college's established standards for enrollment (in addition to the college's standards for admission and course placement, as under continuing law), as well as the relevant academic program's established standards for admission, enrollment, and course placement.

The act's eligibility conditions first apply to students seeking to participate in CCP for the 2018-2019 school year. Students seeking to participate in 2017-2018 remain subject to the former eligibility requirements.

### **Cost of eligibility assessments**

(R.C. 3365.03)

Beginning with students seeking to participate during the 2018-2019 school year, the act requires the college to which the student applies to pay for one assessment to determine that student's eligibility for the Program (see above). However, for any additional eligibility assessment, the student is financially responsible.



## **Eligibility of underperforming participants**

(R.C. 3365.091)

The act requires the Chancellor of Higher Education, in consultation with the state Superintendent, to adopt rules specifying the conditions under which an underperforming participant may continue to participate in the CCP Program.

The rules must address at least the following:

- (1) The definition of an "underperforming participant";
- (2) Any additional conditions for participants with repeated underperformance to satisfy;
- (3) The timeframe for notifying an underperforming participant who is determined to be ineligible;
- (4) Mechanisms available to assist underperforming participants;
- (5) The role of school guidance counselors and college academic advisors in assisting underperforming participants;
- (6) If an underperforming participant is determined to be ineligible for participation, any consequences that ineligibility may have on the student's ability to complete the high school's graduation requirements; and
- (7) The school year for which implementation of the rules first apply.

When developing the rules, the Chancellor must establish a process to receive input from public and private high schools and colleges, as well as other interested parties.

## **Payments by the Department**

Under continuing law, each student may choose to participate in the CCP Program under 'Option A' (the student is responsible for all costs related to participation) or 'Option B' (the state, through the Department of Education, pays the college on the student's behalf). If participating under 'Option B,' the amount of state payments depends upon several factors, including the type of high school and college in which the participant is enrolled, how the participant receives instruction, and whether the high school and college are operating under the default payment structure or an agreement specifying an alternative payment structure.



## **Payment amounts**

(R.C. 3365.01 and 3365.07; conforming change in R.C. 3301.0712)

The act modifies several payment amounts under the CCP Program. First, for agreements specifying an alternative payment structure, it gives the Chancellor discretion whether to approve payments below the default floor amount (about \$42 per credit hour for the biennium), if the agreement complies with all other programmatic requirements. Prior law required the Chancellor to approve payments below the default floor if all other requirements were met.

Additionally, the act specifies that, if the college's standard rate (see below) is less than the default amount, the Department instead must pay the standard rate. Essentially, it prohibits payments made by the Department for a CCP course, under either the default or the alternative payment structure, from exceeding the college's standard rate. "Standard rate" is defined under the act as "the amount per credit hour assessed by the college for an in-state student who is enrolled in an undergraduate course at that college, but who is not participating in the CCP Program, as prescribed by the college's established tuition policy."

## **Payment dates**

(R.C. 3365.07)

Except in cases involving incomplete or disputed participant information, the act prescribes the following dates by which the Department must make payments to colleges for CCP participants:

- (1) January 31, for fall participants; and
- (2) July 31, for spring participants.

Continuing law requires payments for summer participants to be made each September, "or as soon as possible thereafter."<sup>63</sup>

## **Courses eligible for funding**

(R.C. 3365.06)

The act requires the Chancellor, in consultation with the state Superintendent, to adopt rules specifying which courses under the CCP Program are eligible for funding

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<sup>63</sup> R.C. 3365.034, not in the act.



from the Department of Education. Under the act, only courses eligible for funding may be taken under 'Option B.'

The rules must address at least the following:

- (1) Whether courses must be taken in a specified sequence;
- (2) Whether to restrict funding and limit eligibility to certain types of courses, including (a) courses in the statewide articulation and transfer system, (b) courses that apply to multiple degree pathways or to in-demand jobs, or (c) other types of courses;
- (3) Whether courses with private instruction, as defined by the Chancellor, are eligible for funding; and
- (4) The school year for which implementation of the rules first apply.

When developing the rules, the Chancellor must establish a process to receive input from public and private high schools and colleges, as well as other interested parties.

#### **Minimum grade for course credit (VETOED)**

(R.C. 3365.04, 3365.05, and 3365.12; conforming change in R.C. 3365.15)

The Governor vetoed a provision that would have required participants to receive a grade of "C" or better in a CCP course in order to (1) receive credit (both high school and college credit) for that course and (2) count that course toward the high school's graduation requirements and subject area requirements.

#### **Appeals**

(R.C. 3365.03 and 3365.12)

#### **Missed notification deadline**

Under continuing law, if a public school student fails to notify the school principal by April 1 of the student's intent to participate in the CCP Program during the following school year, the student must obtain the principal's written consent in order to participate. If the principal does not give consent, the student may then appeal the principal's decision.

The act changes to whom the student may appeal the principal's decision, from the State Board (as under prior law), to the district superintendent, community school governing authority, STEM school governing body, or college-preparatory boarding school board of trustees. The act also specifies that the decision on the appeal is final.



### **Course credit dispute**

Under continuing law, if there is a dispute between a participant and the participant's high school with regard to high school credit granted for a CCP course, the participant may appeal the decision. The act changes to whom the participant may appeal the decision, from the State Board (as under prior law), to the Department of Education.

### **Information and notifications**

(R.C. 3365.04 and 3365.05)

The act moves, from March 1 to February 1, the annual deadline for public and participating nonpublic high schools to provide information about the CCP Program to students in grades 6 through 11.

It also eliminates provisions requiring public and participating private colleges to notify the state Superintendent of a participant's admission to the college under CCP, as well as the participant's courses, hours of enrollment, and chosen participation option ('Option A' or 'Option B').

### **CCP reports**

(R.C. 3365.15)

#### **Report on outcomes**

The act requires the Chancellor and state Superintendent to submit a joint annual report, beginning in December 2018 and ending in December 2023, on outcomes of the CCP Program, supported by empirical evidence. Each report must be submitted to the Governor, Senate President, Speaker of the House, and chairpersons of the House and Senate Education Committees and include all of the following, disaggregated by cohort (defined as "a group of students who participated in CCP and who, upon graduation from high school, enroll in an Ohio college during the same academic year"):

- (1) Number, level, and type of degrees attained;
- (2) Number of students who receive a degree in two different subject areas (i.e., double major);
- (3) Time to degree completion, disaggregated by degree level and type;
- (4) Time to enrollment in a graduate or doctoral program;
- (5) The number of students who participate in study abroad; and



(6) How all of the above measures compare to (a) the overall student population who did not participate in CCP during high school, and (b) similar measures compiled under the former Post-Secondary Enrollment Options (PSEO) Program.

The first report must be submitted by December 31, 2018, while the last report must be submitted by December 31, 2023.

### **Biennial report**

The act makes the biennial report detailing the status of the CCP Program permissive, rather than mandatory as under prior law. However, if the Chancellor and state Superintendent choose to submit the biennial report, all of the following apply:

(1) It may include only data available through the Higher Education Information (HEI) System, a database administered by the Chancellor;

(2) It must be submitted to the same officials receiving the outcomes report (see above); and

(3) It still must be submitted by December 31 every two years, with the first report due December 31, 2017.

### **Early College High School (ECHS) exemption**

(R.C. 3313.6013, 3365.02, and 3365.10)

Under prior law, some Early College High School (ECHS) Programs were governed by the CCP Program, while others were specifically exempted (see below). The act, instead, exempts any ECHS Program from the requirements of the CCP Program, so long as it (1) meets the modified statutory definition of ECHS Programs and (2) is approved by the state Superintendent and the Chancellor.

An ECHS Program is defined by the act as "a partnership between at least one school district or school and at least one institution of higher education that allows participants to simultaneously complete requirements toward earning a regular high school diploma and have the opportunity to earn not less than 24 credits that are transferable to the institutions of higher education in the partnership as part of an organized course of study toward a post-secondary degree or credential at no cost to the participant or participant's family."

Prior law exempted only ECHS Programs that (1) applied for and obtained a waiver for innovative programming, (2) began operating before July 1, 2014, and were still operating under an unexpired agreement, or (3) received funding under the former



Straight A Program to establish or expand an ECHS Program. Prior law also exempted portions of an ECHS Program that did not confer transcribed credit.

Under continuing law, the ECHS Program is one of four "Advanced Standing Programs," along with the CCP Program, Advanced Placement (AP) Program, and International Baccalaureate (IB) Diploma Program. Each public and chartered nonpublic high school must offer its students at least one advanced standing program.

#### **IV. Educator licensure and preparation**

##### **Elimination of Ohio Teacher Residency Program (VETOED)**

(Repealed R.C. 3319.223; R.C. 3302.151, 3319.111, 3319.22, 3319.227, 3319.26, 3319.61, 3333.048, and 3333.39; Section 733.60)

The Governor vetoed a provision that, beginning with the 2017-2018 school year, would have eliminated the Ohio Teacher Residency (OTR) Program and prohibited any individual currently participating in the OTR Program from being required to complete the Program or any component of the Program.

The OTR Program is a four-year, entry-level program for educators that must be completed in order to qualify for a professional educator license issued by the State Board.

##### **Substitutes for educational assistants**

(R.C. 3319.088 and 3319.36)

The act authorizes a school district superintendent to allow an employee who does not hold an educational aide permit or an educational paraprofessional license to do the following, provided that the superintendent believes the employee's application materials indicate that the employee is qualified to obtain the permit or license:

--To work as a substitute for an educational assistant who is absent due to illness or a leave of absence; or

--To fill a temporary position created by an emergency.

The act also authorizes a school district treasurer to pay an employee who works as such a substitute, without that employee filing certain reports and written statements that most teachers must file under continuing law.

Prior to starting work as a substitute, the employee must file an application with the State Board for an educational aide permit or an educational paraprofessional



license. Additionally, the employee must complete a criminal records check in accordance with continuing law for nonlicensed school employees.

The employee may work as a substitute for a maximum of 60 days following the starting date. However, if the employee is issued an educational aide permit or educational paraprofessional license, or is denied such a permit or license, during the 60-day period, the employee must cease working as a substitute either on the date the employee files the license with the district superintendent, or on the date the employee is denied the license.

### **Licensed educator fingerprints**

(R.C. 3319.291)

Under continuing law, the State Board must request a criminal records check for all applicants for new educator licenses and, at least every five years, for license renewals. In most cases, an applicant must submit two sets of fingerprints for that purpose, one for the state Bureau of Criminal Identification and Investigation (BCII) and one for the Federal Bureau of Investigation (FBI). However, in some cases, an applicant need only submit one set for just the FBI. Therefore, the BCII may not have all of the information it needs to include all licensed educators in the Retained Applicant Fingerprint Database ("Rapback") operated by BCII.

The act directs the Department to require all license applicants and license holders who are not enrolled in Rapback to submit one complete set of fingerprints and written permission authorizing the state Superintendent to forward the fingerprints to BCII for the purpose of enrolling that person in the Database. If a person does not comply by the date prescribed by the Department, the Department must reject the person's application or inactivate the person's license until the person complies.

### **Opioid abuse prevention instruction in teacher prep**

(R.C. 3333.0414)

The act requires the Chancellor to adopt rules requiring all teacher preparation programs and school personnel preparation programs, for all content areas and grade levels, to include instruction in opioid and other substance abuse prevention. The instruction must include information on the magnitude of opioid and substance abuse, the role educators and other school personnel can play in educating students on the



adverse effects of such abuse, and resources available to teach students about the consequences of such abuse and to help fight and treat it.<sup>64</sup>

## V. Curriculum and graduation credentials

### Alternative graduation requirements for Class of 2018

(Section 733.67)

The act creates two alternative graduation pathways for public and chartered nonpublic high school students of the Class of 2018. These are students who entered the ninth grade on or after July 1, 2014, but before July 1, 2015. The pathways are alternatives that a student may choose in lieu of the pathways already afforded under continuing law (see "**Background**" below).

#### Main alternative pathway

The first pathway qualifies a student for graduation if the student (1) takes all of the end-of-course exams required for the student or takes an alternate assessment for chartered nonpublic school students, (2) retakes, at least once, any end-of-course exam in English language arts or math for which a student received an equivalent score of lower than "3," (3) completes the district's or school's required units of instruction, and (4) meets at least *two* of the following other conditions:

- (a) Has an attendance rate of at least 93% during the twelfth grade;
- (b) Takes at least four full-year or equivalent courses during the twelfth grade and has a grade point average of at least 2.5 for those courses;
- (c) Completes a capstone project during the twelfth grade;
- (d) Completes, during the twelfth grade, 120 hours of work in a community service role or in a position of employment, including internships work study, co-ops, and apprenticeships;
- (e) Earns three or more transcribed credit hours under the College Credit Plus program at any time during high school;
- (f) Passes an Advanced Placement (AP) or International Baccalaureate (IB) course, and receives a score of 3 or higher on the corresponding AP exam or a score of 4 or higher on the corresponding IB exam, at any time during high school;

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<sup>64</sup> Under continuing law, school districts are required to include instruction in prescription opioid abuse prevention in their health curricula (R.C. 3313.60(A)(5)(f), not in the act).



(g) Earns at least a level 3 score on each of the "reading for information," "applied mathematics," and "locating information" components of WorkKeys assessment;

(h) Obtains an industry-recognized credential or a group of credentials equal to at least three total points; or

(i) Satisfies the conditions required to receive an OhioMeansJobs-Readiness Seal (see below).

### **Career-technical alternative pathway**

The second pathway qualifies a student for graduation if the student (1) takes all of the end-of-course exams required for the student or takes an alternate assessment for chartered nonpublic school students, (2) completes the district's or school's required units of instruction, (3) completes a career-technical training program approved by the Department that includes at least four career-technical courses, and (4) completes *one* of the following other conditions:

(a) Attains a cumulative score of at least proficient on career-technical education exams, or test modules, that are required for a career-technical education program;

(b) Obtains an industry-recognized credential, or a group of credentials equal to at least 12 points; or

(c) Demonstrates successful workplace participation, as evidenced by documented completion of 250 hours of workplace experience and by regular, written, positive evaluations from the workplace employer or supervisor and representative of the district or school. (This condition must be based on a written agreement signed by the student, a representative of the district or school, and an employer or supervisor.)

## **Background**

### **Graduation pathways**

The term "graduation pathways" refers to three general options under which a student can graduate from high school. The pathways for both public and chartered nonpublic schools are: (1) score at "remediation-free" levels in English, math, and reading on nationally standardized assessments, (2) attain a cumulative passing score on the state high school end-of-course exams, or (3) attain a passing score the WorkKeys job skills assessment and obtain either an industry-recognized credential or a state agency- or board-issued license for practice in a specific vocation.<sup>65</sup> A fourth option –

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<sup>65</sup> R.C. 3313.618.

attaining a passing score on an alternate assessment approved by the Department – is available only to students in chartered nonpublic schools.

### **High school achievement assessments**

The high school state achievement assessments are referred to in the Revised Code as the College and Work-Ready Assessment System and consist of the following: (1) a nationally standardized assessment that measures college and career readiness, such as the SAT or ACT, and (2) seven end-of-course exams in English language arts I, English language arts II, biology, Algebra I, geometry, American history, and American government.<sup>66</sup>

### **Credit for integrated course content**

(R.C. 3313.603; Section 733.40)

The act permits a school district or chartered nonpublic school to integrate academic content in subject areas for which the State Board has adopted standards into a course in a different subject area, including a career-technical education course.

If a student completes an integrated course in the manner authorized under the act, the student may receive credit for both subject areas. Additionally, a school may administer a related end-of-course exam to a student upon completion of the integrated course.

Finally, the act explicitly states that nothing in the provisions regarding integrated course excuse a district, chartered nonpublic school, or student from the statutory curriculum, testing, or graduation requirements.

### **Development of guidance and planning**

Under the act, by July 1, 2018, the Department of Education, in consultation with the Department of Higher Education and the Governor's Office of Workforce Transformation, must develop both of the following:

(1) A plan that permits and encourages districts and chartered nonpublic schools to integrate academic content so that students may earn simultaneous credit in more than one course; and

(2) Guidance to assist districts and schools that choose to implement integrated coursework, including appropriate licensure for teachers.

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<sup>66</sup> R.C. 3301.0712.



## **Credit through subject area competency**

(R.C. 3313.603 and 3314.03)

The act requires the Department, by December 31, 2017, to develop a framework for school districts and community schools to use in granting units of high school credit to students who demonstrate subject area competency through work-based learning experiences, internships, or cooperative education.

Districts and schools must comply with the Department's framework beginning with the 2018-2019 school year. Each district and school must review any policy it has adopted regarding the demonstration of subject area competency to identify ways to incorporate work-based learning experiences, internships, and cooperative education into the policy in order to increase student engagement and opportunities to earn units of high school credit.

## **Industry-recognized credentials and licenses for graduation**

(R.C. 3302.03, 3313.618, and 3313.6113)

The act eliminates the responsibility for the State Board to approve industry-recognized credentials and licenses. Instead, it requires the state Superintendent, in collaboration with the Governor's Office of Workforce Transformation and representatives of business organizations, to establish a committee to develop a list of industry-recognized credentials and licenses that may be used to qualify for a high school diploma and for state report card purposes. The state Superintendent must appoint the committee by January 1, 2018. The committee must:

- (1) Establish criteria for acceptable industry-recognized credentials and licenses aligned with the in-demand jobs list published by the Department of Job and Family Services;
- (2) Review the list of industry-recognized credentials and licenses in existence on January 1, 2018, and update the list as necessary; and
- (3) Thereafter, review and update the list at least every two years.

## **OhioMeansJobs-Readiness Seal**

(R.C. 3313.618, 3313.6110, and 3313.6112)

The act requires the state Superintendent, in consultation with the Chancellor and the Governor's Office of Workforce Transformation, to establish the OhioMeansJobs-Readiness Seal. The seal must be attached or affixed to the high school



diploma and transcript of a student enrolled in a public or chartered nonpublic school who both:

(1) Satisfies the requirements and criteria for earning the seal, including demonstration of work-readiness and work ethic competencies such as teamwork, problem-solving, reliability, punctuality, and computer technology competency; and

(2) Completes a standardized form developed by the state Superintendent and has that form validated by at least three individuals, each of whom must be an employer, teacher, business mentor, community leader, faith-based leader, school leader, or coach of the student.

The state Superintendent must prepare and deliver to all school districts, community schools, STEM schools, college-preparatory boarding schools, and chartered nonpublic schools an appropriate mechanism for assigning a seal on a student's diploma and transcript indicating that the student has been assigned the seal, as well as any other information the state Superintendent considers necessary.

The act also permits a parent, guardian, or other person having care or charge of a homeschooled student to assign the seal to the student's diploma in the same manner as prescribed for transcripts issued by public and nonpublic schools.

### **Regional workforce collaboration model**

(R.C. 6301.21)

The act requires the Governor's Office of Workforce Transformation, the Department, and the Chancellor to develop a regional workforce collaboration model by December 31, 2017. The model must be developed in consultation with business and economic stakeholder groups. It must provide guidance on how business and economic stakeholder groups must collaborate to form a partnership to provide career services to students. Named stakeholder groups include the JobsOhio Regional Network, local chambers of commerce, economic development organizations, business associations, secondary and post-secondary organizations, and Ohio College Tech Prep Regional Centers. Career services may include job shadowing, internships, co-ops, apprenticeships, career exploration activities, and problem-based curriculum developed in alignment with in-demand jobs.

The act further requires the Office of Workforce Transformation to oversee the creation of regional workforce collaboration partnerships based on the model. The act requires six partnerships located in different regions of the state as determined by JobsOhio.



## **Pre-apprenticeship training programs**

(R.C. 3313.904)

The act requires the Departments of Education and Job and Family Services, in consultation with the Governor's Office of Workforce Transformation, to establish an option for career-technical education students to participate in pre-apprenticeship training programs that impart the skills and knowledge needed for successful participation in a registered apprenticeship occupation course.

## **VI. State assessments**

### **Elimination of fourth- and sixth-grade social studies assessments**

(R.C. 3301.0710, 3302.01, 3302.03, and 3313.6012)

The act eliminates the fourth- and sixth-grade social studies state assessments. Despite the act's elimination of the assessments, it requires each school district or school to teach and assess social studies in at least the fourth and sixth grades, requires any such assessment to be determined by the district or school, and permits the assessment to be formative or summative in nature. Finally, the act prohibits a district or school from reporting to the Department the results of any social studies assessment used by a district or school.

The act maintains the other elementary state assessments, which are English language arts and math for each of grades 3-8 and science for grades 5 and 8.

### **Exemption from state testing and graduation requirements (VETOED)**

(R.C. 3301.0711)

The Governor vetoed a provision that would have conditionally exempted from the requirements to (1) take state high school assessments and (2) complete a graduation pathway, students who are enrolled in a chartered nonpublic school in which at least 75% of students are children with disabilities receiving special education services. The provision would have required an exempted school to make available to the Department any internal student data on testing that could be used for state accountability purposes and specified that the school is subject to the graduation requirements of the school's accrediting body. Finally, it would have applied the exemption to all students in an exempted school, regardless of whether they received special education services or whether they attended the school under a state scholarship program.



## **Release of state achievement test questions**

(R.C. 3301.0711; Section 733.10)

The act changes the process by which questions and preferred answers on state achievement assessments for grades 3 to 8 and high school end-of-course exams become public records. Beginning with those administered in the spring of 2018, at least 40% of questions from state-required assessments and exams must become public records. The Department must determine which questions will be needed for future reuse, and those questions will not be released and must be redacted before the assessment or exam is released as a public record. However, the Department must inform each school district and school of the corresponding statewide academic standard and benchmark to which each redacted question relates. Finally, the Department must continue staggered release through the 2016-2017 school year, but the act prohibits the release in 2017 of any questions and preferred answers from the elementary English language arts and math assessments administered in 2015-2016.

Prior law prescribed a phased release of the questions and answers of a state achievement assessment so that they would all be released by July 31 two years after the administration.

## **Paper and online administration of state assessments (VETOED)**

(R.C. 3301.0711(I))

The Governor vetoed provisions that would have authorized public and chartered nonpublic schools to administer the state achievement assessments in a paper format or a combination of online and paper formats. The vetoed provisions also stated that districts and schools could not be required to administer any state assessment in an online format. Finally, the vetoed provisions would have required the Department to furnish, free of charge, all state achievement assessments to a school district or school, regardless of the format selected.

## **Kindergarten readiness diagnostic assessments**

(R.C. 3301.0715; Section 812.20)

Beginning July 1, 2017, the act permits the administration of the selected response and performance task items portion of the kindergarten readiness diagnostic assessment up to two weeks prior to the first day of the school year. Under continuing law, the other portions of the assessment may not be administered prior to the first day of school, and the entire assessment must be completed by November 1.



## VII. Community schools

### Community school sponsor evaluation system (PARTIALLY VETOED)

(R.C. 3314.016)

Under continuing law, the Department annually assigns an overall rating to the sponsors of community schools (public charter schools) based on a combination of the following three components: (1) the academic performance of students enrolled in community schools under the sponsor's oversight, (2) the sponsor's adherence to quality practices, and (3) the sponsor's compliance with laws and administrative rules. Each component receives an individual rating, and the overall rating is derived from those individual ratings. The ratings are "exemplary," "effective," "ineffective," and "poor."

#### Scoring of individual components and overall ratings (VETOED)

The Governor vetoed several provisions that would have revised the way scores are computed under the sponsor evaluation system as follows:

(1) Would have prohibited the Department from assigning an automatic overall rating to a sponsor based solely on the sponsor receiving an equivalent score of "0" points on one or more individual components, not including the academic performance component;

(2) Would have specified that an overall rating is the cumulative score of the three components that comprise the evaluation system *unless* a sponsor receives an equivalent score of "0" on the academic performance component; and

(3) Would have revised the formula used to calculate the academic performance component by requiring the Department to weight the Progress component of the state report card at 60% of the total score for the academic performance component.

#### Notice of system

The act requires the Department to develop and post on its website by July 15 of each school year a description of the evaluation system that will be used to assign ratings. Under the act, any changes the Department makes to the system after July 15 may not take effect until the following school year.

#### Annual training

Beginning in 2018, the act specifies the Department must make its training on the evaluation system available by July 15 of each year. It also must include guidance on



any changes made to the system. Continuing law requires the annual training to also include the methodology, timelines, and data required.

### **Publication of ratings**

Under the act, the community school sponsor ratings must be published between October 1 and November 15. Prior law required them to be published between October 1 and October 15.

### **Review process for community school sponsor ratings**

The act establishes a process by which sponsors may review information used by the Department to calculate specific components that comprise the sponsor evaluation system. The process applies only to the "adherence to quality practices" and "compliance with laws and rules" components. The Department must establish a review period of at least ten business days. If during that period, a sponsor discerns what it believes is an error in the evaluation of one or both of those components, the sponsor can request adjustments based on documentation previously submitted as part of the evaluation. To support the requested adjustments, a sponsor must provide any necessary evidence or information.

The Department must review the evidence and information, determine whether an adjustment is valid, and promptly notify the sponsor of its determination and reasons. If adjustments could result in a change to the component ratings or the overall rating, the Department must recalculate the applicable ratings prior to publication of the final ratings.

### **Exception to revocation of sponsorship authority (VETOED)**

(Section 265.500)

The Governor vetoed a provision that would have permitted a sponsor whose sponsorship authority was revoked because of an overall rating of "poor" on its 2015-2016 evaluation to renew sponsorship, for the 2017-2018 school year of any school it previously sponsored, but only if the sponsor received a score of "3" or a "B" or higher on the academic performance component for the 2015-2016 school year. It also would have permitted that sponsor to continue sponsoring its schools for the 2018-2019 school year if for the 2017-2018 school year it received at least a score of "3" or a "B," or an equivalent score, on the academic performance component and an overall rating of at least "ineffective."

## **ESC community school sponsors (VETOED)**

(R.C. 3314.016)

The Governor vetoed a provision that would have created an exemption for educational service centers (ESCs) that sponsor community schools and have a sponsor rating of "effective" or higher. Under the vetoed provisions those ESCs would have been able to sponsor a community school regardless of whether it was located in a county within the service territory of the ESC or in a contiguous county. Under continuing law, an ESC may sponsor conversion and start-up schools, without regard to location so long as the Department approves the sponsorship.<sup>67</sup>

## **Access to student data codes for community school payments**

(R.C. 3301.0714(D)(2))

The act permits the Department to have access to information that enable student data verification codes (often called student "SSID" numbers) to be matched to personally identifiable student data for the purpose of making per-pupil payments to community schools under the school funding formula. Under continuing law, the Department (and the State Board) may also have access to this information for purposes of student level data records for early childhood education programs, the administration of state scholarship programs, and the verification of the accuracy of payments to county boards of development disabilities.

## **Dividing an e-school**

(R.C. 3314.29)

Beginning with the 2018-2019 school year, the act authorizes the governing authority of an Internet- or computer-based community school (e-school) that serves all of grades K-12, has an enrollment of at least 2,000 students, and has a sponsor rated "effective" or higher to adopt a resolution to divide the e-school into two or three separate e-schools. Following approval of that resolution by the school's sponsor, and by March 15 prior to the school year in which the division will take effect, the school's governing authority must file the resolution with the Department. The division of an e-school is effective on the July 1 after the resolution is filed with the Department. The required division of grade levels depends on the number of resulting schools, as described below:

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<sup>67</sup> R.C. 3314.02(C)(1)(d), not in the act.



Number of resulting schools	Required division of grade levels		
Two schools	K-8	9-12	
Three schools	K-5	6-8	9-12

Each divided e-school and each resulting school: (1) must have the same governing authority, (2) may not operate as a dropout prevention and recovery program, and (3) may not divide again. Additionally, the sponsor and governing authority of each resulting e-school must enter into a separate contract. Furthermore, each resulting e-school must be included in the calculation of the academic performance component for sponsor ratings under the community school sponsor evaluation system. Finally, the Department must issue a separate state report card for each resulting e-school, which must count toward closure of the school and any other matter based on report card ratings or measures without the two-year grace period that applies to other new community schools.

### **Automatic withdrawals from online public schools**

(R.C. 3313.6410 and 3314.26)

The act specifies, for purposes of the continuing law requirement that an online school of a school district or an e-school withdraw a student for failure to participate in the administration of state assessments for two consecutive years, that the consecutive years are of a student's enrollment in that particular school.

## **VIII. STEM and STEAM schools**

### **STEAM schools, equivalents, and programs of excellence**

(R.C. 3326.01, 3326.03, 3326.032, 3326.04, and 3326.09)

The act authorizes the creation of science, technology, engineering, arts, and mathematics (STEAM) schools, equivalents, and programs of excellence, which are types of STEM schools, STEM school equivalents, and STEM programs of excellence, respectively.

#### **Requirements for STEAM schools and equivalents**

Under continuing law, in order to establish a STEM school or receive a designation of STEM school equivalent, a partnership of public and private entities (in the case of a STEM school) or a community school or chartered nonpublic school (in the case of a STEM school equivalent) must submit a proposal to the STEM Committee. The proposal must contain certain information, including evidence that the school will offer



a rigorous, diverse, integrated, and project-based curriculum and, in the case of a STEM school, information regarding its governance.

Under the act's provisions, a proposal for a STEAM school or STEAM school equivalent must contain all of the same information and the following:

(1) Evidence that the curriculum will integrate arts and design to foster creative thinking, problem-solving, and new approaches to scientific invention (under continuing law, a STEM school or equivalent must include the "arts and humanities" in its curriculum);

(2) In the case of a STEAM school, evidence that the school will operate in collaboration with a partnership that includes arts organizations (as well as institutions of higher education and businesses as under continuing law);

(3) In the case of a STEAM school equivalent, evidence that the school has a working partnership with public and private entities that includes arts organizations (as well as higher education entities and business organizations as under continuing law); and

(4) Assurances that the school has received in-kind commitments of sustained and verifiable fiscal and in-kind support from arts organizations.

The act also requires that the curriculum team for each STEAM school and equivalent include an expert in the integration of arts and design into the STEM fields.

If a STEM school or equivalent wishes to become a STEAM school or equivalent, it may change its existing proposal to include the information described above and submit the revised proposal to the STEM Committee for approval.

### **Requirements for STEAM programs of excellence**

A school district, community school, or chartered nonpublic school may, under continuing law, submit a proposal to the STEM Committee for a grant to support the operation of a STEM program of excellence. This proposal must contain specified information, including evidence that the program will offer a rigorous and diverse curriculum that is based on scientific inquiry and technological design, emphasizes personal learning and teamwork skills, and will expose students to advanced scientific concepts within and outside the classroom. Although continuing law requires the STEM Committee to award these grants, funds have not been appropriated for this purpose for several years.

Under the act's provisions, a proposal for a grant for a STEAM program of excellence must contain all of the same information as a proposal for a STEM program of excellence, plus the following:

(1) Evidence that the curriculum will integrate arts and design into the curriculum to foster creative thinking, problem-solving, and new approaches to scientific invention; and

(2) Evidence that the program will operate in collaboration with a partnership that includes arts organizations (as well as institutions of higher education and businesses as under continuing law).

As with STEM schools and equivalents, if a STEM program of excellence wishes to become a STEAM program of excellence, it may change its existing proposal to include the information described above and submit the revised proposal to the STEM Committee for approval.

#### **Additional grade levels**

The act also permits STEM and STEAM programs of excellence to serve students in any of grades K-12, rather than any of grades K-8 as under prior law.

#### **All-day kindergarten – STEM and STEAM**

(R.C. 3326.11)

The act permits STEM and STEAM schools and equivalents to offer all-day kindergarten in the same manner as school districts. This change conforms with law effective earlier in 2017<sup>68</sup> that permit STEM schools and equivalents to offer any of grades K-12. These provisions also apply to STEAM schools and equivalents under the act.

#### **Tuition for out-of-state students**

(R.C. 3326.10 and 3326.101)

The act permits a STEM or STEAM school to determine the amount of tuition to charge a student who is not an Ohio resident, so long as the tuition is at least the minimum amount the school receives for a student who is an Ohio resident. Under prior law, STEM schools were required to charge tuition for an out-of-state student

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<sup>68</sup> Sub. S.B. 3 of the 131st General Assembly.



*equal* to the amount that the school would have received for *that* student if the student were an Ohio resident, as determined by the Department.

### **Access to school district property**

(R.C. 3313.411 and 3313.413)

The act adds STEM schools (and, by reference, STEAM schools) to the list of those public schools that must be offered the right of first refusal when a school district decides to sell real property or is required to offer for sale or lease unused property. Under continuing law, community schools and college-preparatory boarding schools also must be offered this right of first refusal.

Law retained by the act continues to require that "high-performing" community schools have priority to acquire school district property in the voluntary sale or involuntary sale or lease of such property, followed by the other public schools specified in law (as described above).

## **IX. Scholarship programs**

### **Application periods for Ed Choice income-based scholarships**

(R.C. 3310.16)

The act requires the Department to determine by May 31 of each school year, whether funds remain available for income-based scholarships under the Educational Choice (Ed Choice) Scholarship Program after the first application period. It also specifies that the Department need not conduct a second application period for the income-based expansion of Ed Choice if the scholarships awarded in the first application period use the entire amount appropriated for that school year. If there are funds remaining, the Department must conduct a second application period.

#### **Background**

The income-based expansion of Ed Choice qualifies students whose family income is at or below 200% of the federal poverty guidelines, regardless of the academic performance of their resident public schools. Unlike other Ed Choice scholarships, the income-based scholarships are funded directly from an amount appropriated by the General Assembly, instead of deductions from students' resident districts.<sup>69</sup> Application periods are divided into two windows. The first occurs between February 1 and July 1 prior to the school year in which a scholarship is sought. The second may not occur

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<sup>69</sup> R.C. 3310.032, not in the act.



before July 1 of the school year for which the scholarship is sought and must run for more than 30 days.

The first year of the Ed Choice expansion was the 2013-2014 school year, for which only kindergarten students could receive scholarships. For each subsequent year, the law provides for adding one next higher grade level until all grades are eligible for scholarships. Accordingly, for the 2017-2018 school year, the Program will serve grades K-4, and for the 2018-2019 school year, it will serve grades K-5.

### **Jon Peterson Scholarship deadline**

(R.C. 3310.52 and 3323.052)

The act requires the Department to prescribe a procedure whereby scholarships under the Jon Peterson Special Needs Scholarship Program are awarded "upon application." Prior law specified deadlines and procedures for the application for and renewal of scholarships.

The act expressly prohibits the Department from adopting specific deadline dates for the Jon Peterson Special Needs Scholarship Program.

### **Cleveland Scholarship maximums**

(R.C. 3313.978)

The act increases the maximum amount that may be awarded under the Cleveland Scholarship Program as follows:

<b>Grade Level</b>	<b>Former Maximum</b>	<b>New Maximum</b>
K-8	\$4,250	\$4,650
9-12	\$5,700	\$6,000

## **X. Other education provisions**

### **Payments for the Adult Diploma Pilot**

(R.C. 3313.902)

The act requires an entity other than the Department to make full or partial payments for a student participating in the Adult Diploma Pilot Program, if the state Superintendent and Chancellor determine that it is appropriate for that entity to make those payments.



The Adult Diploma Pilot Program permits a community college, technical college, state community college, or Ohio Technical Center to obtain approval from the state Superintendent and Chancellor to develop and offer a program of study that allows individuals who are at least 22 years old and have not received a high school diploma or certificate of equivalence to obtain a diploma.

## **Auxiliary Services funds**

### **Uses**

(R.C. 3317.06)

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. The act adds to the list of permitted uses (1) provision of language and academic support services and other accommodations for English language learners, and (2) procurement of security services through a county sheriff, police force, or other certified police officer.

### **Payments**

(R.C. 3317.024, 3317.06, 3317.062; Section 265.170)

The act requires the Department to pay Auxiliary Services funds directly to each chartered nonpublic school that is not affiliated with a religious order, sect, church, or denomination or does not have a curriculum or mission that contains religious content, religious courses, devotional exercises, religious training, or any other religious activity. The act maintains the funding process for students in a chartered nonpublic school that has a religious affiliation or has a curriculum or mission that contains religious activities, whereby funds are paid to the school district in which the school is located and the purchases are made by the district on behalf of those students.

## **Chartered nonpublic school reporting**

(R.C. 3301.16 and 3301.164)

The act requires each chartered nonpublic school to annually publish on its website the number of enrolled students as of the last day of October, and its policy regarding background checks for employees and for volunteers who have direct contact with students.



## **Review of FTE manual (VETOED)**

(R.C. 103.45 and 3301.65)

The Governor vetoed a provision that would have subjected to approval by the Joint Education Oversight Committee the manual containing the standards, procedures, timelines, and other requirements for review or audit of the full-time equivalency (FTE) student enrollment reporting by all public schools.

A detailed description of the vetoed provisions, including the timelines for submission and approval of the FTE manual, is available on pages 247-248 of LSC's analysis of H.B. 49, As Passed by the House. The analysis is available online at <https://www.legislature.ohio.gov/download?key=7018&format=pdf>.

## **Payments for students in residential facilities**

(R.C. 3313.64 and 3323.14)

In the case of a special education student who is served by a school district other than the one in which the student's parent resides because the student is placed in a residential facility (that is not a foster home, a detention facility, or a juvenile facility), the act permits a tuition payment in the same manner as for a nondisabled student under continuing law. If a district is educating such a special education student, the act permits the district to choose whether to receive a tuition payment or to receive an excess costs payment for that student (as authorized under continuing law). Either payment is deducted from the state education aid of the district in which the student's parent resides.

## **Unvoted debt for alternative fuel vehicles**

(R.C. 133.06, 3313.372, and 3313.46)

Ordinarily, a school district may not incur debt in excess of  $\frac{1}{10}$  of 1% of its tax valuation without voter approval. Nevertheless, continuing law permits a district to issue unvoted debt in an amount of up to  $\frac{1}{10}$  of 1% of its tax valuation for the installation of energy conservation improvements in its buildings. In a similar manner, the act authorizes a district to incur that same amount of unvoted debt for the purchase of new alternative fuel vehicles (AFVs) or vehicle conversions to reduce fuel costs. However, under continuing law, the total amount of a district's unvoted debt after using either provision cannot exceed 1% of its tax valuation. As in the case of energy conservation improvements, the issuance of debt for AFVs or conversions requires the approval of the Ohio Facilities Construction Commission (OFCC), and if it has either a financial planning and supervision commission (for fiscal emergency districts) or an



academic distress commission, the district also must receive approval of that commission before submitting its request to OFCC.

To avail itself of the act's provisions, a district must contract with a person experienced in implementing student transportation for a report that analyzes and makes recommendations for the use of AFVs. The report must include cost estimates detailing the return on investment over the life of the AFVs and their environmental impact and estimates of all costs associated with alternative fuel transportation. If the district board finds that the amount of money it would spend on AFVs or conversions likely is less than the amount it would save in fuel and operational and maintenance costs over five years, the board may submit the report to OFCC for approval to issue the unvoted debt. In the case of a school district under fiscal watch, OFCC, in consultation with the Auditor of State, may deny approval if it finds the expenditure is not in the district's best interest. Otherwise, OFCC must approve a district's request if it determines that the district board's findings are reasonable and the report is complete.

While a district has outstanding debt for the purchase of new AFVs or conversions, it must monitor the purchase and report annually to OFCC on the return on investment and associated environmental impact. Fuel and operational and maintenance cost savings must be certified by the district treasurer.

### **Summer food service**

(R.C. 3313.813)

Under the act, if a school district that provides summer academic intervention services opts out of offering a summer food program in a school in which at least half of the students are eligible for free lunches, the State Board nevertheless must require the district board to allow an approved summer food service program sponsor to use the school's facilities. The Department must post a list of approved sponsors in a prominent location on its website.

Continuing law requires a district that provides summer academic intervention services to extend its school breakfast program or school lunch program during the summer or to establish a summer food service program. The district board may opt out of the summer food requirement if the board determines that it cannot comply for financial reasons.

The act permits a district board to charge the summer food service program sponsor a reasonable fee for use of the school facilities, subject to continuing laws governing the use of school facilities. The fee may include the actual cost of custodial services, charges for the use of school equipment, and a prorated share of the utility costs as determined by the district board.



A district also must require a summer food service program sponsor to indemnify the district and hold it harmless from any potential liability resulting from the operation of the program. The district and the sponsor must either add the sponsor as an additional insured party under the district's existing liability insurance policy or require the sponsor to submit evidence of a separate liability insurance policy for an amount approved by the district board. The sponsor must be responsible for any costs incurred in obtaining the coverage under either option.

### **Reporting victims of student violence**

(R.C. 3301.0714(B)(1)(o); Section 733.13)

Beginning on July 1, 2018, the act requires the State Board's guidelines for the statewide Education Management Information System (EMIS) to require the data reported by districts and schools and maintained by the Department to include, for each disciplinary action which is reported under federal law, an identification of the persons at whom a student's violent behavior resulting in discipline was directed. The persons must be identified by their respective classifications, such as student, teacher, or nonteaching employee, and cannot be identified by name.

The Department must prepare a report of the information collected for the 2018-2019 and 2019-2020 school years. It must be submitted to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House, and the chairpersons and ranking minority members of Senate and House Education committees by October 1, 2020.

Finally, the act specifies that the requirement to report and maintain the data in EMIS no longer applies two years following the submission of the Department's report.

### **International students in interscholastic athletics**

(R.C. 3313.5315)

The act permits an international student who holds an F-1 U.S. visa and attends an elementary or secondary school in Ohio that began operating a dormitory on the school's campus prior to 2014 to participate in the school's interscholastic athletics. The act states that the student must not be denied the opportunity to participate solely because the student's parents do not reside in Ohio.

Finally, the act prohibits a school district, school, interscholastic conference, or organization that regulates interscholastic conferences or events from having a rule, bylaw, or other regulation that conflicts with the act's provisions.



## **Sudden cardiac arrest in youth athletics**

(R.C. 3313.5310 and 3707.58)

Continuing law prescribes procedures for informing student and youth athletes and their parents about the signs of cardiac arrest and for removing athletes from play or practice if they display those signs. These procedures apply to both schools and youth sports organizations. One of those procedures requires that athletes and their parents receive and review a copy of information regarding sudden cardiac arrest that is developed by the Departments of Health and Education. They must submit to their respective school or sports organization a signed form indicating that they have received and read that information.

The act specifies that an athlete must submit that signed form only once every year. Prior law required submission of the form once every year for each athletic activity in which an athlete participated.

## **Sunscreen in schools**

(R.C. 3313.713)

The act prohibits a school district from including in its medication policy a requirement for written authorization or instructions from a health care provider in order to administer nonprescription sunscreen to a student. The act requires a designated district employee to administer sunscreen in accordance with the district's policy upon request. It also permits a student to possess and self-administer sunscreen while on school property or at a school-sponsored event without written authorization or instructions from a healthcare provider.

The act does permit a district to include in its policy a requirement for parental authorization for the possession and administration of sunscreen.

## **Betel nut substances in schools**

(R.C. 3313.751)

The act prohibits a student from using or possessing any substance containing betel nut in any area under control of, or at any activity supervised by, a school district or educational service center.



## **Bright New Leaders for Ohio Schools**

(R.C. 3319.271)

The act permits the Governor, President of the Senate, and Speaker of the House to each nominate three individuals to apply to be participants in the Bright New Leaders for Ohio Schools Program. The nominations must be in accordance with the selection process of the Program and the admission requirements of the Ohio State University.

Additionally, the act removes a provision that specified that state financial support for the nonprofit corporation that implements the Program would cease on June 30, 2018.

The Program provides an alternative path for individuals to receive training, earn degrees, and obtain licenses in public school administration.

## **Moratorium on new ESC agreements**

(Section 265.360)

The act prohibits a school district that has not entered into an agreement with an educational service center (ESC) as of June 30, 2017, from doing so until June 30, 2019.

Under continuing law, a district with a student count of 16,000 or less must have an agreement with an ESC. Larger districts are permitted, but not required, to have an agreement with an ESC.<sup>70</sup>

## **Transformation alliance**

(R.C. 3311.86)

The act removes the sunset provision that would have ended the authority to establish a municipal school district transformation alliance on January 1, 2018 – thus, extending the authority indefinitely. The act also removes the termination of any transformation alliances in existence on that date.

Under continuing law, a municipal school district is a school district that is or has ever been under a federal court order requiring supervision and operational, fiscal, and personnel management of the district by the state Superintendent. Cleveland is currently the only municipal school district. The city mayor appoints the municipal school district board, and may create a transformation alliance made up of public and

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<sup>70</sup> R.C. 3313.843, not in the act.



private partners, to assist the district in making operational and academic improvements, including making recommendations on community school sponsors in the transformation alliance area.

### **District territory transfers under annexation agreement**

(R.C. 3311.06)

From September 29, 2017, to October 1, 2021, the act generally prohibits a school district that is a party to an annexation ("win/win") agreement from transferring nonresidential territory to another district that is a party to the agreement without the approval of both districts' boards. However, the act specifies that its restriction does not apply if one of the district's territory overlaps with a "new community authority" created before 1993. (Under continuing law regarding community development within counties, a new community is "a community or development of property in relation to an existing community planned . . . [to include] facilities for . . . industrial, commercial, residential, cultural, educational, and recreational activities, and designed in accordance with planning concepts for the placement of utility, open space, and other supportive facilities.")<sup>71</sup>

An "annexation agreement" is an agreement authorized under continuing law entered into between an "urban school district" (a "city" school district with an average daily membership for the 1985-1986 school year in excess of 20,000 students) and its neighboring suburban school districts. This agreement, rather than statutory law or the State Board, controls the transfer of territory that is annexed by the city served by the urban school district. The only such agreement is one between the Columbus City School District and several of its surrounding suburban school districts.

### **Sale of school district athletic field**

(Sections 610.60 and 610.61 (amending Section 7 of H.B. 532 of the 129th G.A.))

The act extends to December 31, 2019, the application of uncodified law that permits a city school district to offer highest priority to purchase an athletic field to the chartered nonpublic school that is the property's current leaseholder.

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<sup>71</sup> R.C. 349.01, not in the act.



## **Joint transportation district pilot program**

(Section 311.20)

The act requires the Joint Education Oversight Committee to develop legislative recommendations for creating a joint transportation district pilot program under which (1) at least two school districts may create a joint transportation district to share transportation services, and (2) the districts adopt staggered starting and ending times for the school day.

The Committee must submit its recommendations to the General Assembly by March 29, 2018.

## **At-risk student information clearinghouse**

(Repealed R.C. 3301.28)

The act repeals a law that required the Department to establish a clearinghouse of information regarding the identification of and intervention for at-risk students.

## **Purchase of school buses**

(R.C. 3327.08)

The act specifies that bid bonds are not required for the purchase of school buses, unless a school district or educational service center board requests that bid bonds be part of the process for a specified purchase. The act does not affect the requirement that they may purchase school buses only after competitive bidding that satisfies specific requirements.

## **Training in use of automated external defibrillator**

(R.C. 3313.6023 and 3313.717)

The act creates an exemption from the requirement for school district and community school employees to complete training in the use of an automated external defibrillator, which must be completed by July 1, 2018, and at least once every five years thereafter. The following individuals are exempt under the act:

(1) Substitute teachers;

(2) Adult education instructors who are scheduled to work the full-time equivalent of less than 120 days per school year; and



(3) Persons who are employed on an as-needed, season, or intermittent basis, so long as they are not employed to coach or supervise interscholastic athletics.

Continuing law already exempts employees of e-schools and community schools that primarily serve students with disabilities from the requirement.

### **State minor labor law exemption for STEM programs and CCP**

(R.C. 4109.06)

The employers of minors are exempt from the state minor labor law if the minor is participating in certain occupations, activities, or programs. The act adds the following two programs to the exemptions:

(1) A STEM program approved by the Department;

(2) Any eligible classes through the College Credit Plus Program that include a state-recognized pre-apprenticeship program.

Continuing law provides that, if an employer is exempt from the state minor labor law, the employer may employ a minor without being presented an age and schooling certificate. An age and schooling certificate is issued by the superintendent of the school district in which the minor resides or the chief administrative officer of the school the minor attends after examining and approving the minor's prospective employment, school record, age, and, in some cases, physical fitness.<sup>72</sup>

Additionally, an employer who is exempt from the state minor labor law is no longer subject to (1) the prohibition in Ohio law on employing a minor in an occupation which is considered hazardous or detrimental to the health and well-being of minors and (2) the restrictions in Ohio law regarding a minor's hours of work. However, the employer is still subject to all federal requirements regarding the employment of minors.<sup>73</sup>

### **Business advisory councils**

(R.C. 3313.82)

The act requires the state Superintendent, in consultation with the Governor's Executive Workforce Board, to establish standards for the operation of business advisory councils that each school district board of education and educational service

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<sup>72</sup> R.C. Chapter 3331., not in the act.

<sup>73</sup> 29 U.S.C. 218.



center governing board must appoint under continuing law. The standards must include a requirement that each business advisory council and its appointing board develop and submit to the Department a plan under which the council must advise the board on the matters specified by continuing law. Those matters include (1) the delineation of employment skills and the development of curriculum to instill those skills, (2) changes in the economy and the job market and the types of employment in which future jobs are most likely to be available, and (3) suggestions for developing a working relationship among businesses, labor organizations, and educational personnel.

The act also specifies that the standards must require each business advisory council to meet at least quarterly and that each council and its board must file a joint statement by March 1 of each year describing how both parties have fulfilled their responsibilities.

### **Accumulated sick leave – Department unclassified employees**

(R.C. 124.384)

The act limits the ability of an unclassified Department employee to receive payment on separation of employment for sick leave accumulated while employed by a school district to an employee who began employment with the Department before October 1, 2017. Under prior law, any unclassified Department employee initially employed on or after July 5, 1987, could receive such a payment.

### **Ohio FFA Association assistance**

(R.C. 3303.20; Section 733.63)

The act permits the Department's Supervisor of Agricultural Education to serve as the chair of the board of trustees of the Ohio FFA Association. The Supervisor is authorized to assist with the Association's programs and activities in a manner that enables it to maintain its state charter and to meet requirements of the U.S. Department of Education and the National FFA Organization. This assistance may include the provision of personnel, services, and facilities.

The act prohibits Department employees from receiving compensation from the Ohio FFA Association, except that the Department may be reimbursed by the Association for reasonable expenses related to the assistance provided to it.

Finally, the act states the following: "The General Assembly finds that the Ohio FFA Association is an integral part of the organized instructional programs in career-



technical agricultural education that prepare students for a wide range of careers in agriculture, agribusiness, and other agriculture-related occupations."

### **Workgroup on related services personnel**

(Section 733.65)

The act requires the state Superintendent to establish a workgroup on special education-related services personnel. The stated purpose of the act's provision is to improve coordination of state, school, and provider efforts to address the related services needs of students with disabilities.

The workgroup must:

(1) Identify and evaluate causes and solutions for the shortage of related services personnel in the school setting, including evaluating the long-term sustainability of potential solutions;

(2) Establish short-term, medium-term, and long-term goals to address the shortage of related services personnel in the state, and monitor progress on those goals; and

(3) Report, as needed, on the work and findings of the workgroup.

The workgroup must include the following members:

(1) Employees of the Departments of Education and Higher Education and other state agencies that have a role in addressing the related services needs of students with disabilities;

(2) Representatives from at least the following interested parties: (a) the Ohio Speech-Language-Hearing Association, (b) the Ohio School Psychologists Association, and (c) the Ohio Educational Service Center Association; and

(3) Representatives of school district superintendents, treasurers or business managers, and other school business officials.

The Department of Education must provide administrative support to the workgroup.

The act specifies that the workgroup ceases to exist on June 30, 2019, unless the General Assembly authorizes its continuation.



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## BOARD OF EMBALMERS AND FUNERAL DIRECTORS

### Board membership

- Modifies the membership criteria for the Board of Embalmers and Funeral Directors.

### Permits and licenses

- Specifies that a crematory operator must operate with a permit and a crematory facility must operate with a license.
- Establishes criteria for a crematory operator permit, associated fees, and continuing education requirements.
- Eliminates the requirements that a funeral home be established under the name of the license holder and the license not include directional or geographical references in the name.
- Exempts courtesy card permit holders from continuing education requirements.
- Caps license reinstatement fees.
- Modifies the definition of "embalming" to include specified chemical treatments.
- Requires that a cremation chamber used for cremation of animals display a notice on the unit stating that it is used for animals only.

### Dead human body and cremated remains

- Prohibits any person from knowingly refusing to promptly submit the custody of a dead human body or cremated remains upon the order of the person legally entitled to the body or cremated remains.
- Prohibits, with a few exceptions, a person from knowingly failing to carry out the final disposition of a dead human body within 30 days after taking custody of the body.
- Requires the Board to adopt rules related to the lawful disposition of unclaimed cremated remains held in a funeral home or crematory that has been closed.

### Preneed funeral contracts

- Requires the Board to adopt rules regarding violations relating to the submission of sale reports for preneed funeral contracts.



- Requires a funeral home licensee for a funeral home that is closing to send written notice to the purchaser of every preneed funeral contract to which the funeral business is a party, containing the name of any funeral business that has been designated to assume the contract obligations.
- Requires, within 30 days of the closing of a funeral home, the funeral home licensee to transfer all preneed contracts to the funeral homes that have been designated to assume the obligation of the preneed contracts.
- Requires the Board to make designations for preneed contracts in the case of a closed funeral home, if the licensee fails to designate a successor.
- Requires that all preneed funeral contracts include a disclosure that any purchaser may be eligible for reimbursement of financial losses suffered as a result of malfeasance, misfeasance, default, failure, or insolvency of the licensee.
- Requires preneed contracts held in trust to contain a disclosure regarding whether the seller will charge an initial service, cancellation, or service fees.
- Requires payment for preneed contracts to be paid directly to an insurance company or, subject to certain exceptions, to the contract's trustee.
- Requires the seller of a preneed funeral contract, within 30 days of receiving payment made payable to the trustee, to remit the payment to the trustee, unless the purchaser rescinds the contract.
- Eliminates the requirement that taxes, expenses, and fees be paid only from the accumulated income on the preneed funeral contract trust.
- Establishes the Preneed Recovery Fund, a custodial fund to be used to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of malfeasance, misfeasance, default, failure, or insolvency in connection with the sale of a preneed funeral contract.
- Imposes a \$10 fee on the sale of preneed funeral contracts other than those funded by insurance policy assignment, and requires that those fees be deposited into the Fund.



## Board membership

(R.C. 4717.02)

The act modifies the membership criteria for the Board of Embalmers and Funeral Directors. Under continuing law, unchanged by the act, the Board must consist of seven members. Prior law required that five members were both a licensed embalmer and a practicing funeral director. The act requires that five members be practicing funeral directors, but that only four of these five members need also be licensed embalmers. The act also adds the requirement that at least one of the five funeral director members of the Board must hold a crematory operator permit.

## Crematory operator permit

(R.C. 4717.01, 4717.051, 4717.06, 4717.07, 4717.08, 4717.09, 4717.14, and 4717.15)

### Permit criteria

The act specifies that a crematory operator must operate with a permit. To obtain a crematory operator permit, an applicant must provide evidence, verified under oath and satisfactory to the Board, that the applicant:

- (1) Is at least 18 years old and of good moral character;
- (2) Has a certificate showing completion of a crematory operation certification program.
- (3) If the applicant has pleaded guilty to, or has been found by a judge to be guilty of, or has had judicial finding of eligibility for treatment in lieu of conviction in Ohio for any of 11 specified offenses (*aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary*) or for a substantially equivalent offense, at least five years has elapsed since the applicant was released from incarceration, a community control sanction, a post-release control sanction, parole, or treatment program;

The Board must issue the crematory operator permit if it receives satisfactory evidence and determines that the applicant satisfies all of the requirements listed above. The Board can revoke or suspend a permit or subject the permit holder to discipline in the same way it can exercise enforcement with licensees under continuing law.



## **Permit fees and enforcement**

The fee for the initial or biennial renewal of a crematory operator permit is \$100. The act subjects the crematory operator permit renewal requirement to the same requirements under continuing law for licensees, including that the permit expires on the last day of December of each even-numbered year. If the permit is not renewed by this time, it is considered "lapsed," which can be cured by paying the lapsed fee to the Board. The reinstatement of a lapsed crematory operator permit is \$100 plus \$50 for each month or portion of a month the permit is lapsed, but the Board may not charge more than \$500.

The Board may refuse to grant or renew, or may suspend or revoke any permit, or issue a notice of violation to any permit holder without an adjudication hearing.

## **Crematory operator continuing education**

The holder of a crematory operator permit must maintain active certification from a crematory operator certification program as a condition to renew the permit. The Board is prohibited from renewing the crematory operator permit of an individual who fails to satisfy this certification requirement.

## **Funeral home, embalming and crematory facility licenses**

(R.C. 4717.06, 4717.07, 4717.09, 4717.11, and 4717.30)

### **Name**

The act makes a few changes regarding the license requirements for funeral home, embalming, and crematory facilities. It requires that the name of the person licensed (funeral director, embalmer, or crematory operator) to operate either a funeral home, embalming facility, or crematory facility be conspicuously displayed immediately on the outside or the inside of the primary entrance of the home or facility used by the public. In addition, it eliminates the requirement that a funeral home be established and named only under the name of the license holder and the requirement that the license not include directional or geographical references in the name.

### **Immunity**

Continuing law provides a qualified immunity to a number of persons in relation to specified actions in relation to funerals, embalming, cremation, and the disposition of human and cremated remains. The act makes this list of persons uniform to provide parallel immunities for crematory operators, crematory facilities, funeral directors, and funeral homes.



## **Embalmer and funeral director continuing education**

Under the act, a person licensed in another state holding a courtesy card permit is not required to satisfy the continuing education requirements that licensed embalmers and funeral directors must meet in order to renew the permit.

## **Reinstatement fee cap**

The act also caps the fees the Board may charge to reinstate a lapsed license to operate a funeral home or embalming facility at \$1,000, and a crematory facility at \$500.

## **Change of location, management, or ownership**

The act revises procedures for when there has been a change of location, management, or ownership of a funeral home or embalming facility, and establishes them for crematory facilities. It requires the licensee to surrender the license within 30 days after a change in:

(1) The location of the crematory facility (continuing law for funeral homes and embalming facilities);

(2) The person who is actually in charge and ultimately responsible for the crematory facility (new);

(3) The ownership of the business entity that owns the home or facility that results in a majority of the ownership of the business entity being held by one or more persons who alone or in combination with others did not own a majority of the business entity immediately prior to the change in ownership (continuing law for funeral homes and embalming facilities).

Within 30 days after a change described above occurs, the person who will actually be in charge and ultimately responsible for the home or facility after the change must apply for a new license. The home or facility may continue to operate until the Board denies the application.

The act eliminates the provision permitting a funeral home to continue to operate under the name of a licensee who ceases to operate the home if the name of the new person licensed to operate the funeral home is added to the license within 24 months after the previous license holder ceases to operate the funeral home.

## **Crematory facility used for animals**

The act requires that cremation chambers used for cremation of animals have conspicuously displayed on the unit a notice that the unit is to be used only for animals.



## **Dead human body and cremated remains**

(R.C. 4717.04, 4717.13, and 4717.27)

The act specifies that, when required to do so under continuing law, a crematory facility or funeral home holding unclaimed cremated remains may dispose of the cremated remains by scattering them in any dignified manner, including in a memorial garden, at sea, by air, or at any scattering grounds, or in any other lawful manner. Under continuing law, unchanged by the act, the cremated remains can also be disposed of in a grave, crypt, or niche.

The act prohibits a person from (1) knowingly refusing to promptly submit the custody of a dead human body or cremated remains, after an order, to the person legally entitled to the body or cremated remains or (2) knowingly failing to carry out the final disposition of a dead human body within 30 days after taking custody of the body, unless ordered otherwise by the person holding the right of disposition.

The act also requires the Board to adopt rules related to the lawful disposition of unclaimed cremated remains held in a funeral home or crematory that has been closed.

## **Preneed funeral contracts**

(R.C. 4717.04, 4717.07, 4717.13, 4717.32, 4717.35, and 4717.36)

### **Preneed Recovery Fund fee and contract reports**

The act makes changes to the law regarding the administration and regulation of preneed funeral contracts. It requires that \$10 of each preneed funeral contract sold in Ohio, other than those funded by the assignment of an existing insurance policy, must be provided to the Board. The Board must deposit this fee into the Preneed Recovery Fund (see "**Preneed Recovery Fund**," below).

In addition, the act prohibits any person from failing to forward to the Board on or before its due date the required annual report of preneed funeral sales. If the report is sent to the Board by mail, then it should be postmarked on or before the due date to be considered timely filed. Mail that is not postmarked is considered filed on the date the Board receives it.

### **Procedures for contracts from closed funeral homes**

When a funeral home closes, the act requires the person who holds the license for the closed funeral home to send a written notice to the purchaser of *every* preneed funeral contract to which the funeral business is a party. The notice must explain that the funeral business is being closed and the name of any funeral business that has been



designated to assume the obligations of the preneed contract. Within 30 days of the closing, the person who holds the license for the closed funeral home must not negligently fail to transfer all preneed contracts to the funeral homes designated to assume the obligation of the contracts. If the person who holds the license for a funeral home that is closed fails to designate a successor funeral home, the Board must make this designation and order the contracts' transfer to the designated funeral homes.

### **Contract disclosures and directives**

The act requires that preneed funeral contracts include a disclosure that the purchaser of funeral goods or funeral services may be eligible for reimbursement of financial losses suffered as a result of malfeasance, misfeasance, default, failure, or insolvency of the licensee. Also, the contract must include a directive that any payment made by the purchaser of the preneed funeral contract must be made directly to the insurance company if it is funded by an insurance policy or annuity.

If a preneed funeral contract is funded by any means other than an insurance policy or policies, or an annuity or annuities, the contract must include (1) a disclosure that directs any payments by the purchaser of the contract to be made directly to the trustee identified in the contract and (2) a disclosure of whether the seller will charge any initial service or cancellation fee.

### **Fees and payment**

The act requires that any payments made by the purchaser of a preneed funeral contract funded by the purchase of an insurance policy or policies, or an annuity or annuities, be made in the form of a check, cashier's check, money order, or debit or credit card payable to the insurance company. Under continuing law, the insurance agent must remit the application for insurance and the premium paid to the insurance company designated in the preneed contract within a time period specified under continuing law, unless the purchaser rescinds the contract.

Similarly, in the case of a preneed funeral contract funded by any means other than an insurance policy or annuity, the act requires that all payments (except the initial service fee permitted under the act and any sales tax) be made by the contract purchaser in form of a check, cashier's check, money order, or debit or credit card, payable only to the trustee of the contract trust. Within 30 days of receiving payment, the seller must remit the payment to the trustee, unless the purchaser rescinds the contract. The funds deposited with the trustee must remain intact and held in trust for the contract beneficiary.

In regards to a preneed funeral contract that is funded by any means other than an insurance policy or an annuity and that stipulates a fixed or firm or guaranteed price



for the services and goods provided under the contract, the seller may charge an initial service fee not more than 10% of the total amount of all payments to be made under the contract. If the amount is paid by the purchaser in installments, no more than half of any payment may be applied to the initial service fee. If the purchaser revokes the contract, any portion of the initial service fee that has not been paid is no longer due and payable to the seller.

Under continuing law, if the preneed funeral contract does stipulate a firm or fixed or guaranteed price, the purchaser may request and receive from the trustee all of the trust assets at the time of cancellation, less a cancellation fee. The original seller may collect a cancellation fee that is equal to or less than 10% of the value of the trust assets on the date the trust is cancelled. The act provides, however, that to the extent the original seller took an initial service fee as permitted, the aggregate amount of the cancellation fee and the initial service fee may not exceed 10% of the value of those assets. Similarly, under continuing law when the purchaser of a preneed funeral contract transfers the contract to a successor seller, the original seller may collect a transfer fee from the trust that equals up to 10% of the value of the trust assets on the date the trust is transferred. The act provides, however, that to the extent the original seller took an initial service fee, the aggregate amount of the transfer fee and the initial service fee may not exceed 10% of the value of those assets.

Under continuing law, a trustee of a preneed funeral contract is permitted to pay taxes and expenses for a preneed funeral contract trust and may charge a fee for managing the trust. Prior law required that these taxes, expenses, and fees be paid only from the accumulated income on the trust. The act eliminates this requirement.

## **Preneed Recovery Fund**

(R.C. 4717.03(L), 4717.07, and 4717.41)

The act establishes the Preneed Recovery Fund as a custodial fund (in the Treasury of State's custody, but not part of the state treasury) to be administered by the Board. The \$10 fee collected in regards to preneed funeral contracts sold in Ohio, described above under "**Preneed Recovery Fund fee and contract reports**," must be deposited into the Fund. The Fund must be used to reimburse purchasers of preneed funeral contracts who have suffered financial loss as a result of malfeasance, misfeasance, default, failure, or insolvency in connection with the sale of a preneed funeral contract by any licensee, regardless of whether the sale occurred before or after the Fund's establishment. If at the end of Ohio's fiscal year, the Fund balance exceeds \$2 million, the fee required from the preneed funeral contracts for the upcoming fiscal year must be reduced to \$5. If the balance at the end of a fiscal year exceeds \$3 million, payment of this fee must be suspended for the upcoming fiscal year.



The Board must adopt rules governing the Fund's management and the presentation and processing of applications for reimbursement, subrogation, or assignment of the rights of any reimbursed applicant.

The Board may spend moneys in the Fund to pay reimbursements on approved applications, purchase insurance to cover losses as it considers appropriate and consistent with the Fund's purposes, and invest portions of the Fund that are not currently needed to reimburse losses and maintain adequate reserves, as permitted by fiduciaries. The Board can also pay its expenses for administering the Fund, including employment of local counsel to prosecute subrogation claims.

Reimbursements from the Fund may be made only to the extent those losses are not bonded or otherwise covered, protected, or reimbursed, and only after the applicant has complied with the Board's rules. The Board must investigate all applications, and may reject or allow claims in whole or in part to the extent that money is available in the Fund. The Board has complete discretion to determine the order and manner of payment of approved applications. All payments from the Fund are a matter of privilege and not of right, and no person has any right in the Fund as a third-party beneficiary or otherwise. Attorneys may not be compensated by the Board for prosecuting an application for reimbursement.

If an applicant receives reimbursement from the Fund, the Board is considered subrogated in the reimbursement amount and may bring any action it considers advisable against any person. The Board may also enforce any claims it has for restitution or otherwise and may employ and compensate consultants, agents, legal counsel, accountants, and other persons it considers appropriate.

## **Embalming**

(R.C. 4717.01)

The act modifies the definition of "embalming" to include specified chemical treatments, such as arterial injection, cavity treatment, and hypodermic tissue injection, to reduce the presence and growth of microorganisms, to temporarily slow organic decomposition, and to restore acceptable physical appearance.

## **False and deceptive advertising**

(R.C. 4717.14)

The act provides examples of what constitutes "false and deceptive advertising," which is prohibited under continuing law. Under the act, "false and deceptive advertising" includes, but is not limited to:



(1) Using the names of persons who are not licensed to practice funeral directing in a way that leads the public to believe that those persons are engaging in funeral directing;

(2) Using any name for the funeral home other than the name under which the funeral home is licensed; or

(3) Using in the funeral home's name the surname of an individual who is not directly, actively, or presently associated with the funeral home, unless the surname has been previously and continuously used by the funeral home.



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## ENVIRONMENTAL PROTECTION AGENCY

### Total Maximum Daily Load (TMDL)

- Authorizes the Director of Environmental Protection to establish a TMDL, which allocates pollutant discharges among permit holder and nonpoint sources, for waters of the state that do not meet water quality standards.
- Establishes requirements governing the development of a TMDL, including the creation of a draft TMDL, notice and input procedures, factors for consideration in developing a TMDL, modification of a TMDL, and appeal of TMDL pollutant limitations.

### NPDES permit fees

- Requires the fee for the issuance of an NPDES permit to be paid at the time of application along with the nonrefundable application fee.
- Changes the fee for a municipal storm water discharge from \$100 per square mile of area permitted under an NPDES permit to \$10 per  $\frac{1}{10}$  of a square mile.

### Industrial water pollution control certificates

- Eliminates the authority of the Director to issue, deny, revoke, or modify industrial water pollution control certificates.

### Construction Grant Fund

- Eliminates the Construction Grant Fund, which was required to consist of money from grants to the state from the U.S. Environmental Protection Agency (USEPA) under the federal Water Pollution Control Act (USEPA has discontinued this grant program).
- Accordingly, eliminates the construction grant program, under which local governments could apply for grant money from the Ohio Environmental Protection Agency (OEPA) for design, acquisition, construction, alteration, and improvement of sewage and waste treatment works.

### Water Pollution Control Loan Administrative Fund

- Allows OEPA to use money in the Water Pollution Control Loan Administrative Fund for water quality related programs administered by OEPA, rather than solely to defray its administrative costs associated with the water pollution control loan program as under former law.



## **County sewer districts**

- Authorizes a county sewer district to contract to provide water and sewerage services to persons or entities located outside the district, including outside the county in which the district has jurisdiction.

## **Local air pollution control authorities**

- Modifies the list of agencies that qualify as a local air pollution control authority (authority) under the law governing air pollution control.
- Allows the Director to modify a contract between the Director and an authority to authorize the authority to perform air pollution control activities outside that authority's geographic boundaries.

## **Clean Diesel School Bus Fund**

- Eliminates the Clean Diesel School Bus Fund, which, according to OEPA, was obsolete and was required to be used to update emissions equipment on diesel school buses.

## **Asbestos abatement**

- Transfers the authority to administer and enforce the laws governing asbestos abatement certification from the Department of Health to OEPA.
- Eliminates several administrative procedures that applied to hearings regarding violations of asbestos abatement laws that were supplemental to the Administrative Procedure Act.
- Requires money collected from civil and criminal penalties and fees and other money collected under the asbestos abatement certification laws to be deposited in the Non-Title V Clean Air Fund administered by OEPA, rather than the General Operations Fund administered by the Department of Health.
- Delays the effective date of these changes until January 1, 2018.

## **Title V air emissions fees**

- Authorizes, rather than requires as in prior law, OEPA to transfer up to 50¢ per ton of each type of Title V air pollution emissions fee to the Small Business Assistance Fund.



## **Volkswagen settlement funding**

- Establishes the Volkswagen Clean Air Act Settlement Fund, consisting of money received by Ohio from the Volkswagen Clean Air Act Settlement.
- States that it is the intent of the General Assembly to appropriate into the Fund money received from the Settlement.

## **Explosive gases at solid waste disposal facilities**

- Revises the law governing the monitoring of explosive gases (primarily methane) at solid waste disposal facilities, including:
  - Authorizing, rather than requiring as in former law, the Director to order the submission of explosive gas monitoring plans when there is a threat to human health or safety or the environment;
  - Requiring a plan to be submitted for active or closed solid waste disposal facilities, if ordered, rather than for active or closed sanitary landfills (a subset of solid waste disposal facilities) as provided under former law; and
  - Requiring specified "responsible parties" associated with a facility, after the submittal of a plan, to monitor explosive gas levels at the facility and submit written reports of the results of the monitoring in accordance with the plan.

## **Antiquated law governing solid waste facilities**

- Eliminates antiquated provisions of law that applied in the 1980s and early 1990 that governed applications for a permit-to-install a solid waste facility.

## **Scrap Tire Grant Fund transfer**

- Authorizes, rather than requires as in prior law, the Director to request the Office of Budget and Management (OBM) to transfer money each fiscal year from the Scrap Tire Management Fund to the Scrap Tire Grant Fund, which is used to support market development activities related to scrap tires.
- Also authorizes, rather than requires, OBM to execute that transfer.
- Specifies that up to \$1 million may be transferred each fiscal year, rather than equal to \$1 million as in former law.



## **Clean-up and removal at tire sites**

- Repeals an obsolete law that required at least 65% of an existing 50¢ fee on the sale of tires be spent for clean-up and removal activities at the Goss Tire Site in Muskingum County or other tire sites in Ohio.

## **Cleanup and Response Fund**

- Requires OEPA to use the Cleanup and Response Fund for implementing the law governing hazardous waste, in addition to using the Fund to support the investigation and remediation of contaminated property as under continuing law.

## **Alternative daily cover**

- Exempts solid waste that the Director approves for, and that is used as, alternative daily cover from disposal and transfer fees that otherwise apply to solid waste.

## **Background investigations under waste laws**

- Expands the time frame, from every three years to every five years, for updating background information submitted via a disclosure statement by permit applicants, permittees, and prospective owners under the law governing solid, hazardous, and infectious wastes.

## **Inspection of commercial hazardous waste facilities**

- Eliminates the Director's authority to take certain actions with respect to on-site inspections of commercial hazardous waste facilities.

## **Authority to waive fees and late penalties**

- Authorizes the Director to waive or reduce late fees and fees incurred during a response to an emergency.

## **Administration of programs division**

- Requires the Director to establish within OEPA a division to administer the Agency's financial, technical, and compliance programs to assist communities, businesses, and other regulated entities.

## **Extension of various fees**

- Extends all of the following for two years:

--The sunset of the annual emissions fees for synthetic minor facilities;



- 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;
- The sunset of the annual discharge fees for holders of NPDES permits under the Water Pollution Control Law;
- The sunset of license fees for public water system licenses;
- A higher cap on the total fee due for plan approval for a public water supply system and the decrease of that cap at the end of the two years;
- 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 to take examinations for certification as operators of water supply systems or wastewater systems;
- 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 and Safe Drinking Water Laws;
- The sunset of the fees levied on the transfer or disposal of solid wastes; and
- The sunset of the fees levied on the sale of tires.

### **Toxic Release Inventory Program**

- Allows owners and operators of specified facilities to fulfill state toxic release inventory reporting requirements by complying with federal reporting requirements established by USEPA.
- Specifies that the submission of a toxic chemical release inventory report to USEPA constitutes simultaneous submission of the report to OEPA, thereby satisfying state reporting requirements under state and federal law.
- Retains OEPA's authority to conduct an investigation of and enforce civil and criminal penalties for a violation committed under the Toxic Release Inventory Program, including the failure to submit toxic release inventory reports to USEPA.
- Eliminates fees for filing a toxic release inventory report, including late fees.

## Total Maximum Daily Load (TMDL)

(R.C. 6111.03, 6111.561, 6111.562, 6111.563, and 6111.564)

### Introduction and general provisions

According to the U.S. Environmental Protection Agency (USEPA), a TMDL is a planning tool and potential starting point for restoration or protection activities for bodies of water under the federal Water Pollution Control Act. A TMDL establishes a target for the total load of a pollutant that a water body can assimilate and allocates the load to sources of the pollutant. A TMDL for impaired bodies of water is required under the federal Act and can impact the parameters under which a National Pollutant Discharge Elimination System (NPDES) permit is issued. The act authorizes the Director to establish a TMDL for waters of the state where a TMDL is required under the federal Act. It establishes the following requirements that govern TMDL development:

### Establishment of a TMDL: general requirements

- The Director must establish a TMDL for waters of the state for pollutants identified under the federal Act at a level necessary to achieve water quality standards.
- A TMDL must account for seasonal variation, a margin of safety, and a lack of knowledge concerning the relationship between effluent limitations and water quality.
- The establishment of a TMDL is not subject to rule adoption procedures under the Administrative Procedure Act and additional laws governing the adoption of rules, and it is not a final action of the Director, meaning it is not appealable in the same manner as other actions of the Director.
- A TMDL does not have the full force and effect of law,<sup>74</sup> but may be challenged in accordance with the act.
- A TMDL in existence prior to March 24, 2015, is valid and in full force and effect as established, however, the TMDL may be modified in accordance with the act.

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<sup>74</sup> The act states that a TMDL does not have the full force and effect of law and is not a final action of the Director. As such, the TMDL is not appealable. However, an NPDES permit issued or modified in conformity with a TMDL's pollutant load allocations is appealable (see "**Challenging TMDL pollutant limitations**," below).



- A modification of a TMDL in existence prior to March 24, 2015, is not subject to the Administrative Procedure Act and additional laws governing the adoption of rules.

### **General notice, input, and implementation requirements**

- The Director must do all of the following:
  - Provide notice and an opportunity for input from dischargers, soil and water conservation districts, and other stakeholders during specified stages of TMDL development, for example during the project assessment study plan;
  - Make documentation available to stakeholders during each stage of TMDL development and during each stage of planning and actions necessary for TMDL implementation;
  - Provide a minimum of two opportunities for input from stakeholders with regard to completed TMDLs that have not been submitted to USEPA for approval prior to September 29, 2017;
  - In developing a draft TMDL and plans and actions necessary for TMDL implementation, consider various factors, including the amount of pollutants derived from each point source, how reducing those amounts will contribute to attainment of water quality standards, and the influence of nonpoint sources of pollution on water quality; and
  - In developing wasteload and load allocations, pollutant control measures, and implementation plans and schedules, consider various factors, including the feasibility of treatment technologies, sources of funding for point and nonpoint sources, alternative approaches, and economic impacts and environmental benefits.

### **Draft TMDL**

- Before establishing a final TMDL, the Director must prepare a draft TMDL.
- The draft TMDL must include estimates of total pollutant amounts that cause water quality impairment and the total pollutant amounts that may be added to a body of water while still maintaining water quality standards.

### **Draft TMDL notice and comment**

- The Director must provide public notice of a draft TMDL, at minimum, to all dischargers to which the draft relates, specified significant industrial users of the water of the state, and other stakeholders that have provided input.
- The public notice must specify the water of the state to which the draft applies and the time, date, and location of any public hearing.
- The Director must provide for a comment period of at least 60 days and an opportunity for a public hearing if there is significant public interest.
- The Director must prepare a responsiveness summary after the comment period expires.
- The Director must adopt rules governing procedures for providing notice and criteria for determining significant public interest.

### **Final TMDL**

- The Director may establish a final TMDL, subject to USEPA approval, after the comment period, the responsiveness summary, and any public hearing.

### **TMDL modification**

- The Director may modify a draft, final, or USEPA-approved TMDL, subject to the same notice, comment, and public hearing requirements that apply to draft TMDLs.
- Any revised effluent limit, pretreatment limit, or other term or condition based on a modification may be challenged.
- The Director must modify a TMDL that is successfully challenged and to which no further appeals are available to conform to the final decision of the highest tribunal of competent jurisdiction, and the Director must submit the modified TMDL to USEPA for approval.

### **Challenging TMDL pollutant limitations**

- A final Director-established or USEPA-approved TMDL may be challenged during an appeal before the Environmental Review Appeals Commission (ERAC) of an NPDES permit with TMDL-based effluent limitations, derived pretreatment limits, or other TMDL-based terms and conditions.



- When establishing schedules of compliance in NPDES permits, the Director must consider the likelihood of a legal challenge and the estimated time of appeal.
- If an appeal is made by a publicly owned treatment works (POTW), ERAC must join specified industrial users who are known to discharge significant pollutant amounts into the POTW that are subject to TMDL limits, and the Director must notify those users and the NPDES permit holder of the right to appeal.
- A direct or indirect discharger pursuing an appeal or an indirect discharger joined to an appeal may not be dismissed from the appeal on ground that the matter is not ripe for review.
- A challenge of TMDL-based effluent limits, derived pretreatment limits, or other terms and conditions based on that TMDL during the appeal for an NPDES permit may not be dismissed on ground that the matter is not ripe for review.

### **Plan approval and NPDES permit fees**

(R.C. 3745.11(L), (U), and (V), and 6111.14)

The act specifies that the application fee for a plan approval for a wastewater treatment works is not refundable. It also alters the fee for municipal storm water discharge from \$100 per square mile of area permitted under an NPDES permit to \$10 per  $\frac{1}{10}$  of a square mile. In so doing, it clarifies the mathematical calculation of the fee. Finally, except for NPDES permits for public dischargers, the act allows OEPA to charge an additional amount for a permit based on OEPA costs of review and issuance. Prior law authorized OEPA to charge the additional amount only with regard to a permit to install.

### **Industrial water pollution control certificate**

(R.C. 6111.03 and 6111.30)

The act eliminates obsolete authority of the Director to issue, deny, revoke, or modify industrial water pollution control certificates. Water pollution control certificates are issued for tax exemption purposes. The authority to issue the certificates was transferred from OEPA to the Department of Taxation in 2003.<sup>75</sup>

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<sup>75</sup> See R.C. 5709.20 through 5709.27, not in the act.



## **Construction Grant Fund and program**

(Repealed R.C. 6111.033 and 6111.40)

The act eliminates the Construction Grant Fund, which consisted of money from grants to the state from USEPA under the federal Water Pollution Control Act. The Fund was no longer in use because USEPA had ceased making those grants. In accordance with this change, the act eliminates the construction grant program, under which a municipal corporation, board of county commissioners, conservancy district, sanitary district, or regional water and sewer district was authorized to apply to OEPA for money for the design, acquisition, construction, alteration, and improvement of sewage and waste treatment works.

## **Water Pollution Control Loan Administrative Fund**

(R.C. 6111.036)

The act authorizes OEPA to use money in the Water Pollution Control Loan Administrative Fund for water quality related programs administered by OEPA. It retains law that authorizes OEPA to also use money in the Fund to defray administrative costs associated with the Water Pollution Control Loan Program. The Fund consists of fees collected through the administration of loans under that Program.

## **County sewer districts**

(R.C. 6117.38)

The act authorizes a county sewer district to provide water supply services, in addition to sewerage services as authorized under continuing law, to persons or entities located outside of the district. In addition, it authorizes the district to contract for such services with persons or entities located outside of the county where the district is located. Under former law, it was unclear whether a district had the authority to contract for water and sewer services with persons or entities located outside of the county where the district was located.

## **Local air pollution control authorities**

(R.C. 3704.01 and 3704.111)

The act modifies the list of local agencies that constitute a local air pollution control authority for under the law governing air pollution control by doing all of the following:



(1) Changing the name of the agency representing Butler, Warren, Hamilton, and Clermont counties from the Hamilton County Department of Environmental Services to the Hamilton County Department of Environmental Services, Southwest Ohio Air Quality Agency;

(2) Expanding the jurisdiction of the City of Cleveland Division of the Environment to all of Cuyahoga County, rather than the city of Cleveland only; and

(3) Eliminating the North Ohio Valley Air Authority that represents Carroll, Jefferson, Columbiana, Harrison, Belmont, and Monroe counties.

The act also authorizes the Director of OEPA to modify a contract between the Director and a local air pollution control authority to authorize that authority to perform air pollution control activities outside that authority's geographic boundaries.

### **Clean Diesel School Bus Fund**

(Repealed R.C. 3704.144)

The act eliminates the Clean Diesel School Bus Fund. The Fund was originally created to provide grants to school districts and county boards of developmental disabilities to add pollution control equipment to diesel-powered school buses and to convert school buses to alternative fuels.

The Fund's purposes are now obsolete. According to OEPA, there is no longer a market for installing pollution control equipment on school buses because the equipment is standard on all buses manufactured after 2005. Instead, Fund money will be redirected to the existing Diesel Emission Reduction Grant Program, which provides partial funding for replacing aging diesel buses with new clean diesel or alternatively fueled buses.<sup>76</sup>

### **Asbestos abatement**

(R.C. 3701.83, 3704.035, 3710.01, 3710.02, 3710.04 through 3710.19, 3710.99, and 3745.11; Sections 277.20 and 812.10)

The act transfers the authority to administer and enforce the laws governing asbestos abatement from the Department of Health to OEPA beginning January 1, 2018. Under former law, the Department of Health licensed and certified companies and persons directly involved with the asbestos abatement industry. Under the program, the Department regulated contractors performing asbestos removal projects, project

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<sup>76</sup> R.C. 122.861, not in the act.



supervisors, project designers, workers removing asbestos, persons inspecting buildings for asbestos-containing materials, persons developing plans to manage asbestos found in a facility, persons conducting air sampling for asbestos, and the companies that provide required asbestos training. OEPA now assumes all of these responsibilities.

For purposes of transferring the program from the Department to OEPA, the act makes the following technical and clarifying changes:

(1) Revises definitions that apply to asbestos certification to comport with rules adopted by the OEPA Director;

(2) Specifies that rules adopted by the Director, hearing procedures, and emergency orders of the Director apply to environmental health and environmental health emergencies, rather than public health and public health emergencies;

(3) Stipulating that all rules, orders, and determinations of the Department related to the Asbestos Abatement Program continue in effect until the rules, orders, and determinations of OEPA become effective;

(4) Stipulating that all licenses, certificates, permits, registration approvals, or endorsements issued by the Department before January 1, 2018, continue in effect as if issued by OEPA;

(5) Stipulating that business commenced, but not completed, by the Department must be completed by OEPA, and providing for the transfer of the authority over contracts from the Department to OEPA;

(6) Transferring all employees of the Department working full-time for the Asbestos Abatement Program to OEPA, subject to specified labor laws and the applicable collective bargaining agreement; and

(7) Authorizing the Department and OEPA to enter into a memorandum of understanding to facilitate the transfer.

The act also eliminates several administrative procedures that applied to Department hearings regarding violations of the law governing asbestos abatement that were supplemental to the Administrative Procedure Act. The supplemental provisions of law included provisions governing the venue of a hearing, special notice procedures, the postponement or continuation of a hearing, hearing referees or examiners, and a special filing deadline for appeals.

The act specifies that money collected from civil and criminal penalties and fees and other money collected under the law governing asbestos abatement must be



deposited in the Non-Title V Clean Air Fund, rather than the General Operations Fund administered by the Department. The Non-Title V Clean Air Fund is used by OEPA to pay the cost of administering and enforcing law pertaining to the prevention, control, and abatement of air pollution. The act further specifies that money in the Fund may be used by OEPA for the prevention, control, and abatement of asbestos, and asbestos abatement licensure and certification.

### **Title V air emissions fees**

(R.C. 3745.11(K)(1))

The act allows, instead of requires as in prior law, the Director to transfer *up to* 50¢ per ton of each type of Title V air pollution emission fee to the Small Business Assistance Fund. Title V emissions fees are assessed on the total actual emissions from a Title V air contaminant source of specified pollutants, including particulate matter, sulfur dioxide, nitrogen oxides, organic compounds, and lead.

### **Volkswagen settlement funding**

(R.C. 3745.45)

USEPA recently settled a civil enforcement case against Volkswagen, resolving allegations that it violated the federal Clean Air Act as a result of the sale of diesel motor vehicles equipped with "defeat devices" (computer software designed to cheat on federal emissions tests). As required by the Volkswagen Clean Air Act Settlement, Volkswagen must establish a \$2.7 billion environmental mitigation trust fund. The trust will be administered by an independent trustee, and each state in the U.S. may designate a beneficiary to receive funding from the Settlement to use for certain qualifying projects.

The act establishes the Volkswagen Clean Air Act Settlement Fund in the state treasury, consisting of money received from the Volkswagen Clean Air Act Settlement. The act states that it is the intent of the General Assembly to appropriate into the Fund money received by Ohio from the Settlement.

### **Explosive gases at solid waste disposal facilities**

(R.C. 3734.041)

The act makes revisions to the law governing the monitoring of methane gas at solid waste disposal facilities as follows:

- (1) Revises the submittal of explosive gas monitoring plans by:



--Authorizing, rather than requiring, the Director to order the submittal of such plans when there is a threat (rather than a danger as in former law) to human health or safety or the environment; and

--Requiring a plan to be submitted for active or closed solid waste disposal facilities, if ordered, rather than for active or closed sanitary landfills (a subset of solid waste disposal facilities) as provided under former law.

(2) Adds a person appointed as a receiver under the law governing receiverships and a trustee in bankruptcy to the list of individuals or entities that may be required to create and submit an explosive gas monitoring plan;

(3) Adds "information related to concentrations of explosive gas at or surrounding a facility" to the list of factors that may trigger an order to submit an explosive gas monitoring plan;

(4) Requires the plan to provide for adequate evaluation of explosive gas generation at and migration from the facility;

(5) Requires specified "responsible parties" associated with a facility to do both of the following after submittal of the plan:

--Monitor explosive gas levels at the facility; and

--Submit written reports of the results of the monitoring in accordance with the plan.

(6) Authorizes, rather than requires as in former law, the Director to do both of the following:

--Conduct an evaluation of the levels of explosive gases on the premises of a facility to determine whether the formation or migration of gases is a threat to human health or safety or the environment;

--Issue an order addressing explosive gas formation and migration issues at any facility (previously sanitary landfills only) when the Director determines that the formation and migration could threaten human health or safety or the environment.

(7) Authorizes the Director or the Director's authorized representative on their own initiative to enter on land where a facility is located in order to evaluate explosive gas generation and migration; and

(8) Limits evaluations of structures in proximity of a facility to occupied structures, rather than all structures as under former law.



## **Antiquated law governing solid waste facilities**

(R.C. 3734.02, 3734.05, and 3734.06)

The act eliminates antiquated provisions of law that applied in the 1980s and early 1990s and that governed applications for a permit-to-install a solid waste facility.

## **Scrap Tire Grant Fund transfer**

(R.C. 3734.82)

The act alters the procedure for the transfer of money from the Scrap Tire Management Fund to the Scrap Tire Grant Fund. Under former law, the Director was required to request the Office of Budget and Management (OBM) to transfer \$1 million each fiscal year from the Scrap Tire Management Fund to the Scrap Tire Grant Fund. OBM was required to execute the transfer on request.

With regard to the transfer, the act makes the following three changes:

- (1) Allows, instead of requires as in prior law, OEPA to request the transfer;
- (2) Allows, instead of requires as in prior law, OBM to execute the transfer; and
- (3) Specifies that up to \$1 million may be transferred by OBM each fiscal year, rather than equal to \$1 million each fiscal year as in former law.

Under continuing law, the Scrap Tire Grant Fund is used by OEPA to (1) support market development activities for scrap tires and synthetic rubber from tire manufacturing processes and tire recycling processes, and (2) support scrap tire amnesty and cleanup events sponsored by solid waste management districts. The Scrap Tire Grant Fund consists solely of money transferred from the Scrap Tire Management Fund as discussed above.

The Scrap Tire Management Fund consists, in part, of money derived from fees on scrap tire disposal facilities. OEPA must use money in the Scrap Tire Management Fund for administering OEPA's Scrap Tire Management Program, providing grants to boards of health to support the control of pests at scrap tire facilities, and making transfers to the Scrap Tire Grant Fund.



## **Clean-up and removal at tire sites**

(Repealed R.C. 3734.821)

The act repeals an obsolete law that required, from September 2001 until June 2011, at least 65% of an existing 50¢ fee on the sale of tires to be expended for clean-up and removal activities at the Goss Tire Site in Muskingum County or other tire sites in Ohio.

## **Cleanup and Response Fund**

(R.C. 3745.016)

The act requires OEPA to use money in the existing Cleanup and Response Fund for implementation of the Hazardous Waste Law. It retains law that requires OEPA to also use Fund money to support the investigation and remediation of contaminated property.

## **Alternative daily cover**

(R.C. 3734.578)

The act specifically exempts solid waste that the Director has approved for use as alternative daily cover in accordance with rules and that is actually used as alternative daily cover from solid waste disposal and transfer fees that otherwise apply.

## **Background investigations under waste laws**

(R.C. 3734.42)

The act expands the time frame, from every three to every five years, for updating background information related to permit applicants, permittees, and prospective owners under the law governing solid, hazardous, and infectious wastes. Thus, the Attorney General, every five years, must request from the FBI any information regarding a criminal conviction with respect to each officer, director, partner, or key employee of an applicant, permittee, or prospective owner. Further, an applicant, permittee, or prospective owner, must, every five years, submit to the Attorney General a disclosure statement listing information related to administrative, civil, and criminal actions during the previous five-year period regarding a business concern required to be listed on the disclosure statement.



## **Inspection of commercial hazardous waste facilities**

(R.C. 3734.31)

The act eliminates the Director's authority to:

(1) Employ and equip one qualified individual or utilize proven and universally accepted technology to perform ongoing on-site inspection and monitoring functions at each operating commercial hazardous waste facility;

(2) Recover the actual and reasonable costs incurred by OEPA for maintaining qualified agency personnel on-site to perform inspection and monitoring functions at a facility; and

(3) Negotiate with the owner or operator of a facility for the placement of additional on-site inspectors at the facility and for the costs incurred by OEPA for maintaining those inspectors at the facility.

## **Authority to waive fees and late payment penalties**

(R.C. 3745.012)

The act authorizes the Director to waive or reduce a fee incurred under the state environmental laws as follows:

(1) A late payment penalty if the original fee has been paid in full; or

(2) A fee incurred during a response to an emergency, including fees for the disposal of material and debris, if the Governor declares a state of emergency.

## **Administration of programs division**

(R.C. 3745.018)

The Director must establish a new division within OEPA to administer its financial, technical, and compliance programs and assist communities, businesses, and other regulated entities. The division must administer all of the following:

(1) State revolving wastewater and drinking water loan programs;

(2) OEPA grant programs, including the recycling and litter prevention grant programs;

(3) Programs for providing compliance and pollution prevention assistance to regulated entities; and



(4) Statewide source reduction, recycling, recycling market development and litter prevention programs.

### Extension of various fees

(R.C. 3745.11, 3734.57, and 3745.901)

The act extends the time period for charging various OEPA fees under the laws governing air pollution control, water pollution control, and safe drinking water. The following table sets forth each fee, its purposes, and the time period OEPA is authorized to charge the fee under former law and the act:

Type of fee	Description	Sunset under former law	Sunset 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 lower the facility's potential to emit air contaminants below the major source thresholds established in rules adopted under continuing law.	The fee was required to be paid through June 30, 2018.	The act extends the fee through June 30, 2020.
Wastewater treatment works: plan approval application fee	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:  --A tier one fee of \$100 plus 0.65% of the estimated project cost, up to a maximum of \$15,000; or  --A tier two fee of \$100 plus 0.2% of the estimated project cost, up to a maximum of \$5,000.	An applicant was required to pay the tier one fee through June 30, 2018, and the tier two fee on and after July 1, 2018.	The act extends the tier one fee through June 30, 2020; the tier two fee begins on or after July 1, 2020.



Type of fee	Description	Sunset under former law	Sunset under the act
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, 2016, and January 30, 2017.	The act extends the fees and the fee schedules to January 30, 2018, and January 30, 2019.
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, 2016, and January 30, 2017.	The act extends the fee to January 30, 2018, and January 30, 2019.
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, 2016, and January 30, 2017.	The act extends the fee to January 30, 2018, and January 30, 2019.
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, 2018, and was required to be paid annually in January.	The act extends the initial license and license renewal fee through June 30, 2020.
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 .35% of the estimated project cost. However, current law sets a cap on the fee.	The cap on the fee was \$20,000 through June 30, 2018, and \$15,000 on and after July 1, 2018.	The act extends the cap of \$20,000 through June 30, 2020; the cap of \$15,000 applies on and after July 1, 2020.



Type of fee	Description	Sunset under former law	Sunset under the act
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 \$1,800 for each additional survey requested.</p>	<p>The schedule with higher fees applied through June 30, 2018, and the schedule with lower fees applied on and after July 1, 2018.</p> <p>The \$1,800 additional fee applied through June 30, 2018.</p>	<p>The act extends the higher fee schedule through June 30, 2020; the lower fee schedule applies on and after July 1, 2020.</p> <p>The act extends the additional fee through June 30, 2020.</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 must pay a fee, at the time an application is submitted, in accordance with a statutory schedule.	A higher schedule applied through November 30, 2018, and a lower schedule applied on and after December 1, 2018.	The act extends the higher fee schedule through November 30, 2020; the lower fee schedule applies on and after December 1, 2020.
Application fee for a permit other than an NPDES permit, variance, or plan approval	A person applying for a permit other than an NPDES permit, a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law must pay a nonrefundable fee.	If the application is submitted through June 30, 2018, the fee was \$100. If the application was submitted on or after July 1, 2018, the fee was \$15.	The act extends the \$100 fee through June 30, 2020; the \$15 fee applies on and after July 1, 2020.
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, 2018, the fee was \$200. If the fee was submitted on or after July 1, 2018, the fee was \$15.	The act extends the \$200 fee through June 30, 2020; the \$15 fee applies on and after July 1, 2020.
Fees on the transfer or disposal of solid wastes	<p>A total of \$4.75 in state fees is levied on each ton of solid waste disposed of or transferred in Ohio.</p> <p>The fees are used for administering the hazardous waste, solid waste,</p>	The fees applied through June 30, 2018.	The act extends the fees through June 30, 2020.



Type of fee	Description	Sunset under former law	Sunset under the act
	and other OEPA programs, and for soil and water conservation districts.		
Fees on the sale of tires	<p>A base fee of 50¢ per tire is levied on the sale of tires to assist in the cleanup of scrap tires.</p> <p>An additional fee of 50¢ per tire is levied to assist soil and water conservation districts.</p>	Both fees were scheduled to sunset on June 30, 2018.	The act extends the fees through June 30, 2020.

### Toxic Release Inventory Program

(R.C. 3751.01, 3751.02, 3751.03, 3751.04, 3751.05, 3751.10, 3751.11; Section 737.10)

The act allows owners and operators of specified facilities to fulfill state toxic release inventory reporting requirements under the Toxic Release Inventory Program by complying with federal reporting requirements established by USEPA. Previously, owners and operators of specified industrial facilities were required to submit toxic release inventory reports to both OEPA and USEPA. The act specifically states that the electronic submission of a report to USEPA constitutes the simultaneous submission of the report to OEPA as required by federal law. According to OEPA, USEPA shares the federally submitted reports with OEPA. Thus, the elimination of the requirement to submit the report directly to OEPA removes a redundancy in federal and state reporting requirements.

The act eliminates state fees required to be paid for filing a toxic release inventory report with OEPA, including late fees. The act further provides that any money collected by OEPA before or after September 29, 2017, from fees must remain in the Toxic Chemical Release Reporting Fund to be used exclusively for implementing, administering, and enforcing the laws governing the Toxic Release Inventory Program.



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## ENVIRONMENTAL REVIEW APPEALS COMMISSION

- Requires the Commission to adopt or amend regulations governing expedited hearings, expedited decisions, and stays (R.C. 3745.03).



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## OHIO FACILITIES CONSTRUCTION COMMISSION

### Agency administration of projects

- Permits the Department of Administrative Services (DAS), the Ohio School for the Deaf, and the Ohio State School for the Blind to administer a capital facilities project whose estimated cost is less than \$1.5 million.

### Contractor debarment

- Allows the Executive Director of the Ohio Facilities Construction Commission (OFCC) to debar a subcontractor, supplier, or manufacturer, in addition to a contracting firm.
- Permits the Executive Director also to debar a partner, officer, or director of one of those entities.

### OFCC membership

- Adds two senators appointed by the Senate President and two representatives appointed by the Speaker of the House as nonvoting members of OFCC.
- Specifies that the senators must not be from the same political party and that the representatives must not be from the same political party.
- Requires the Governor's appointment to be an administrative department head who is not the Director of Budget and Management or the Director of Administrative Services, and authorizes that member to designate an employee of the member's agency to serve.

### Transfer of school facilities programs to OFCC

- Abolishes the Ohio School Facilities Commission and transfers its responsibilities to OFCC.

### CFAP segments – school districts' costs (VETOED)

- Would have specified that, if a district satisfies certain conditions, the district's portion of the cost for a second or subsequent segment of a project, under the Classroom Facilities Assistance Program (CFAP), be based on the district's current wealth percentile ranking.



## **Joint vocational district projects (VETOED)**

- Would have permitted OFCC to select one joint vocational school district in each of FYs 2018 and 2019 to receive assistance to construct a new complete classroom facility as a replacement for one or more facilities, renovate the district's existing facilities, or both, and would have specified other conditions for a district's project (VETOED).

## **1:1 School Facilities Option Program**

- Establishes the 1:1 School Facilities Option Program as an alternative to assist school districts that have not entered into an agreement for classroom facilities assistance (except for emergency assistance) with constructing, acquiring, reconstructing, or making additions or repairs to any feature of a classroom facility.
- Specifies that a district may participate in the alternative program only when it becomes eligible for assistance under CFAP or the Vocational School Facilities Assistance Program (VFAP), based on its wealth percentile ranking.
- Specifies that a district that opts to receive assistance under the alternative program may receive up to \$1 million or 10% of what would be the state's share of the district's total project cost under CFAP or VFAP, provided the district matches the state funds it receives on a one-to-one basis.

## **Repeal of reporting requirements**

- Repeals a provision requiring the submission of a report by a public entity to OFCC regarding a capital facilities project funded wholly or in part using state funds.
- Repeals a provision requiring annual submission of a report by the Attorney General to the OFCC Executive Director on any mediation and litigation costs associated with capital facilities projects for which a judgment has been rendered.

## **Agency administration of facilities projects**

(R.C. 123.21 and 123.211 (formerly Section 529.10 of S.B. 310 of the 131st G.A.))

The act allows the Executive Director of the Ohio Facilities Construction Commission (OFCC) to authorize the Department of Administrative Services, the Ohio School for the Deaf, and the Ohio School for the Blind to administer a capital facilities project whose estimated cost is less than \$1.5 million, notwithstanding the law that generally requires OFCC to administer such projects.



Under continuing law, the Executive Director of the OFCC may authorize the following agencies to administer a project whose estimated cost is less than \$1.5 million, upon the agency's request through the Ohio Administrative Knowledge System Capital Improvements (OAKS-CI) application:

- The Department of Mental Health and Addiction Services;
- The Department of Developmental Disabilities;
- The Department of Agriculture;
- The Department of Job and Family Services;
- The Department of Rehabilitation and Correction;
- The Department of Youth Services;
- The Department of Public Safety;
- The Department of Transportation;
- The Department of Veterans Services; and
- The Bureau of Workers' Compensation.

An agency that administers its own project must comply with the state's procedures and guidelines for public improvements and must track all project information in OAKS-CI pursuant to OFCC guidelines.

Additionally, the act codifies the section of continuing law that authorizes certain agencies to administer their own projects; that is, the act places the section in the Revised Code.

## **Contractor debarment**

(R.C. 153.02)

The act expands the authority of the OFCC Executive Director to debar a contractor upon proof that the contractor has committed certain types of misconduct. Under continuing law, a debarred contractor is not eligible to bid for or participate in any contract for a state or school district capital facilities project during the debarment period.

First, the act defines "contractor" as a construction contracting business, a subcontractor of such a business, or a supplier or manufacturer of materials. The prior



statute did not define that term and might have been read to include only a construction contracting business. Further, the act specifies that when the Executive Director debar a contractor that is a partnership, association, or corporation, the Executive Director also may debar any partner of the partnership or any officer or director of the association or corporation. As a result, the Executive Director can prevent the owners of a debarred business entity from dissolving the entity and reforming as a new one in order to avoid the debarment.

## **OFCC membership**

(R.C. 123.20; Section 803.10)

The act adds four legislators as nonvoting members of the OFCC, which previously consisted only of the Director of Budget and Management and the Director of Administrative Services or their designees and a member appointed by the Governor. Two legislative members must be senators appointed by the Senate President, and two must be representatives appointed by the Speaker of the House. The senators must not be members of the same political party, and the representatives must not be members of the same political party.

The Speaker and the President must make their appointments by January 31 of an odd-numbered year, and the appointments must be for the duration of that General Assembly (that is, until January 1 of the next odd-numbered year). A legislative seat on the OFCC becomes vacant if the legislator ceases to serve in the relevant chamber of the General Assembly. A vacancy in a legislative seat must be filled in the same manner as for original appointments by the 31st day after the seat becomes vacant.

Under prior law, four legislators served on the former School Facilities Commission under the same conditions (see "**Transfer of programs to OFCC**" below).

Additionally, the act specifies that the Governor's appointment to the OFCC must be an administrative department head who is not the Director of Budget and Management or the Director of Administrative Services. The member appointed by the Governor may designate an employee of the member's agency to serve on the member's behalf. Prior law did not specify any requirements regarding the Governor's appointment to the OFCC; however, that member is currently the Director of Rehabilitation and Correction.

To correspond with this change, the act removes provisions specifying the length of the term of the member appointed by the Governor and the manner for filling a vacancy for that member's position.



The act specifies that the member appointed by the Governor before September 29, 2017, will serve the remainder of the member's term. When that term expires, or if the member is unable to fulfill the term, the Governor must appoint a member to the OFCC as provided by the act.

## **School facilities programs**

### **Transfer of programs to OFCC**

(R.C. 123.20; repealed R.C. 3318.19, 3318.30, and 3318.31; Section 515.10; conforming changes in numerous other R.C. sections)

The act abolishes the Ohio School Facilities Commission (SFC) and transfers its responsibilities to the OFCC. Accordingly, the OFCC Executive Director (who was also the SFC Executive Director) is responsible for supervising the operation of the programs that provide state assistance to school districts and other public schools in constructing classroom facilities. Under prior law, the SFC was an independent agency within the OFCC.

### **CFAP segments – school districts' costs (VETOED)**

(R.C. 3318.037)

The Governor vetoed a provision that would have based a district's portion of the project cost for a second or subsequent segment under the Classroom Facilities Assistance Program (CFAP) on the district's current wealth percentile ranking, rather than the percentile calculated when the project was segmented, if the current percentile is lower.

### **Joint vocational district projects (VETOED)**

(R.C. 3318.421)

The Governor vetoed a provision that would have permitted the OFCC to select one joint vocational school district in each of FYs 2018 and 2019 to receive assistance to construct a new complete classroom facility as a replacement for one or more existing facilities, renovate the district's existing facilities, or both. Under the vetoed provision, a district's portion of the project cost would have been less than or equal to 50% of the total cost of the project, but the state portion would have been less than or equal to \$26 million.



## **1:1 School Facilities Option Program**

(R.C. 3318.39)

The act establishes the 1:1 School Facilities Option Program. Under that program, the OFCC must provide funding to assist eligible school districts in constructing, acquiring, reconstructing, or making additions or repairs to any feature of a classroom facility that meets the Commission's design standards, in lieu of a larger project under CFAP or the Vocational School Facilities Assistance Program (VFAP) (see "**Background**"). A district may avail itself of the new program only if it has not entered into an agreement for any state-assisted classroom facilities project prior to September 29, 2017, except for a project under the Emergency Assistance Program. Furthermore, a city, exempted village, or local school districts that received partial assistance under CFAP prior to May 20, 1997, is not eligible for the new program.

A district may participate in the new program only when it becomes eligible for assistance under CFAP or VFAP, in accordance with the annual wealth percentile rankings of districts. Also, in order to participate, the district's board of education must approve participation by an affirmative vote of at least four-fifths of its full membership.

A district that receives assistance under the new program is not eligible for subsequent assistance under either CFAP or VFAP for 20 years after it enters into an agreement under the program. A similar provision of continuing law applies to districts that enter into CFAP or VFAP agreements.

### **Assessment of eligible districts**

The act requires the OFCC, at the request of an eligible district, to assess the district's current facilities needs and determine the following:

- (1) The scope of the entire project;
- (2) The basic project cost of the district's classroom facilities needs; and
- (3) The state's portion of the total project if the district were to receive assistance under CFAP or VFAP.

### **Amount of funding and matching share**

Under the new program, a district may receive state funds of up to the greater of \$1 million or 10% of the state's portion of the total project cost, as determined by the assessment. However, a district may choose to receive less than the maximum amount. The district must match the amount of state funds it receives on a one-to-one basis.



## Background

Several programs provide state assistance to school districts and other public schools in constructing classroom facilities. The main program, CFAP, is a graduated, cost-sharing program that provides each city, local, and exempted village school district with partial funding to address all of its classroom facilities needs. Because priority for state funding is based on a district's relative wealth, poorer districts were served first and received a greater amount of state assistance than wealthier districts will receive when it is their turn to be served. Each year, all districts are ranked into percentiles according to the three-year average adjusted tax valuations per pupil. A school district may divide the district's entire classroom facilities project under CFAP into discrete segments.

Joint vocational school districts (JVSDs) are served by a similar program, the Vocational School Facilities Assistance Program (VFAP). Under continuing law, the OFCC (formerly SFC) may set aside up to 2% of its project funds for VFAP and may provide assistance to at least one JVSD under that program each fiscal year.

Other programs address the needs of particular types of districts and schools. Generally, they all operate on a cost-sharing basis.

## Repeal of reporting requirements

(Repealed R.C. 123.27)

The act repeals the law that requires both:

- (1) The submission of a report by a public entity to the OFCC regarding a capital facilities project funded wholly or in part using state funds; and
- (2) The annual submission of a report by the Attorney General to the OFCC Executive Director on any mediation and litigation costs associated with capital facilities projects for which a judgment has been rendered.



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## OHIO GENERAL ASSEMBLY

### Review of cabinet departments (VETOED)

- Would have established a procedure for the General Assembly to periodically review cabinet departments, with certain departments reviewed either each even-numbered or odd-numbered General Assembly (VETOED).
- Would have required the review to be done by standing committees directed to do so by the Speaker of the House and Senate President (VETOED).
- Would have expressly authorized the General Assembly to abolish, terminate, or transfer a department by no other means except by the enactment of a law (VETOED).
- Would have authorized the General Assembly to review and report on the performance and effectiveness of other departments and, if reviewed, would have required the Chief of the Common Sense Initiative Office to testify regarding the department (VETOED).
- Would have modified the schedule of performance audits conducted by the Auditor of State to coincide with the periodic review of cabinet departments (VETOED).

### Legislative Task Force to study creation of Legislative Budget Office

- Creates the six-member Joint Legislative Task Force on Creating a Legislative Budget Office, consisting of three Senate and three House members, to study and recommend on the feasibility and effectiveness of creating a Legislative Budget Office.

### Review of cabinet departments (VETOED)

(R.C. 101.88, 101.881, 101.882, 101.89, and 117.46)

The Governor vetoed a provision that would have established a procedure for the General Assembly to periodically review cabinet departments. The vetoed provision would have required the following departments to be reviewed during each even-numbered General Assembly:

--Office of Budget and Management;

--Department of Administrative Services;



--Department of Agriculture;  
--Department of Health;  
--Department of Public Safety;  
--Department of Developmental Disabilities;  
--Development Services Agency;  
--Department of Rehabilitation and Correction;  
--Department of Aging;  
--Department of Medicaid;  
--Office of the Adjutant General; and  
--Department of Higher Education.

The vetoed provision would have required the following departments to be reviewed during each odd-numbered General Assembly:

--Department of Commerce;  
--Department of Transportation;  
--Department of Natural Resources;  
--Department of Job and Family Services;  
--Department of Mental Health and Addiction Services;  
--Department of Insurance;  
--Department of Youth Services;  
--Environmental Protection Agency;  
--Department of Veterans Services;  
--Office of Health Transformation;  
--Public Utilities Commission; and  
--Department of Taxation.



The provision would have permitted the General Assembly to abolish, terminate, or transfer a department only by enactment of a law. It also would have required the rules, orders, licenses, contracts, and other actions the department made, granted, or performed to have continued in effect according to their terms, unless the General Assembly had provided otherwise by law. The General Assembly would have been permitted to provide by law for the temporary or permanent transfer of some or all of a terminated or transferred department's functions and personnel to a successor department, board, or officer. Abolition, termination, or transfer of a department would not have caused the termination or dismissal of any claim against the department by any person, or any claim pending against any person by the department.

The vetoed provision would have required that, within three months after the beginning of a General Assembly during which a department is scheduled to be reviewed, the President and Speaker direct a standing committee of their respective houses to hold public hearings. The President and Speaker would have been permitted to defer a department's review once, until the next General Assembly in which it would have been reviewed. The Speaker and President also would have been allowed to direct a standing committee to review other departments not already scheduled for review during that General Assembly.

The committee would have been required to review and evaluate the usefulness, performance, and effectiveness of each department. A department under review would have had the burden of demonstrating a public need for the department. It would have been required to submit a report stating the department's primary purpose, its various goals and objectives, its past and anticipated workload, the number of staff required to complete that workload, its total number of staff, its past and anticipated budgets, and its source of funding. The committee would have determined whether there was a need to continue the department by considering a variety of factors expressly listed. If a committee reviewed a department that issues a license to practice a trade or profession, it would have considered the following specific factors:

--Whether the requirement for the license serves a meaningful, defined public interest and provides the least restrictive form of regulation that adequately protects the public interest;

--The extent to which the objective of licensing may be achieved through market forces, private or industry certification and accreditation programs, or enforcement of other existing laws;

--The extent to which licensing ensures that practitioners have occupational skills or competencies that correlate with a public interest, and the impact that those criteria



have on applicants for a license, particularly those with moderate or low incomes, seeking to enter the occupation or profession; and

--The extent to which the requirement for the license stimulates or restricts competition, affects consumer choice, and affects the cost of services.

The President and Speaker also would have been required to notify the Chief of the Common Sense Initiative Office of a department's review. The Chief or Chief's designee would have been required to testify before the committee about the department. The testimony must have included whether the Office had received commentary, advice from the small business advisory council with respect to the department's rules, or any other information about the department's effectiveness and efficiency.

After a committee reviewed a department or departments, the committee could have published a report of its findings and recommendations. The committee must have provided any report to the Clerk of the House and Senate, who then would have provided the reports to the President, Speaker, Governor, and each affected department. The report would have been made available to the public on the General Assembly's website.

### **Auditor of State's schedule for performance audits (VETOED)**

The Governor vetoed a provision that would have aligned the Auditor of State's schedule for conducting performance audits to the schedule for review of cabinet departments. The act would have required the performance audits to be completed before the end of the General Assembly during which they were conducted. The Auditor would have been required to make the performance audit available to the standing committee directed to review the department during the following General Assembly.

### **Legislative Task Force to study creation of Legislative Budget Office**

(Section 701.31)

The act creates the Joint Legislative Task Force on Creating a Legislative Budget Office. Its purpose is to study and make recommendations regarding the feasibility and effectiveness of creating a Legislative Budget Office.

The Task Force must consist of six members, who must be appointed by October 29, 2017. The Speaker of the House appoints three members and the Senate President appoints three members, with each appointing at least one member from the minority



party. Vacancies are filled in the same manner. The Speaker and President must jointly choose a member to serve as chairperson and that chairperson may call meetings.

Members of the Task Force do not receive compensation, except to the extent that serving as a member is part of the member's regular duties of employment. Days when the Task Force holds meetings are considered legislative days.

The Task Force must issue a report of its recommendations to the Speaker and Minority Leader of the House and to the President and Minority Leader of the Senate by July 1, 2018. Upon issuing its recommendations, the Task Force ceases to exist.



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## OFFICE OF THE GOVERNOR

### Antitrust review by CSI Office

- Beginning January 21, 2018, requires the Common Sense Initiative Office to review and approve or disapprove certain board or commission actions or proposed actions concerning occupation or industry regulation that may have antitrust implications.
- Voids an action or proposed action disapproved by the Office.
- Allows a board or commission that has taken or proposes to take an action, person who is affected or is likely to be affected by an action taken or proposed by a board or commission, or a person granted a stay in court to refer an action for review by the Office.
- Requires a person to obtain a determination from the Office before pursuing a court action for a violation of antitrust laws, and grants the state, a board or commission, or a member of a board or commission the right to request a stay of antitrust proceedings that lasts until the Office approves or disapproves the action.
- Exempts the following persons from the exhaustion requirement and the stay of court proceedings: the Attorney General, a county prosecutor, or any assistant prosecutor designated to assist a county prosecutor.
- Exempts from the Office's review any action in which members of the board or commission who are members of the profession affected by the action are statutorily prohibited from participating in the action.
- Requires the Office to adopt rules under the Administrative Procedure Act to implement and administer the act's review provisions.

### Health Services Price Disclosure Study Committee

- Eliminates the Health Services Price Disclosure Study Committee in the Governor's Office of Health Transformation.

### Antitrust review by CSI Office

(R.C. 107.56)

Beginning January 21, 2018, the act requires the Common Sense Initiative Office to review and approve or disapprove certain board or commission actions with



antitrust implications that have been referred to the Office. Only certain entities may refer an action to the Office for review. The Office must adopt rules under the Administrative Procedure Act to implement and administer the act's antitrust review provisions.

### Covered entities

Under the act, "board or commission" generally means any multi-member body created by state law that licenses or otherwise regulates an occupation or industry to which at least one of the body's members belongs. The act expressly includes all of the following boards and commissions in the definition:

<b>Boards expressly subject to antitrust review</b>				
Accountancy Board	Architects Board	Board of Embalmers and Funeral Directors	Board of Executives of Long-Term Services and Supports	Crematory Review Board
Motor Vehicle Dealers Board	Motor Vehicle Repair Board	Motor Vehicle Salvage Dealer's Licensing Board	Ohio Athletic Commission	Ohio Construction Industry Licensing Board
Ohio Landscape Architects Board	Ohio Real Estate Commission	Real Estate Appraiser Board	State Auctioneers Commission	State Speech and Hearing Professionals Board
State Cosmetology and Barber Board	Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board	State Board of Education	State Board of Emergency Medical, Fire, and Transportation Services	Board of Nursing
State Board of Pharmacy	State Board of Registration for Professional Engineers and Surveyors	Chemical Dependency Professionals Board	State Board of Psychology	State Dental Board
State Medical Board	State Veterinary Medical Licensing Board	State Vision Professionals Board	State Chiropractic Board	Counselor, Social Worker, and Marriage and Family Therapist Board



## Reviewable actions

The Office must review board or commission actions referred to it that could be subject to state or federal antitrust law if undertaken by a private person or combination of private persons, including actions that directly or indirectly have the following effects:

- Fixing prices, limiting price competition, or increasing prices of goods or services provided by the occupation or industry that the board or commission regulates;
- Dividing, allocating, or assigning customers or markets in Ohio among the members of the occupation or industry that the board or commission regulates;
- Excluding present or potential competitors from the occupation or industry that the board or commission regulates;
- Limiting in Ohio the output or supply of goods or services provided by members of the occupation or industry that the board or commission regulates.

The act exempts the following actions from review by the Office, unless the action is referred to it by a party granted a stay in a pending antitrust suit (see "**Exhaustion and stay**," below):

- Denying an application for a license because the applicant has violated or has not complied with Ohio law or administrative rules.
- Taking disciplinary action against an individual or corporation that is licensed by a board or commission for violations of Ohio law or administrative rules.

An action is not subject to review by the Office if members of the board or commission who are members of the profession affected by the action are statutorily prohibited from participating in the action.

## Parties

The act allows the following parties to refer an action to the Office for review:

- A board or commission that has taken or is proposing to take an action;



- A person who is affected or is likely to be affected by an action taken or proposed to be taken by a board or commission;
- A person who has been granted a stay by a court (see "**Exhaustion and stay**," below).

Referral of an action or proposed action to the Office for review does not constitute an admission that the action violates state or federal law.

## **Procedure**

A board or commission or person who refers an action to the Office for review must prepare a brief statement, explaining the action and describing its consistency or inconsistency with state or federal antitrust law, and file it with the Office. If the action or proposed action is in writing, the party referring the action must attach it to the statement.

The Office must determine whether a referred action is supported by, and consistent with, a clearly articulated state policy expressed in the statutes creating the board or commission or the statutes and rules setting forth the board's or commission's powers, authority, and duties. If the Office finds the action to be consistent with a clearly articulated state policy, the Office must determine whether the clearly articulated state policy is merely a pretext by which the board or commission enables members of the occupation or industry it regulates to engage in anticompetitive conduct that could be subject to antitrust law if undertaken by private persons.

The Office must approve an action if it determines that the action is consistent with a clearly articulated state policy, and the state policy is not a pretext for members of the regulated profession to engage in anticompetitive conduct. The Office must disapprove an action if it determines that the action is not consistent with a clearly articulated state policy, or that the state policy is a pretext.

A board or commission may proceed with or continue an action approved by the Office. If the Office disapproves an action, the action is void.

The Office must prepare a written memorandum that explains its approval or disapproval. The Office must transmit a copy of the memorandum to all parties involved in the review and post it to the Office's website.

A person affected by a board's or commission's action, or who is likely to be affected by a proposed action, must refer the action to the Office for review within 30 days after receiving notice of the action. If a person refers an ongoing or proposed action to the Office for review, the board or commission must cease the action or refrain



from taking the action until the Office prepares and transmits a memorandum approving the action.

### **Exhaustion and stay**

Generally, the act requires any person who has standing to commence and prosecute a state or federal antitrust action against a board or commission to seek review by the Office before pursuing the antitrust claim. The requirement does not apply to the Attorney General, a county prosecutor, or any assistant prosecutor designated to assist a county prosecutor.

If an antitrust suit is pending in court, but the action that forms the basis for the suit has not been reviewed by the Office, the state, a board or commission, or a board or commission member may request a stay of the suit. A court must grant the stay unless the lawsuit was initiated by the Attorney General, a county prosecutor, or an assistant prosecutor designated to assist a county prosecutor. Any stay granted under the act continues until the Office has completed and transmitted the memorandum described under "**Procedure**," above.

### **Health Services Price Disclosure Study Committee**

(Section 620.10 (repealing Section 7 of H.B. 52 of the 131st G.A.))

The act eliminates the Health Services Price Disclosure Study Committee in the Governor's Office of Health Transformation. The Committee was created in 2015 to study the impact and feasibility of carrying out a statute that requires a medical services provider to present to a patient a written cost estimate before performing any nonemergency service or procedure.<sup>77</sup>

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<sup>77</sup> R.C. 5162.80, not in the act. (R.C. 5162.80 is the subject of litigation and is currently enjoined by the Williams County Court of Common Pleas. Litigation on this matter is still underway. *Community Hospitals and Wellness Centers, et al. v. State of Ohio*, 16CI000128 (Williams County CP, Agreed Temporary Injunction, December 22, 2016).)



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## DEPARTMENT OF HEALTH

### **Vital statistics**

- Modifies the Vital Statistics Law to reflect processes the Department of Health has implemented as it transitions to exclusive use of electronic birth and death registration systems.
- Eliminates requirements that local registrars of vital statistics transmit to the State Registrar Social Security numbers on birth and death certificates.

### **Abuse of long-term care facility residents**

- Includes psychological abuse, sexual abuse, and exploitation as additional types of misconduct in a long-term care facility that must be reported.
- Requires licensed health professionals to report abuse, neglect, exploitation, and misappropriation to the facility, rather than to the Director of Health.
- Requires a statement of findings of abuse, neglect, exploitation, or misappropriation of a resident by a licensed health professional to be included in the Nurse Aide Registry.
- Prohibits certain employers from employing a licensed health professional if there is a statement in the Registry of abuse, neglect, exploitation, or misappropriation by the professional.

### **Information sharing**

- Authorizes the Director of Health to release to the Department of Aging the identity of a patient or resident who receives assisted living services from programs administered by that Department.

### **Nursing home inspection – increased capacity**

- Provides that a nursing home does not need to be inspected before the Director of Health increases its licensed capacity if the resident rooms to which the beds will be added were similarly inspected as part of the nursing home's most recent inspection.

### **Confidentiality of HIV/AIDS information**

- Clarifies that information regarding an individual's HIV test, or an individual's AIDS or AIDS-related diagnosis, may be disclosed to any physician who treats the individual.



## **Moms Quit for Two grants**

- Continues the Moms Quit for Two Grant Program to provide grants to nonprofit or government entities to deliver evidence-based tobacco cessation interventions to pregnant women and women living with children who reside in communities with high infant mortality.

## **WIC vendor contracts**

- Requires the Department of Health to process an application for a Women, Infants, and Children (WIC) vendor contract within 45 days if the applicant already has a WIC vendor contract.

## **Third-party payment for goods and services**

- Prohibits the Department from paying, on or after January 1, 2018, for goods and services an individual receives through the Department or one of its grantees or contractors if the individual has coverage for those goods and services through another source.
- Specifies that the prohibition does not apply when it is expressly contrary to another Ohio statute or when Department funds are required to mitigate the spread of infectious disease or are needed for exceptional circumstances.

## **Lead-safe residential rental units**

- Eliminates the legal presumption that residential units, child care facilities, or schools constructed before 1950 do not contain a lead hazard if the owner undertakes preventative steps called essential maintenance practices.
- Eliminates all procedures and requirements related to essential maintenance practices that applied to residential units, child care facilities, and schools and, instead, establishes lead abatement procedures and requirements specific only to residential rental units by:
  - Requiring the Director to maintain a lead-safe residential rental unit registry;
  - Specifying that the owner of a residential rental unit constructed before 1978 may register that unit as lead-free on the registry if the owner has implemented specified lead-safe maintenance practices;
  - Allowing residential rental units constructed after January 1, 1978, and units determined to be lead free to be included in the registry;



--Establishing procedures, requirements, and exemptions regarding the lead-safe registry;

--Requiring a person seeking to conduct residential rental unit lead-safe maintenance practices to participate in a training program approved by the Director; and

--Requiring the Director to establish a nonrefundable application fee for seeking approval of a training program.

### **Choose Life Fund**

- Authorizes the Director to distribute money from the Choose Life Fund that was not distributed in a previous year due to the lack of an eligible organization.
- Specifies that the Director may distribute the money to eligible organizations.

### **Hospital data reporting**

- Repeals requirements that hospitals submit to the Director information on meeting performance measures and inpatient and outpatient services.

### **OVI drug concentration technology**

- Eliminates "gas chromatography mass spectrometry" as the sole technology used to measure the concentration of marijuana metabolite for the OVI (impaired driving) law, thus allowing the use of different technologies.

### **Hospital nurse staffing plan**

- Requires each hospital to have its own nursing services staffing plan reviewed by the hospital's nursing care committee at least once every two years, rather than annually.
- Requires each hospital, by March 1 of each even-numbered year, to submit a copy of its nursing services staffing plan in effect at that time to the Department in order to maintain a repository for public access.
- Specifies that the submitted copies of the plans are public records.

### **State Board of Sanitarian Registration**

- Eliminates the State Board of Sanitarian Registration and transfers its duties and powers regarding the regulation of sanitarians-in-training and sanitarians to the Department.



- Requires the Director to establish an advisory board to advise the Director regarding the registration of sanitarians-in-training and sanitarians and other matters.
- Requires the Director to submit a report to the Governor, the Speaker of the House, and the President of the Senate assessing the cost impact to the Department to regulate sanitarians.

### **Breast and Cervical Cancer Project**

- Requires the Department to set new eligibility requirements for services provided through the Ohio Breast and Cervical Cancer Project (BCCP).
- Requires the Department to adopt rules specifying the cost sharing limit for each screening and diagnostic service that may be obtained through BCCP.
- Eliminates a provision that permitted the BCCP to use remaining contributed funds, after paying for screening, diagnostic, and outreach services provided by local health departments, federally qualified health centers, or community health centers, to pay for services provided by other providers.

### **Health Care Compact (VETOED)**

- Would have adopted "The Health Care Compact," which would have permitted Ohio to become a member state and, along with other member states, enact the Compact (VETOED).

### **Smoke Free Workplace Act – research exception**

- Exempts from the Smoke Free Workplace Act qualifying enclosed spaces in college or university laboratory facilities when used for clinical research related to the health effects of smoking or tobacco use.

### **Central intake and referral – home visiting and early intervention**

- Provides that the central intake and referral system for home visiting services must also serve as a single point of entry for access, assessment, and referral of families to Part C early intervention services.
- Requires the Departments of Health and Developmental Disabilities to share any funding made available to each for local outreach and "child find" efforts after creating the central intake and referral system.



## **Prohibited conduct in RV parks**

- Prohibits certain felonious conduct (nuisance activities) in recreational vehicle parks and combined use park camps.
- Requires the local board of health to send notice to the park operator, after the occurrence of two nuisance activities on the park property, that the operator is at risk of losing its license if another nuisance activity occurs within a six-month period.
- Requires the camp licensing entity to revoke a park operator's license if the licensing entity receives notice that three or more nuisance activities have occurred in the park in a six-month period.

## **Certificates of need**

- Requires the Director to administer an expedited review process for certificate of need applications in addition to the standard review process.
- Provides that a change in the owner or operator of a long-term care facility for which a certificate of need was granted that occurs during the five-year monitoring by the Department is not a reviewable activity unless the new owner or operator is associated with certain violations.

## **Program for Medically Handicapped Children**

- Requires that any Medicaid provider be approved to provide the same goods and services under the Program for Medically Handicapped Children (also known as "BCMh") that the provider is approved to provide under the Medicaid Program.

## **Palliative care facilities**

- Repeals a provision regarding palliative care facility licensure that was inadvertently enacted because of a drafting error.

## **Vital statistics**

(R.C. 3705.07, 3705.08, 3705.09, and 3705.10)

The act modifies various provisions of the Vital Statistics Law to reflect new processes that the Department of Health has implemented for the filing of births, fetal deaths, and deaths, as it transitions to exclusive use of electronic registration systems.



The act requires local registrars of vital statistics to consecutively number each fetal death and death certificate printed on paper that the local registrar receives from the Electronic Death Registration System (EDRS) maintained by the Department. The number assigned to each certificate must be the one provided by EDRS. The local registrar then must make a copy only of each fetal death and death certificate printed on paper. The paper copy must be filed and preserved as the local record only until the electronic information regarding the event has been completed and made available in EDRS and EDRS is capable of issuing a complete and accurate electronic copy of the certificate. Prior law specified that the copy made by the local registrar (presumably on paper) had to be preserved as the local record permanently. Lastly, the local registrar must transmit to the State Office of Vital Statistics all original fetal death and death certificates received using the state transmittal schedule specified by the Department. The State Office must maintain a permanent index of all births, fetal deaths, and deaths that are registered, but the act eliminates the requirement that the index show the volume in which it is contained.

The act requires the Director of Health to prescribe *electronic* methods, as well as forms, for obtaining registrations of birth, death, and other vital statistics. It eliminates a requirement that the Director furnish necessary postage, forms, and blanks for obtaining registrations in each vital statistics registration district.

The act requires that all birth, fetal death, and death records be certified rather than signed. It also specifies that, in general, (1) a birth certificate requiring signature may, instead, be electronically certified by the person in charge of the institution or that person's designee and (2) a death certificate may be certified by the individual who attests to the facts of death. Accordingly, the act specifies that when a birth occurs in or en route to an institution (1) the person in charge of the institution or that person's designee no longer must secure necessary signatures, but may instead complete and certify the facts of birth on the certificate within ten calendar days (rather than "ten days") and (2) the physician or certified nurse-midwife in attendance at the birth must be listed on the record (rather than provide the medical information and certify the facts of birth).

The act eliminates a requirement that all birth certificates include a line for the mother's and father's signature. It maintains the requirement that birth certificates include a statement setting forth the names of the child's parents. It also eliminates a provision regarding issuance of a new birth certificate to include the name of a child's father after a man is presumed, found, or declared to be the father or has acknowledged paternity. Under the eliminated provision, the Department had to promptly forward a copy of the new birth record to the appropriate local registrar and the original birth record had to be destroyed.



The act eliminates a provision that authorized a person to file with the State Office a birth record when an Ohio resident has given birth to a child in a foreign country that lacks a vital statistics registration system and evidence of such facts that is satisfactory to the Director was shown. Finally, the act eliminates provisions that require local registrars of vital statistics to transmit to the State Registrar of Vital Statistics Social Security numbers on birth and death certificates.

### **Abuse of long-term care facility residents**

(R.C. 3721.21, 3721.22, 3721.23, 3721.24, 3721.25, and 3721.32 with conforming changes in R.C. 173.27, 173.38, 173.381, 3701.881, and 5164.342)

#### **Reporting of abuse, neglect, exploitation, or misappropriation**

Regarding the reporting of misconduct against a resident of a nursing home or residential care facility, the act (1) expands the misconduct that must be reported and (2) modifies the reporting process for licensed health professionals.

Prior to the act, a licensed health professional was required to report abuse or neglect of a resident or misappropriation of resident property to the Director. Under the act, reports by licensed health professionals of the following misconduct are to be made to the facility, instead of the Director:

--Abuse, which specifically includes psychological abuse and sexual abuse under the act (see below);

--Neglect;

--Exploitation, which is defined by the act (see below);

--Misappropriation.

A facility administrator continues to be required to report misconduct to the Director, and the act adds psychological abuse, sexual abuse, and exploitation to the misconduct that an administrator must report. Similarly, other individuals continue to be permitted to report known or suspected abuse, neglect, or misappropriation to the Director, and the act adds psychological abuse, sexual abuse, and exploitation to the misconduct that may be reported. The act continues to require the Director to investigate reported matters and make findings.

Under the act, psychological abuse and sexual abuse are components of "abuse" for purposes of the reporting law. The act defines "psychological abuse" as knowingly or recklessly causing psychological harm to a resident, whether verbally or by action.



"Sexual abuse" is sexual conduct or contact as defined under the Sex Offenses Law.<sup>78</sup> "Physical abuse" continues to be defined as knowingly causing physical harm or recklessly causing serious physical harm by physical contact or by physical or chemical restraint, medication, or isolation that is excessive; used for punishment, staff convenience, or as a substitute for treatment; or is in an amount that precludes habilitation and treatment.

The act defines "exploitation" as taking advantage of a resident, regardless of whether the action was for personal gain, whether the resident knew of the action, or whether the resident was harmed.

Except for changes discussed below, the act continues the following provisions concerning the reporting of abuse, neglect, and misappropriation and applies them to the reporting of exploitation, psychological abuse, and sexual abuse: permissive reporting, liability protections for persons who report, retaliation protections for persons who report and residents, investigation procedures, and nondisclosure requirements.

Regarding resident protection from retaliation, the act extends the resident's protection to actions taken by a resident's family member, guardian, sponsor, or personal representative to report or cause to be reported suspected abuse, neglect, exploitation, or misappropriation, provide information during an investigation, or participate in a hearing or other proceeding pertaining to the suspected abuse, neglect, exploitation, or misappropriation. Prior to the act, the resident had protection from retaliation only if the resident reported the information. There is no specified penalty for retaliation, but continuing law specifies that a person has a cause of action (right to sue) against a person or government entity that violates the prohibition of retaliation.

### **Nurse Aide Registry**

The act expands the misconduct and the persons that must be included in the Nurse Aide Registry maintained by the Director of Health. Continuing law requires the Director to include in the Registry a statement concerning any finding by the Director that a nurse aide, or another person who provides services but is not a nurse aide or licensed health professional, has abused or neglected a resident or misappropriated a resident's property.

The act requires findings of psychological abuse, sexual abuse, or exploitation to be included in the Registry. This affects nurse aides and individuals who are neither nurse aides nor licensed health professionals.

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<sup>78</sup> R.C. 2907.01, not in the act.



The act extends the Nurse Aide Registry provisions to licensed health professionals. This requires the Director to investigate reports of abuse, neglect, exploitation, or misappropriation by licensed health professionals and to include statements of the Director's findings in the Registry.

Under the act, the following agencies and employers are not permitted to employ a nurse aide, licensed health professional, or other person who provides services in a long-term care facility if the Nurse Aide Registry includes a statement that the person abused, neglected, or exploited a resident or misappropriated the property of a resident:

--The Director of Aging, State Long-term Care Ombudsman, and regional long-term care ombudsman programs regarding employment with the state program or a regional ombudsman program;

--An Area Agency on Aging regarding employment in a direct-care position;

--The Department of Aging regarding community-based long-term care services certificates, contracts, or grants to self-employed providers;

--A home health agency regarding employment in a direct-care position; and

--A waiver agency that provides home and community-based services under a Medicaid waiver component regarding employment in providing home and community-based services.

## **Information sharing**

(R.C. 3721.031)

In general, continuing law prohibits the Director of Health and any Department of Health employee from releasing information that would identify a resident or patient of a nursing home or long-term care facility unless the patient or resident or that individual's representative permits the release. The act authorizes the Director, on the request of the Director of Aging (or a designee), to release the identity of a patient or resident of a home or facility who receives assisted living services from programs administered by the Department of Aging. The information may not be used for any purpose other than monitoring the well-being of patients or residents who receive assisted living services.



## **Nursing home inspection – increased capacity**

(R.C. 3721.02)

The act provides that a nursing home does not need to be inspected before the Director increases its licensed capacity if the resident rooms to which the beds will be added were inspected, as part of the nursing home's most recent inspection, for the same number of residents proposed to be placed in a room after the capacity increase.

## **Confidentiality of HIV/AIDS information**

(R.C. 3701.243)

The act clarifies that information regarding an HIV test that an individual has had, or an individual's AIDS or AIDS-related diagnosis, may be disclosed to *any* physician who treats the individual, not just "the individual's physician" as specified in prior law.

## **Moms Quit for Two grants**

(Sections 291.20 and 291.30)

The act retains provisions enacted in the last biennial budget act (H.B. 64) that require the Department to create the Moms Quit for Two Grant Program. Under the Program, the Department must award grants to private, nonprofit entities or government entities that demonstrate the ability to deliver evidence-based tobacco cessation interventions to women who (1) reside in communities that have the highest incidence of infant mortality and (2) are pregnant or live with children.

As under H.B. 64, the Department must evaluate the Program and, by December 31, 2017, prepare a report describing its findings and recommend whether the Program should continue.

## **WIC vendor contracts**

(Section 291.40)

In Ohio, the Department administers the federal Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The act extends to FY 2018 and FY 2019 a requirement that the Department review and process a WIC vendor contract application not later than 45 days after it is received if on that date the applicant is a WIC-contracted vendor and meets all of the following requirements:



(1) Submits a complete WIC vendor application with all required documents and information;

(2) Passes the required unannounced preauthorization visit within 45 days of submitting a complete application; and

(3) Completes the required in-person training within 45 days of submitting the complete application.

The application must be denied if the applicant fails to meet all of the requirements. After being denied, the applicant may reapply for a contract to act as a WIC vendor during the contracting cycle of the applicant's WIC region.

### **Third-party payment for goods and services**

(R.C. 3701.12)

The act generally prohibits the Department from paying, on or after January 1, 2018, for goods and services that are payable through third-party benefits. "Third-party benefits" is defined as any and all benefits paid by a third party to or on behalf of an individual or the individual's parent or guardian for goods or services the individual has received from the Department or one of its grantees or contractors. "Third party" is defined as any person or government entity other than the Department or a program it administers.

The act specifies two exemptions from the prohibition: (1) when the prohibition is expressly contrary to another Ohio statute or (2) when the Director determines that Department funds are required to mitigate the spread of infectious disease or are needed for exceptional circumstances.

### **Lead-safe residential rental units**

(R.C. 3742.41 and 3742.42; Repealed and Reenacted R.C. 3742.43; conforming changes in numerous other R.C. sections)

#### **Introduction**

Generally, under continuing law, if a child under six is determined to have lead poisoning, the Department or an approved board of health must conduct an investigation. If the child is six or older, the Department or board may, but is not required to, conduct the investigation. If it is determined that the possible source of the lead is a residential unit, child care facility, or school, the Department or board must conduct a risk assessment. If the risk assessment determines that the residential unit, child care facility, or school is the source of the lead, the Department or board must



issue a lead hazard control order regarding the property. The unit, facility, or school remains subject to the order until it passes a clearance examination. If the property owner fails or refuses to comply with the order, the Department or board must issue an order prohibiting the owner from allowing the property to be used as a residential unit, child care facility, or school until it passes a clearance examination.

Under prior law, with regard to any residential unit, child care facility, or school constructed before 1950, there was a legal presumption that the unit, facility, or school was not the source of lead and did not contain a lead hazard if the property owner both:

(1) Took preventative steps called essential maintenance practices; and

(2) Covered all rough, pitted, or porous horizontal surfaces of the inhabited or occupied areas within the unit, facility, or school with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, carpet, or linoleum.

The act repeals this legal presumption and all of the law associated with the presumption and essential maintenance practices, and replaces it with a new program that applies **only** to residential rental units.

### **Residential rental unit lead-safe registry**

The Director must maintain a lead-safe residential rental unit registry. The act does not specify whether a residential rental unit listed in the registry is legally presumed not to be a source of lead poisoning. An owner of a residential rental unit may register the unit on the registry as follows:

(1) If the unit was constructed before 1978 and the owner has implemented specified residential rental unit lead-safe maintenance practices established by the act;

(2) If the unit was or is constructed after January 1, 1978; or

(3) If the unit is determined to be lead free by a licensed lead inspector or lead risk assessor after an inspection of the unit.

An owner must register a residential rental unit if the unit is subject to a lead hazard control order from the Department or board and it passes a clearance examination that indicates that all lead hazards in the order are controlled. The owner of a residential rental unit that is designated as senior housing is exempt from this requirement.

A residential rental unit is a rental property containing a dwelling or any part of a building being used as an individual's private residence.



## **Residential rental unit lead-safe maintenance practices**

As indicated above, in order for a property constructed before 1978 to qualify for inclusion on the residential rental unit lead-safe registry, the owner or the owner's agent must implement certain residential rental unit lead-safe maintenance practices. Specifically the owner or agent must do all of the following:

(1) Successfully complete a training program in residential rental unit lead-safe maintenance practices approved by the Director, unless the person is a licensed lead abatement contractor or lead abatement worker;

(2) Annually perform a visual examination for deteriorated paint, underlying damage, and other conditions that may cause exposure to lead;

(3) After the visual examination, repair deteriorated paint or other building components that may cause exposure to lead and eliminate the cause of the deterioration in accordance with the work practice standards established by the U.S. EPA;

(4) Conduct post-maintenance dust sampling in accordance with rules (see below); and

(5) Maintain a record of residential rental unit lead-safe maintenance practices for at least three years that documents those practices, including the post-maintenance dust sampling.

All of the following areas of the residential rental unit are subject to the residential rental unit lead-safe maintenance practices:

(1) Interior surfaces and all common areas;

(2) Every attached or unattached structure located within the same lot line as the residential rental unit that the owner or manager considers to be associated with the operation of the residential rental unit, including garages, play equipment, and fences; and

(3) The lot or land that the residential rental unit occupies.

### **Training programs**

Residential rental unit lead-safe maintenance practices are not required to be performed by a person licensed as a lead abatement contractor or lead abatement worker under continuing law. However, after March 29, 2018, any person other than a lead abatement contractor or worker who performs the maintenance practices must



have successfully completed a training program in lead-safe maintenance practices approved by the Director.

In order to seek approval of a training program in residential rental unit lead-safe maintenance practices, a person must apply to the Director and pay a nonrefundable application fee that is established by the Director. The Director cannot establish a fee that exceeds the expense incurred in conducting an evaluation and approval of a training program. The Director must approve a training program if the applicant can show that the training program will provide written proof of completion to each person who completes the program and passes an examination; and that the program complies with any other requirements that the Director has established by rule (see below).

### **Rules**

The Director must adopt rules that establish:

- (1) Standards and procedures to be followed when registering a residential rental unit on the lead-safe residential rental unit registry (the rules must be based on U.S. EPA standards);
- (2) Procedures and criteria for approving training programs in residential rental unit lead-safe maintenance practices; and
- (3) Procedures for post-maintenance dust sampling.

### **Funding**

The Director may use money in the Lead Poisoning Prevention Fund to provide financial assistance to individuals who are unable to pay for costs associated with residential rental unit lead-safe maintenance practices. Under continuing law, the Director may use money in the Fund to provide financial assistance to individuals who are unable to pay for costs associated with obtaining lead tests and lead poisoning treatment for children under six who are not covered by private medical insurance or who are underinsured, are not eligible for Medicaid or any other government health program, and do not have access to another source of funds to cover the cost of lead tests and any indicated treatment. The act repeals a provision of law that allowed the Fund to be used to pay for costs associated with having lead abatement performed or having preventative treatments performed.

## Choose Life Fund

(R.C. 3701.65)

The act explicitly authorizes the Director to distribute money in the Choose Life Fund from a prior year that was not distributed to eligible organizations. The previously unspent money must be distributed to eligible organizations in accordance with continuing law's requirements, which the act does not change. Under the continuing law, the Fund consists of the contributions paid for Choose Life license plates. The Director must allocate money in the Fund to each county in proportion to the number of Choose Life license plates issued during the preceding year for vehicles registered in the county. The money is then paid to eligible organizations that are generally located in the county and that provide services to pregnant women residing in the county. In certain situations, the Director does not pay the entire annual allocation for a county because there is a lack of eligible organizations to receive it.

## Hospital data reporting

(Repealed R.C. 3727.33, 3727.331, 3727.34, 3727.35, 3727.36, 3727.37, 3727.38, 3727.39, 3727.391, 3727.40, and 3727.41 with conforming changes in R.C. 3727.45)

The act repeals statutory provisions establishing hospital performance measure reporting requirements and certain reporting requirements related to inpatient and outpatient services. The repealed law required each hospital to:

(1) Annually demonstrate performance in meeting inpatient and outpatient service measures specified in rules; and

(2) Annually submit the following information to the Director:

--For patients in certain diagnosis groups that are most frequently treated on an inpatient basis in the hospital: (a) the total number of patients discharged, (b) the mean, median, and range of hospital charges, (c) the mean, median, and range of length of stay, (d) the number of emergency room admissions, hospital transfer admissions, and admissions from other sources, (e) the number of patients falling into certain diagnosis group codes.

--For patients in certain categories of outpatient services most frequently provided by the hospital: (a) the mean and median of total hospital charges for the services and (b) for each category of services, the number of patients.



Hospitals had to make the submitted information available for public inspection and copying for a reasonable fee. The Director had to make it public and, within available appropriations, available on the Internet.

The act also repeals related provisions concerning verification of submitted information, privacy of names and Social Security numbers, hospital liability protections, inadmissibility of submitted information, sale of submitted information, compliance enforcement, and rulemaking.

### **OVI drug concentration technology**

(R.C. 4511.19)

The act eliminates "gas chromatography mass spectrometry" as the sole technology used to measure the concentration of marijuana metabolite for purposes of the OVI (impaired driving) law. This allows for the use of different technologies, particularly as new technologies are developed and approved by the Department.

### **Hospital nurse staffing plan**

(R.C. 3727.54)

Under continuing law, each hospital must create an evidence-based, written nursing services staffing plan guiding the assignment of all nurses in the hospital. The plan must reflect standards established by private accreditation organizations or governmental entities.<sup>79</sup>

The act requires a hospital's nursing care committee to review the plan at least every two years, instead of annually. To maintain a repository for public access, the act requires the hospital to submit a copy of its most recent plan to the Department by March 1 of every even-numbered year, beginning in 2018. The act specifies that the submitted copy is a public record.

### **State Board of Sanitarian Registration**

(R.C. 4736.01, 4736.02, 4736.03, 4736.05, and 4736.12; repealed R.C. 4736.16; conforming changes in numerous other R.C. sections; Sections 515.13 and 515.19)

#### **Elimination of the Board and transfer of authority**

The act eliminates the State Board of Sanitarian Registration and transfers to the Director its duties and powers to regulate sanitarians and sanitarians-in-training,

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<sup>79</sup> R.C. 3727.53, not in the act.



including conducting examinations and administering a continuing education program. A sanitarian, under continuing law, is a person who performs, for compensation, duties requiring specialized knowledge and skills in the field of environmental health science.

All rules, orders, and determinations of the Board continue in effect as if made by the Director, until modified or rescinded by the Director. Further, all certificates, registrations, and continuing education credit issued by the Board remain valid. Any unfinished business of the Board and any pending action or proceeding by or against the Board is transferred to the Department.

### **Sanitarian Advisory Board**

The act establishes the Sanitarian Advisory Board, which is a seven-member board that must advise the Director regarding:

- (1) The registration of sanitarians-in-training and sanitarians;
- (2) Continuing education requirements for sanitarians;
- (3) The administration of sanitarian examinations;
- (4) The education criteria for sanitarians and sanitarians-in-training; and
- (5) Any other matter that may assist the Director in regulating sanitarians and sanitarians-in-training.

The Director must appoint the Board members with the advice and consent of the Senate for terms established in accordance with rules adopted by the Director.

### **Report on cost impact**

The act requires the Director, by January 31, 2018, to submit a report to the Governor, the Speaker of the House, and the President of the Senate assessing the cost impact to the Department to regulate sanitarians. The report must include:

- (1) An analysis of the operating costs to the Department to regulate sanitarians;
- (2) An analysis of whether the costs are sufficiently covered by the revenue from sanitarian and sanitarian-in-training licensing fees; and
- (3) A recommendation of whether the fees should be decreased, increased, or remain unchanged in order to sufficiently cover the operating costs.



## Breast and Cervical Cancer Project

(R.C. 3701.144 and 3701.601)

### Eligibility

The act requires the Department to set new eligibility requirements for services provided through the Ohio Breast and Cervical Cancer Project (BCCP). It specifies that BCCP constitutes Ohio's participation in the National Breast and Cervical Cancer Early Detection Program. BCCP must be administered in accordance with the federal Breast and Cervical Cancer Mortality Prevention Act of 1990,<sup>80</sup> as well as the Department's grant agreement with the U.S. Centers for Disease Control and Prevention.

The following table describes the eligibility requirements that the Department must establish under the act for BCCP.

<b>Ohio Breast and Cervical Cancer Project Eligibility Under the Act</b>	
<b>Income</b>	Not more than 250% of the federal poverty line.
<b>Health insurance status</b>	Any of the following: <ul style="list-style-type: none"><li>• Uninsured;</li><li>• Covered by health insurance that excludes the screening or diagnostic services the woman seeks through BCCP; or</li><li>• Covered by health insurance that imposes cost sharing for the services the woman seeks through BCCP that exceeds the limit specified by the Director of Health in rules.</li></ul>
<b>Covered services</b>	<ul style="list-style-type: none"><li>• Cervical cancer screening and diagnostic services for women ages 21 to 64.</li><li>• Breast cancer screening and diagnostic services for:<ul style="list-style-type: none"><li>➢ Any woman age 40 to 64; or</li><li>➢ A woman age 25 to 39 who has been determined by a</li></ul></li></ul>

<sup>80</sup> 42 U.S.C. 300k *et seq.* (Title XV of the federal Public Health Service Act).



<b>Ohio Breast and Cervical Cancer Project Eligibility Under the Act</b>	
	physician to need breast cancer screening and diagnostic services due to the results of a clinical breast examination, the woman's family history, or other factors.

## Rules

Under the act, the Director must adopt rules specifying the cost sharing limit for each screening and diagnostic service that may be obtained through BCCP. It defines "cost sharing" as the cost to an individual insured under an individual or group insurance policy or a public employee benefit plan according to any coverage limit, copayment, coinsurance, deductible, or other out-of-pocket expense requirements imposed by the policy or plan.<sup>81</sup>

The Director may adopt other rules as necessary to implement BCCP. All rules must be adopted in accordance with the Administrative Procedure Act.

## Use of BCCP funds

(R.C. 3701.601)

The act eliminates a provision that permitted BCCP to use funds contributed to it to pay for services by other providers other than local health departments, federally qualified health centers (FQHCs), or community health centers. As a result, those funds must be used to pay only local health departments, FQHCs, and community health centers for screening, diagnostic, and outreach services. Under continuing law, BCCP is funded by donations made through an income tax refund contribution check-off box and direct personal contributions.

## Health Care Compact (VETOED)

(R.C. 190.01 and 190.02)

The Governor vetoed a provision that would have adopted "The Health Care Compact" and made Ohio a member state, along with any other state that legally joined the Compact. The Compact allows a state that seeks "to protect individual liberty and

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<sup>81</sup> See R.C. 3923.85, not in the act.



personal control over its health care decisions" to authorize its legislature with that regulatory responsibility. Any regulation by the member states is done with the goal to improve health policy in their respective jurisdictions. The Compact would have only been effective upon its adoption by at least two member states and the consent of Congress. A detailed description of the vetoed provisions is available on pages 343-346 of LSC's analysis of the House version of H.B. 49. The analysis is available online at <https://www.legislature.ohio.gov/download?key=7018&format=pdf>.

### **Smoke Free Workplace Act – research exception**

(R.C. 3794.03)

The act establishes an additional exemption from the Smoke Free Workplace Act for certain rooms in a college or university laboratory facility. Specifically, it exempts an enclosed space in a laboratory facility at an accredited college or university, when used exclusively for institutional review board-approved scientific or medical research related to the health effects of smoking or use of tobacco products. Additionally, the research must be conducted in an enclosed space that is not open to the public and that is designed to minimize exposure of nonsmokers to smoke. The act requires a notice of new research to be filed annually with the Department.

Under continuing law, private residences, rooms for sleeping in hotels, family-owned places of employment, rooms in nursing homes, retail tobacco stores, and outdoor patios are, under some circumstances, exempt from the Smoke Free Workplace Act.

### **Central intake and referral – home visiting and early intervention**

(R.C. 3701.611)

Continuing law requires the Departments of Health and Developmental Disabilities to create, by October 6, 2017, a central intake and referral system for the Part C Early Intervention Services Program and all home visiting programs in Ohio. The system must comply with federal IDEA regulations.

Through a competitive bidding process, the departments may select persons or government entities to operate the system. The act adds to and modifies the requirements that a contract they enter into with a system operator must include.

First, under the act, the selected system operator must ensure that the system:



--Serves as a single point of entry for access, assessment, and referral of families to part C early intervention services (in addition to home visiting services, as required by preexisting law); and

--Uses a standardized risk assessment and social determinants of health form or other mechanism for not only assessing each family member's risk factors and social determinants of health, but also for ensuring each family is referred to the appropriate home visiting or part C early intervention program or service. The standardized form or other mechanism must be agreed to by the Home Visiting Consortium and Early Intervention Services Advisory Council.

Second, the contract must include provisions that require the system operator to issue an annual report to the departments that includes data regarding referrals made by the central intake and referral system, costs associated with the referrals, and the quality of services received by families who were referred to the services. The report must be distributed to the Home Visiting Consortium and the Early Intervention Advisory Council.

In addition to these contractual requirements, the act requires the departments to share any funding made available to each for local outreach and child-find efforts after creating the central intake and referral system.

Lastly, the act specifies that its provisions governing the central intake and referral system do not:

--Prohibit the departments from using alternative promotional materials or names for the system;

--Require the use of Help Me Grow Program promotional materials or names; or

--Prohibit providers, central coordinators, the departments, or stakeholders from using the Help Me Grow name for promotional materials for both the home visiting and part C early intervention services components.

## **Prohibited conduct in RV parks**

(R.C. 3729.08 and 3729.14)

The act prohibits a person from using or operating a recreational vehicle park or combined park-camp (a park with both recreational vehicles and portable camping units) as a chronic nuisance property – a property where three or more nuisance activities have occurred during any consecutive six-month period. The act also prohibits a park operator from (1) allowing the park or combined park-camp to be used as a



chronic nuisance property, or (2) knowingly permitting a person with a campsite use agreement to engage in nuisance activity in the park or combined park-camp. A nuisance activity is:

- A felony drug abuse offense;
- A felony sex offense;
- A felony offense of violence; or
- A felony or specification that includes the possession or use of a deadly weapon, including an explosive or a firearm.

### **Notice**

Under the act, the local board of health of the health district in which a recreational vehicle park or combined park-camp is located must send notice to the park or camp operator if the board finds that persons associated with the property have engaged in two or more nuisance activities on the property within any consecutive six-month period. The operator must send the notice by certified mail, and the notice must:

- Specify the conduct that constitutes the nuisance activity; and
- Inform the operator that if any additional nuisance activities occur during the six-month period, the property will be declared a chronic nuisance property and the camp operator's license will be revoked.

If, after mailing the notice, the board learns of another nuisance activity occurring on the property during the six-month period, the board must immediately report to the licensing authority that the property is a chronic nuisance. The licensing authority must immediately revoke the operator's license on receipt of such information.

The license revocation provisions do not limit any other recourse permitted under law for nuisance conduct.

### **Certificates of need**

(R.C. 3702.52)

Law unchanged by the act requires a person seeking to engage in an activity regarding a long-term care facility to obtain a certificate of need (CON) from the Director if the activity is a reviewable activity. A long-term care facility is a nursing home, the portion of a facility certified as a skilled nursing facility or nursing facility for



Medicare or Medicaid, and the portion of a hospital that contains skilled nursing beds or long-term care beds. Reviewable activities that require a CON include constructing a new long-term care facility or replacing an existing one, renovating a facility at a cost of \$2 million or more, increasing bed capacity, and relocating beds. The Director must (1) issue rulings on whether a proposed project is a reviewable activity and (2) accept and consider CON applications.<sup>82</sup>

### **Expedited CON process**

The act requires an expedited review process to be administered in addition to the standard review process. It specifies that an application for which expedited review is requested must meet the same requirements as all other applications.

#### **Reviewable activity rulings**

If an expedited review is requested, a reviewable activity ruling must be issued not later than 30 days after the Director receives a complete request for a ruling. Under continuing law with standard review, the deadline is 45 days after a complete request is received.

#### **CON applications**

Under continuing law, the Director must determine whether a CON application is complete. The Director must mail the applicant a written notice that the application is complete or a written request for information not later than 30 days after receiving the application or a response from the applicant. The act provides that for expedited review applications, the Director's notice or request must be mailed not later than 14 days after receiving the application or response. The act also shortens the comment period to 21 days for expedited review applications, from 45 days for standard review.

Regarding granting or denying a CON application, the act provides that in expedited review cases, the application must be granted or denied no later than 45 days after the notice of completeness is mailed. Under continuing law with standard review, the deadline is 60 days.

### **Changes in facility ownership during monitoring period**

Law unchanged by the act requires the Director to monitor the activities of a person granted a CON during the period beginning with the granting of the CON and ending five years after implementation of the activity for which the CON is granted.

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<sup>82</sup> R.C. 3702.51, 3702.511(A), and 3702.53, none in the act.



The Director must determine whether the reviewable activity for which the CON is granted is conducted in substantial accordance with the CON.

Under continuing law, a decrease in bed capacity cannot be used as the basis for determining that a reviewable activity is not being conducted in substantial accordance with a CON. The act adds that a change in the owner or operator of the facility cannot be used as the basis for such a determination, unless the new owner or operator is associated with certain safety or licensing violations specified in continuing law.<sup>83</sup> Under this provision, the holder of a CON may transfer or sell a facility during the five-year monitoring period without the new owner or operator being required to apply for a CON and pay an application fee.

### **Program for Medically Handicapped Children**

(R.C. 3701.021)

Under continuing law, the Program for Medically Handicapped Children provides assistance to Ohio residents who are under age 21, have special health care needs, and meet medical and financial eligibility criteria. It is administered by the Department of Health's Bureau for Children with Medical Handicaps, which is why the Program is commonly referred to as "BCMh."<sup>84</sup> The Director of Health must adopt rules that specify eligibility requirements for BCMh Program providers.

The act specifies that a Medicaid provider is eligible to be a provider of the same goods and services for the BCMh Program that the provider is approved to provide for Medicaid. The act requires the Director to approve such a Medicaid provider for the BCMh Program.

### **Palliative care facilities**

(Repealed R.C. 3712.042)

The act repeals a statute regarding the licensure of palliative care facilities that was enacted inadvertently in 2016 through a drafting error in H.B. 470 of the 131st General Assembly. All other provisions regarding the licensing of those facilities had been removed from H.B. 470 before its enactment.

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<sup>83</sup> See R.C. 3702.59(B), not in the act.

<sup>84</sup> Ohio Department of Health, *Children with Medical Handicaps Program – Information for Families*, available at <https://www.odh.ohio.gov/odhprograms/cmh/cwmh/infomfam/cmhfmin1.aspx>.



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## DEPARTMENT OF HIGHER EDUCATION

### Restriction on instructional fee increases (PARTIALLY VETOED)

- Prohibits state universities, university branches, and the Northeast Ohio Medical University from increasing in-state undergraduate instructional and general fees for each of the 2017-2018 and 2018-2019 academic years.
- Would have permitted, for the 2017-2018 academic year, community colleges, state community colleges, and technical colleges to increase instructional and general fees by not more than \$10 per credit hour over what was charged in the previous academic year (VETOED).
- For the 2018-2019 academic year, permits community colleges, state community colleges, and technical colleges to increase instructional and general fees by not more than \$10 per credit hour over what was charged in the previous academic year.
- Excludes from the fee restrictions: room and board, 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, voluntary sales transactions, career services, and fees to offset the cost of providing textbooks to students.
- Would have excluded noninstructional program fees from the fee restrictions (VETOED).

### Undergraduate tuition guarantee (VETOED)

- Would have increased from 6% to 8% the limit on the one-time tuition increase a state university may apply to the first cohort under a university's tuition guarantee program (VETOED).

### Investigation of fees

- Authorizes the Chancellor of Higher Education to investigate all fees charged to students by state institutions of higher education and to prohibit state institutions from charging any fee the Chancellor determines not to be in the best interest of students.

### Textbooks

- Requires state institutions of higher education annually to report to the Efficiency Advisory Committee on efforts to reduce textbook costs for students.



- Requires state institutions to conduct an annual study of the current costs of textbooks and to submit it to the Chancellor.
- Requires the board of trustees of each state institution to adopt a textbook selection policy outlining faculty responsibilities and actions faculty may take when choosing and assigning textbooks and other instructional materials.

### **In-state tuition for transferred G.I. Bill beneficiaries**

- Qualifies for in-state tuition at state institutions of higher education persons who are receiving transferred G.I. Bill benefits from a service member who is on active duty.

### **Remedial and developmental courses**

- Applies the prescribed statutory limits on state operating subsidies for academic remedial or developmental courses only to remedial or developmental courses "completed at the main campus" of most state universities.
- Continues to exempt Central State University, Shawnee State University, Youngstown State University, any university branch campus, any community college, any state community college, and any technical college from the statutory limits.

### **Applied bachelor's programs at two-year institutions**

- Permits the Chancellor to approve community colleges, technical colleges, and state community colleges to offer applied bachelor's degrees if specified conditions are satisfied.

### **"3+1" bachelor's model**

- By June 30, 2018, requires the Chancellor to develop a "3+1" program model where a student may earn a bachelor's degree by attending a two-year state institution of higher education for three years and a state university for one year.

### **Noncredit certificate programs**

- By January 1, 2018, requires the Chancellor to create an inventory of credit and noncredit certificate programs and industry-recognized credentials offered at state institutions of higher education and Ohio technical centers that align with in-demand jobs in Ohio.



- Requires the Chancellor to give preference to certificate programs that support adult learners when awarding funds from the OhioMeansJobs Workforce Development Revolving Loan Fund.
- Increases the maximum award amount to \$250,000 (per workforce program, per year) to an institution under the OhioMeansJobs Workforce Development Revolving Loan Program.

### **Workforce compacts**

- Requires all state institutions of higher education located in the same region to enter into a workforce education and efficiency compact.
- Requires state institutions designated as "land grant colleges" under federal law (Ohio State University and Central State University) to also enter into a compact with one another to enhance collaboration.

### **Competency-based education programs**

- Permits the Chancellor to recognize or endorse the following institutions of higher education for the purpose of providing competency-based education programs: (1) a regionally accredited private, nonprofit institution created by the governors of several states, (2) a state institution, and (3) a private, nonprofit institution.

### **College credit for comparable coursework**

- Prohibits state institutions of higher education from refusing to accept college credit earned in Ohio in the past five years as a substitute for comparable coursework and establishes an assessment-based process for a student to receive credit for coursework earned more than five years ago.

### **Student assistance programs**

- Requires that an Ohio College Opportunity Grant (OCOG) be applied toward the total state cost of attendance and the student's housing and living expenses, if the student is also receiving federal veterans' education benefits under the G.I. Bill.
- Qualifies for OCOG persons with intellectual disabilities who are enrolled in comprehensive transition and postsecondary programs (degree, certificate, or nondegree programs involving academic, career, technical, and independent living instruction) certified by the U.S. Department of Education.
- Authorizes the Adjutant General and Chancellor, for purposes of the Ohio National Guard Scholarship Program, to require that federal educational financial assistance



that is based on military service be applied to a recipient's eligible expenses first, before the scholarship funds.

- Repeals the Workforce Grant Program.
- Renames the State Need-Based Financial Aid Reconciliation Fund as the State Financial Aid Reconciliation Fund and makes miscellaneous changes regarding its use.

### **Tenure at state universities**

- Requires the board of trustees of each state university to review the university's policy on faculty tenure and update it to promote excellence in instruction, research, service, commercialization, or any combination of those areas.
- Beginning July 1, 2018, requires a state university to include multiple pathways for tenure in its policy in order to receive Third Frontier research funds from the Department of Higher Education.

### **Paid leave donation programs**

- Allows a state institution of higher education to establish a program under which an employee may donate accrued but unused paid leave to another employee who has a critical need for it because of circumstances such as a serious illness or a family member's serious illness.

### **Financial interests in intellectual property**

- Requires state institutions of higher education to adopt rules under which an employee may receive a financial interest in intellectual property.

### **OSU utility agreement**

- Allows the Columbus campus of the Ohio State University (OSU Columbus) to issue a request for proposals and select a special purpose vehicle with whom to enter into a utility agreement to improve the energy efficiency of the OSU Columbus utility system, beginning in calendar year 2017.
- Exempts OSU Columbus and the selected special purpose vehicle from several aspects of law regarding the sales and use tax, public utilities regulation, disposal of state agency excess or surplus supplies, construction management contracts, public improvements, and use of certain proceeds.



- Provides that a special purpose vehicle cannot own any utility services delivered to OSU Columbus by a public utility, and that OSU Columbus must be the customer of record for any public utility providing service to it while the utility agreement is in effect.
- Prohibits OSU Columbus or the special purpose vehicle from selling electricity generated by the utility system to any customer outside the system, unless otherwise permitted under federal and state laws and the rules of the Public Utilities Commission of Ohio (PUCO).
- Provides that OSU Columbus is not exempt from any applicable public utilities tariffs or PUCO rules or any other applicable federal or state law.

### **University housing, dining, and recreational facilities**

- Permits a university housing commission to develop or redevelop housing, dining, and recreation (HDR) facilities on a property site within or outside the political subdivision in which the university's administrative offices are principally located.
- Applies all of the following to certain HDR facility property sites located outside the political subdivision:
  - HDR uses permitted under continuing law are unconditionally permitted on the property sites;
  - Development may accommodate population and structural densities exhibited on other university or university housing commission property;
  - Land use laws of local subdivisions, subdivision regulations, and other similar laws cannot prohibit, condition, limit, or impair development of the HDR facilities on the property sites.

### **Lease-rental payments**

- Repeals the Chancellor's duties regarding lease-rental payments to the Public Facilities Commission to pay for facilities for state institutions of higher education.

### **Reports, studies, and initiatives**

- Codifies a provision that requires the Chancellor to maintain an Efficiency Advisory Committee and provide an annual report compiling efficiency reports from all state institutions of higher education.



- Requires co-located state institutions of higher education to annually review and report their best practices and shared services to the Efficiency Advisory Committee, and requires the Committee to include co-location information in its annual report.
- Revises the content and timing of the course and program reviews required of state institutions of higher education.
- Requires each state university president to issue an annual report, by December 31, on the number of students who require remedial education, the costs of remediation, and other related information.
- Requires the Chancellor, in conjunction with the Department of Education, to submit an annual report on the progress the state is making in "Attainment Goal 2025."
- Requires the Chancellor to work with state institutions of higher education, Ohio technical centers, and industry partners to develop program models leading to credentials in in-demand occupations.
- Requires the Chancellor to support the continued development of the "Ohio Innovation Exchange" to showcase the research expertise of Ohio's university and college faculty in a variety of fields and to identify institutional research equipment available in the state.
- Requires the Chancellor, Director of the Governor's Office of Workforce Transformation, and Superintendent of Public Instruction to develop a program targeted at increasing the number of students who pursue degrees in advanced technology and cyber security.
- Creates the Joint Committee on Ohio College Affordability to study and develop strategies to reduce the cost of higher education.

## Terms

As used in this portion of the analysis:

A **state institution of higher education** means any of the 13 state universities, the Northeast Ohio Medical University, 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, 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 (PARTIALLY VETOED)**

(Section 381.160)

For FYs 2018 and 2019 (the 2017-2018 and 2018-2019 academic years), the act prohibits each state university, university branch, and the Northeast Ohio Medical University from increasing its in-state undergraduate instructional and general fees over what the institution charged for the 2016-2017 academic year. Moreover, for the 2018-2019 academic year, the act limits community colleges, state community colleges, and technical colleges to not more than a \$10 per credit hour increase in their instructional and general fees over what was charged for the previous academic year. The Governor vetoed the portion of the act that would have allowed these two-year state institutions to increase instructional and general fees by up to \$10 per credit hour for the 2017-2018 academic year. According to the Governor's veto message, the intent of that veto is to prohibit that increase for the 2017-2018 academic year, but to allow it for the 2018-2019 academic year.

The act's limits on fee increases explicitly *exclude* the following:

- (1) Room and board;
- (2) Student health insurance;
- (3) Fees for auxiliary goods or services provided to students at the cost incurred to the institution;
- (4) Fees assessed to students as a pass-through for licensure and certification exams;
- (5) Fees in elective courses associated with travel experiences;
- (6) Fines;
- (7) Voluntary sales transactions; and
- (8) Career services.



The Governor vetoed a provision that would have excluded noninstructional program fees.

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 as the Chancellor identifies.

Finally, the act specifies that the prohibition on increases does not apply to institutions that participate in an undergraduate tuition guarantee program (see below).

### **Undergraduate tuition guarantee (VETOED)**

(R.C. 3345.48)

The Governor vetoed a provision that would have increased from 6% to 8% the limit on the one-time tuition increase a state university could apply to the first cohort under an undergraduate tuition guarantee program.

Under continuing law, each state university may establish a program whereby each entering cohort of undergraduate students pay 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. The act would have increased the maximum increase for just the first cohort under a university's program. For all subsequent cohorts, under law unchanged by the act, the university may increase the rates one time by the sum of the five-year average rate of inflation and the amount the General Assembly permits increases on in-state undergraduate instructional and general fees for the fiscal year.

### **Investigation of fees**

(R.C. 3333.0416)

The act authorizes the Chancellor to investigate all fees charged to students by state institutions of higher education. If the Chancellor finds that the fee is not in the best interest of the students, the Chancellor may prohibit the state institution from charging that fee. However, if the Chancellor prohibits a fee, the institution may seek approval from the Controlling Board to charge it.



## **Higher education textbook study**

(R.C. 3333.951(C) and (D))

The act requires each state institution of higher education annually to report to the Efficiency Advisory Committee on its efforts to reduce textbook costs to students. Also, each state institution must conduct a study to determine current textbook costs for its students and submit that study to the Chancellor annually by a date prescribed by the Chancellor.

## **Textbook selection policy**

(R.C. 3345.025)

The act requires the board of trustees of each state institution of higher education to adopt a textbook selection policy. The policy must include faculty responsibilities and actions faculty may take in selecting and assigning textbooks and other instructional materials.

## **In-state tuition for transferred G.I. Bill beneficiaries**

(R.C. 3333.31)

The act qualifies a person for in-state tuition at state institutions of higher education, if that person is receiving transferred federal veterans' education benefits (either under the Montgomery G.I. Bill or the Post 9/11 G.I. Bill) from a member of the Armed Forces who is on active duty. As under continuing law, in order to qualify for in-state tuition, the person receiving the transferred benefits must live in the state as of the first day of a term of enrollment at the state institution.

Persons receiving transferred G.I. Bill benefits from a veteran who served at least 90 days on active duty, but has since completed service, continue to qualify for in-state tuition under the act.

## **Remedial and developmental courses**

(R.C. 3345.061)

The act specifies that the prescribed statutory limits on state operating subsidies that most state universities (see the exemptions below) may receive for academic remedial or developmental courses apply only to academic remedial or developmental courses "completed at the main campus" of those universities. These limits are as follows:



(1) In the 2014-2015 and 2015-2016 academic years, 3% of the total undergraduate credit hours provided by the university at its main campus;

(2) In the 2016-2017 academic year, 15% of the first-year full-time equivalent students enrolled at the university's main campus;

(3) In the 2017-2018 academic year, 10% of the first-year full-time equivalent students enrolled at the university's main campus;

(4) In the 2018-2019 academic year, 5% of the first-year full-time equivalent students enrolled at the university's main campus.

Under continuing law, the limits do not apply to state operating subsidies for academic remedial or developmental courses paid to (1) Central State University, (2) Shawnee State University, (3) Youngstown State University, (4) any university branch, (5) any community college, (6) any state community college, or (7) any technical college.

### **Applied bachelor's programs at two-year institutions**

(R.C. 3333.051 with conforming changes in R.C. 3354.01, 3354.09, 3357.01, 3357.09, 3357.19, 3358.01, and 3358.08)

The act permits the Chancellor to authorize community colleges, technical colleges, and state community colleges to offer applied bachelor's degree programs. An "applied bachelor's degree" is a bachelor's degree that (1) is specifically designed for an individual who holds an associate of applied science degree, or the equivalent, in order to maximize application of the individual's technical course credits toward the bachelor's degree and (2) is based on a curriculum that incorporates both theoretical and applied knowledge and skills in a specific technical field.

Under the act, the Chancellor may approve a program if it demonstrates all of the following:

(1) Evidence of an agreement between the college and a regional business or industry to train students in an in-demand field and to employ students upon successful completion of the program;

(2) That the workforce needs of the regional business or industry is in an in-demand field with long-term sustainability based upon data provided by the Governor's Office of Workforce Transformation;

(3) Supporting data that identifies the specific workforce need the program will address;



(4) The absence of a bachelor's degree program that meets the workforce needs addressed by the proposed program offered by a state university or private nonprofit college; and

(5) Willingness of an industry partner to offer workplace-based learning and employment opportunities to students enrolled in the proposed program.

The Chancellor also may approve a program that does not meet the criteria described above if the program clearly demonstrates a unique approach to benefit the state's system of higher education in the state, as determined by the Chancellor.

Before approving a program, the Chancellor must consult with the Governor's Office of Workforce Transformation, the Inter-University Council of Ohio, the Ohio Association of Community Colleges, and the Association of Independent Colleges and Universities of Ohio, or any successor to those organizations.

### **"3+1" bachelor's model**

(Section 381.570)

By June 30, 2018, the act requires the Chancellor, in consultation with the Inter-University Council of Ohio and the Ohio Association of Community Colleges, to develop a "3+1" baccalaureate degree program model. The model must outline how a student may complete three academic years, or 90 semester credit hours, at a state community college, community college, or technical college and then transfer to a state university to complete the final academic year, or 30 semester credit hours, or the remainder of the degree program.

When developing the model, the Chancellor must seek input from administrators of state institutions of higher education that are currently participating in a 3+1 program, as well as faculty leaders in the academic fields or disciplines under consideration for the program. Further, the Chancellor must evaluate existing 3+1 programs for their cost effectiveness for students.

### **Noncredit certificate programs**

(R.C. 3333.94; Sections 610.50 and 610.51 (amending Section 2 of S.B. 1 of the 130th G.A.))

By January 1, 2018, the act requires the Chancellor to create an inventory of credit and noncredit certificate programs and industry-recognized credentials offered at state institutions of higher education and Ohio technical centers that align with in-demand jobs in the state.



The act also does the following with regard to the OhioMeansJobs Workforce Development Revolving Loan Program and Fund:

(1) Specifies that, when awarding funds from the Fund, the Chancellor must give preference to certificate programs that support adult learners and are included in the inventory created by the Chancellor (see above);

(2) Adds noncredit certificate programs that align with in-demand jobs to the eligible workforce training programs under the Program; and

(3) Increases the maximum award amount, from \$100,000 to \$250,000 (per workforce program, per year), to an institution under the Program.

### **Workforce compacts**

(R.C. 3345.59)

By June 30, 2018, the act requires that all state institutions of higher education located in the same region of the state (as defined by the Chancellor) enter into a compact to (1) examine unnecessary duplication of programs, (2) develop strategies to address the region's workforce education needs and to promote alternative educational pathways, (3) reduce operational and administrative costs, (4) enhance collaboration and sharing of resources and curriculum, and (5) improve methods for efficiency and delivery of learning opportunities.

In addition to entering into regional compacts, the act requires state institutions designated as "land grant colleges" under federal law to enter into a compact with one another to enhance collaboration. Only Ohio State University and Central State University are designated as "land grant colleges."

State institutions are permitted to join multiple compacts beyond those that they are required to join under the act. Additionally, there is no maximum on the number of state institutions that may join each compact.

Each state institution must include, as part of its annual efficiency report to the Chancellor, the efficiencies produced as a result of each of the institution's compacts.

### **Competency-based education programs**

(R.C. 3333.45)

The act authorizes the Chancellor to recognize or endorse an eligible institution for providing competency-based education programs, where students may receive



credit by demonstrating skills and knowledge in required subject areas. An "eligible institution of higher education" is any of the following:

--A regionally accredited private, nonprofit institution of higher education that is created by the governors of several states, where at least one governor from a participating state is a member of the institution's board of trustees;

--A state institution of higher education; or

--A private, nonprofit institution of higher education.

In recognizing or endorsing an eligible institution that is created by the governors of several states, the act permits the Chancellor to specify (1) the eligibility of the institution's students for state student financial aid programs, (2) any articulation and transfer policies of the Chancellor that apply to the institution, and (3) the reporting requirements for the institution. However, the act prohibits the Chancellor from providing any state operating or capital assistance to this type of institution for the purpose of providing competency-based education in Ohio.

Additionally, in recognizing or endorsing *any* eligible institution under this provision, the Chancellor may (1) recognize competency-based education as an important component of Ohio's higher education system, (2) facilitate opportunities to share best practices on delivery of competency-based education and eliminate any unnecessary barriers to such delivery, and (3) establish any other requirements that the Chancellor determines are in Ohio's best interests.

### **College credit for comparable coursework**

(R.C. 3345.58)

The act prohibits state institutions of higher education from refusing to accept college credit earned in Ohio within the past five years as a substitute for comparable coursework offered at the institution. This includes credit earned in advanced or upper level coursework, which must be accepted as a substitute for comparable core or lower level coursework. For college credit earned in Ohio more than five years ago, the act requires state institutions to (1) permit the student to take a competency-based assessment in the relevant subject area, and (2) if the student passes the assessment, to excuse the student from completing the course and grant the student credit for that course.



## **Student assistance programs**

### **OCOG for G.I. Bill recipients**

(R.C. 3333.122)

The act requires that, if the recipient of an Ohio College Opportunity Grant (OCOG) is also receiving federal veterans' education benefits under the Montgomery G.I. Bill or the Post 9/11 G.I. Bill, the student's OCOG award must be applied to both (1) the total state cost of attendance, *and* (2) the student's housing costs and living expenses. The act further specifies that living expenses include "reasonable costs for room and board."

Under continuing law, an OCOG award generally cannot exceed the total state cost of attendance, unless the student is an eligible foster youth attending a two-year institution of higher education. The state cost of attendance is defined as "the average cost to a student when attending an Ohio institution of higher education" as calculated by the Chancellor.<sup>85</sup>

### **OCOG for persons with intellectual disabilities**

(R.C. 3333.122)

The act qualifies a person with intellectual disabilities enrolled in a comprehensive transition and postsecondary program certified by the U.S. Department of Education for OCOG. A comprehensive transition and postsecondary program, as defined by federal law, is a degree, certificate, or nondegree program that is designed to support persons with intellectual disabilities. The individuals receive academic, career, technical, and independent living instruction at an institution of higher education in order to prepare for gainful employment.<sup>86</sup>

### **Ohio National Guard scholarships**

(R.C. 5919.34)

The act authorizes the Adjutant General and the Chancellor to jointly adopt rules requiring an applicant for the Ohio National Guard Scholarship Program to use federal educational financial assistance programs, including programs offered by the U.S. Department of Defense, that are available based on the applicant's military service. If the rules are adopted, any financial assistance received under those federal programs must be applied first to the recipient's eligible expenses, and then any funds received

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<sup>85</sup> O.A.C. 3333-1-09.1(B)(4).

<sup>86</sup> 20 U.S.C. 1140.



under the National Guard Scholarship must be applied to the remaining expenses. Essentially, the recipient's federal financial assistance is the "first payer" for the recipient's expenses, while the National Guard Scholarship is the "second payer."

A provision of continuing law, unchanged by the act, prohibits a recipient's scholarship from being reduced by the amount of federal veterans' education benefits received under the Montgomery G.I. Bill. It is unclear how this provision is affected by the act's provisions.

### **Workforce Grant Program**

(Repealed R.C. 3333.93; conforming change in R.C. 6301.11)

The act repeals the Workforce Grant Program. This Program provided funds to public or private institutions of higher education or Ohio technical centers to make grants to eligible students pursuing degrees, certificates, or licenses for in-demand jobs.

### **State Financial Aid Reconciliation Fund**

(R.C. 3333.121)

The act revises the State Need-Based Financial Aid Reconciliation Fund as follows:

(1) Specifies that the Fund consists of refunds of state financial aid payments disbursed by the Department of Higher Education for programs that it is responsible for administering, instead of refunds of payments under the Ohio College Opportunity Grant (OCOG) Program and the former Ohio Instructional Grant (OIG) Program;

(2) Requires the Chancellor to use any revenues credited to the Fund to pay obligations for "state financial aid programs," instead of prior-year obligations from the OIG and OCOG programs; and

(3) Renames the Fund as the "State Financial Aid Reconciliation Fund."

### **Tenure at state universities**

(R.C. 3345.45)

The act requires the board of trustees of each state university to review the university's policy on faculty tenure and update it to promote excellence in instruction, research, service, commercialization, or any combination of those areas. Further, beginning January 1, 2018, each state university must include multiple pathways in its faculty tenure policy in order to receive Third Frontier research funds from the



Department. The act specifies that a commercialization pathway may be one of the included pathways.

### **Paid leave donation programs**

(R.C. 3345.57)

The act allows a state institution of higher education to establish a program under which an employee of the institution may donate accrued but unused paid leave to another employee who has no unused paid leave and who has a critical need for it because of circumstances such as a serious illness or an immediate family member's serious illness. If a state institution establishes a leave donation program, it must adopt rules in accordance with the Administrative Procedure Act to provide for the program's administration, including provisions that identify the circumstances under which leave may be donated and the amount, types, and value of leave that may be donated.

### **Financial interests in intellectual property**

(R.C. 3345.14)

The act requires the board of trustees of each state institution of higher education to adopt rules prescribing when an employee may solicit or accept, and when someone may give to that employee, a financial interest in any association to which the board has transferred its interests in intellectual property. Under prior law, adoption of these rules was permissive.

Under continuing law each institution owns all of the rights and legal interests in discoveries, inventions, or patents that result from research conducted at the institution, including by employees acting within the scope of their employment, unless the institution assigns its interests in discoveries to others (such as faculty members, students, or firms in which faculty members or students have ownership interests).

### **OSU utility agreement**

(Section 749.20)

The act authorizes the Columbus campus of the Ohio State University (OSU Columbus), beginning in calendar year 2017, to enter into a utility agreement with a special purpose vehicle to operate, develop, and increase the energy efficiency of the utility system. It defines "utility system" as the university-owned system for producing, transforming, or distributing one or more of the following to serve OSU Columbus, and intended solely for consumption by OSU Columbus or OSU Columbus' lessees: power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not



connected with highway drainage, or any other similar commodity. The definition includes any building, structure, or facility owned or leased by OSU Columbus that is on real property (1) OSU Columbus owns or leases, and (2) behind the meter of the public utility service provider serving OSU Columbus.

The act specifies that the utility system cannot be used to provide or offer communications services. It defines "communications services" as any of the following:

- Telecommunications service, as defined under federal law;<sup>87</sup>
- Cable service, as defined under federal law;<sup>88</sup>
- Information service, as defined under federal law;<sup>89</sup>
- Wireless service;
- Any other one-way or two-way communication service, including Internet access service.

The act further specifies that the utility agreement cannot permit the special purpose vehicle to take ownership of electricity or natural gas delivered by a public utility. In fact, the act provides that nothing in it should be construed to allow the special purpose vehicle to take ownership of any utility services delivered to the Columbus campus by a public utility. Additionally, nothing in the act should be construed to allow OSU Columbus or the special purpose vehicle to sell electricity generated by the utility system to any customer outside the system, unless OSU Columbus or the special purpose vehicle complies with all applicable state and federal laws and rules of the Public Utilities Commission of Ohio (PUCO). OSU Columbus, at all times during the utility agreement, must be the customer of record for any public utility providing utility service to it.

### **Request for proposals**

OSU Columbus must issue a request for proposals (RFP) for managing, maintaining, and improving the utility system and meeting certain energy use and sustainability requirements for the system. The RFP must include all relevant information, including a general description of the project, the proposal submission

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<sup>87</sup> 47 U.S.C. 153(53).

<sup>88</sup> 47 U.S.C. 522(6).

<sup>89</sup> 47 U.S.C. 153(24).



deadline, the information to be included in the proposal, selection criteria, and the timeline for selection.

OSU Columbus may consider any criteria it considers appropriate in evaluating the proposals, including:

- The technical ability of the special purpose vehicle based on its key personnel, corporate structure, organization, and staffing plan;
- The financial ability of the special purpose vehicle based on its approach to financing, sources and uses of funds, and debt structuring;
- The energy conservation measures proposed by the special purpose vehicle.

OSU Columbus may evaluate and select a proposal based on qualifications, best value, or both. The act also permits the evaluation and selection to be done through negotiation. OSU Columbus may accept or reject any or all proposals in whole or in part.

Upon selecting a proposal, OSU Columbus may enter into an agreement with the selected special purpose vehicle for an amount of time and under other terms and conditions as it determines are necessary and appropriate. The special purpose vehicle is to be paid under the agreement by fees or other consideration OSU Columbus determines.

## **Exemptions**

### **Taxes**

Under the act, OSU Columbus-owned property that is leased to the special purpose vehicle is to continue to be tax-exempt, as long as the property is used to operate the utility system for the benefit of OSU Columbus and OSU Columbus' lessees under the utility agreement. The act provides that, for purposes of the sales and use tax, the following are deemed to be sold to OSU Columbus under the agreement: (1) building and construction materials to be incorporated into the utility system, and (2) materials related to energy conservation measures to be developed by the special purpose vehicle.

### **Public utilities**

The act provides that, as long as the utility system serves only OSU Columbus-owned or OSU Columbus-leased buildings, structures, and facilities, the special purpose vehicle will not be considered any of the following:



- A "public utility" under the law governing PUCO's general powers (R.C. Chapter 4905.);
- An "electric services company," for purposes of the competitive electric retail service law (R.C. Chapter 4928.);
- A "retail natural gas supplier," for purposes of the retail natural gas law (R.C. Chapter 4929.);
- An "electric supplier" under the law governing electric and other companies (R.C. Chapter 4933.);

The act also provides that, to the extent the utility system serves only OSU Columbus or OSU Columbus' lessees, OSU Columbus and the special purpose vehicle are exempt from the requirement that certain entities must receive certification from PUCO before providing competitive retail electric service.

Also, OSU Columbus is not to be considered a "public utility property lessor," for purposes of the public utilities tax law (R.C. Chapter 5727.). The act provides, however, that nothing in the act exempts OSU Columbus from complying with all of the following:

- Any applicable tariffs of the public utilities from which OSU Columbus receives utility services;
- Any applicable rules of PUCO; and
- Any other applicable state or federal law.

#### **Excess or surplus supplies**

The act provides that personal property related to the utility system that is sold or leased to a special purpose vehicle pursuant to the agreement must not be considered excess or surplus supplies for the sole purpose of determining the applicability of Ohio law regulating the disposal of state agency excess or surplus supplies. It also specifies that personal property to be sold to the special purpose vehicle does not include any installed components, in whole or in part, of the utility system.

#### **Other exemptions**

The act specifies that Ohio law governing (1) construction management contracts with public authorities, (2) public improvements, and (3) energy conservation contracts entered into with state institution of higher education boards of trustees, do not apply to any of the following:



- OSU Columbus' evaluation or selection of, or contract with, a special purpose vehicle;
- Performance of the following under the utility agreement, provided that the special purpose vehicle uses a best value or competitive selection process to identify the provider: design, demolition, project management, construction, repair, replacement, remodeling, renovation, reconstruction, enlargement, addition, alteration, painting, or structural or other improvements;
- Heating, cooling, or ventilating plants and other equipment installed or materials supplied for any of the activities performed under the agreement.

The act also specifies that the special purpose vehicle, when selecting the energy conservation measure provider named in the agreement, does not need to practice best value or competitive selection.

Under the act, OSU Columbus is exempt from being required to hold, invest, or use the proceeds of the utility agreement for the same purposes for which proceeds may be used under the laws regarding a university's ability to: (1) acquire housing and dining facilities or auxiliary or education facilities, and (2) establish or develop entrepreneurial projects. This exemption applies notwithstanding continuing Ohio law, unchanged by the act, that requires state universities to use proceeds from the sale or lease of certain property for the same purposes for which proceeds or borrowings may be used for the above two actions.<sup>90</sup>

### **Termination**

The act specifies that authority provided regarding the utility agreement requirements terminates on the date that all obligations under the agreement have been completed.

### **University housing, dining, and recreation facilities**

(R.C. 3347.091)

The act provides that buildings or real property a university housing commission identifies as a property site to develop or redevelop for housing, dining, and recreation (HDR) facilities, need not be situated within the political subdivision in which the university's administrative offices are principally located.

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<sup>90</sup> R.C. 3345.12(Q), not in the act.

If the property site is located entirely outside of the political subdivision, and at least 33% of the property site's boundary is contiguous (the boundary need not be continuous) to other university-owned or leased property, all of the following apply:

(1) HDR uses permitted under continuing law are unconditionally permitted on the property site.

(2) The property site may be developed to accommodate population and structural densities that match other developed real property and buildings owned or leased by the university or commission for the HDR purposes.

(3) No land use laws enacted by a municipality, township, city, or county; subdivision regulations; or similar lawfully binding provisions may be enforced, to the extent that they prohibit, condition, limit, or impair either the development of a property site or structural types or dimensions proposed for such purposes.

The act states that the HDR provisions are not to be construed to impair or prohibit a commission or university from acquiring title to real property or buildings leased or proposed to be leased in accordance with those provisions.

University housing commissions exist for each of the 13 state universities.<sup>91</sup>

## **Lease-rental payments**

(Repealed R.C. 3333.13)

The act repeals the Chancellor's duties regarding lease-rental payments to the Public Facilities Commission to pay for facilities for state institutions of higher education. Those duties are no longer necessary because the bonds issued to pay for those facilities, and for which the lease-rental payments were made, have been retired.

## **Reports, studies, and initiatives**

### **Efficiency Advisory Committee and reports**

(R.C. 3333.95, as codified in Sections 610.10 and 610.11)

The act codifies a 2015 provision that requires the Chancellor to maintain an Efficiency Advisory Committee and provide an annual report by December 31 compiling efficiency reports from all state institutions of higher education. In doing so, it specifies that the Committee's purpose is generating institutional efficiency reports

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<sup>91</sup> R.C. 3347.01, not in the act.



(rather than optimal efficiency plans) and eliminates the requirement that the Chancellor's report benchmark efficiency gains realized over the previous year.

It also makes a technical change regarding the submission of the report, by requiring it to be submitted to the President of the Senate and the Speaker of the House (rather than the General Assembly), in addition to the Office of Budget and Management and the Governor.

Regarding the content of the efficiency reports that each state institution must submit to the Chancellor, and that must be compiled in the Chancellor's report, the act eliminates the requirement that each do the following:

(1) Identify efficiencies at the respective institution;

(2) Quantify revenue enhancements, reallocation of resources, expense reductions, and cost avoidance where possible in the areas of general operational functions, academic program delivery, energy usage, and information technology and procurement reforms; and

(3) Particularly emphasize areas where these reforms are demonstrating savings or cost avoidance to students.

### **Co-located campus report**

(R.C. 3333.951)

The act requires co-located state institutions of higher education to annually review and report, to the Efficiency Advisory Committee, their best practices and shared services in order to improve academic and other services and reduce costs for students. The Committee, then, must include the information from co-located state institutions in its annual report.

Co-located institutions are two-year institutions (such as a community college and a university branch) that share a campus.

### **Course and program reviews**

(R.C. 3345.35)

Under continuing law, each state institution of higher education, every five years, must evaluate all courses and programs it offers. The act eliminates the portion of the review that was based on student performance and, instead, requires each institution to evaluate all courses and programs based on enrollment and duplication with other state institutions within a geographic region, as determined by the



Chancellor. The act also requires each institution to evaluate the benefits of collaboration to deliver a duplicative program (rather than a low-enrollment course as under former law). Each institution must provide a summary of recommended actions, including consideration of collaboration with other state institutions, for courses and programs with low enrollment.

The first review under the revised provisions must be completed by December 31, 2017. The findings may be submitted as an addendum to those that were submitted prior to January 1, 2016. Additionally, each institution, in order to fulfill its reporting requirement, may submit its program and course review as part of its annual report to the Efficiency Advisory Committee.

Finally, the act changes the date by which the board of trustees of each state institution must evaluate all courses and programs from every fifth January 1 to every fifth September 1.

### **College remediation report**

(R.C. 3345.062)

The act requires each state university president, annually by December 31, to issue a report regarding the remediation of students. The report must include the number of students who require remedial education, the cost and specific areas of remediation the university provides, and causes for remediation. Each president must present the findings to the university's board of trustees and submit a copy to the Chancellor and the Superintendent of Public Instruction.

### **Annual report of "Attainment Goal 2025"**

(R.C. 3333.0415)

Beginning in 2018, the act requires the Chancellor, in collaboration with the Department of Education, to prepare an annual report regarding the progress the state is making in increasing the percentage of adults in the state with a college degree, industry certificate, or other postsecondary credential to 65% by the year 2025. The Chancellor must submit an electronic copy of the report to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House.

### **Program models, credentials for in-demand occupations**

(Section 381.590)

The act requires the Chancellor to work with state institutions of higher education, Ohio technical centers, and industry partners to develop program models to



increase continuing education and noncredit program offerings that lead to credentials in the state's in-demand occupations. The models must include project-based learning.

### **Ohio Innovation Exchange**

(Section 381.580)

The act requires the Chancellor to support the continued development of the Ohio Innovation Exchange for the purpose of (1) showcasing the research expertise of Ohio's university and college faculty in engineering, biomedicine, and information technology, and other fields of study, and (2) identifying institutional research equipment available in the state.

The "Ohio Innovation Exchange" is an initiative of the Department of Higher Education developed jointly by Case Western Reserve University, Ohio University, the Ohio State University, and the University of Cincinnati, in consultation with the Ohio Manufacturing Institute, that provides access to faculty profiles and resources.<sup>92</sup>

### **Program to increase degrees in technology and cyber security**

(Section 733.50)

Under the act, the Chancellor, in consultation with the Director of the Governor's Office of Workforce Transformation and the Superintendent of Public Instruction, must work with the business community and institutions of higher education to develop a program targeted at increasing the number of high school students who pursue certificates or degrees in advanced technology and cyber security.

### **Joint Committee on Ohio College Affordability**

(Section 757.130)

The act creates the Joint Committee on Ohio College Affordability. The Committee is charged with studying and developing strategies to reduce the cost of attending college in Ohio. In doing so, it must consult with the Chancellor and representatives of colleges and universities.

The Committee must hold its first meeting by November 28, 2017, and meet at the members' discretion thereafter. By September 29, 2018, the Committee must submit a report on its findings and recommendations to the Governor and General Assembly. The Committee ceases to exist after submitting the report.

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<sup>92</sup> More information about the "Ohio Innovation Exchange" is available at <https://www.ohioinnovationexchange.org/>.



The Committee consists of five members of the Senate and five members of the House. No more than three members from each chamber may be members of the same political party. The President of the Senate and Speaker of the House must appoint the members from their respective chambers by October 29, 2017.



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## OFFICE OF THE INSPECTOR GENERAL

- Extends the term of the current Inspector General by two years to end January 11, 2021, instead of January 13, 2019, and modifies the general term of the Inspector General to begin every four years thereafter on the second Monday of January.

### Term of the Inspector General

(R.C. 121.48)

The act extends the term of the current Inspector General by two years to end January 11, 2021, instead of January 13, 2019, and modifies the general term of the Inspector General to begin every four years thereafter on the second Monday of January. Under prior law, the Inspector General's term ran in conjunction with the Governor's term beginning on the second Monday of January.



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## DEPARTMENT OF INSURANCE

### **Suspension of open enrollment and other insurance programs**

- Extends from January 1, 2018, to January 1, 2022, the suspension of Ohio's Open Enrollment Program, Ohio's Health Reinsurance Program, and conversion options under an existing health benefit plan.
- Requires that if sections of the federal Patient Protection and Affordable Care Act of 2010 (ACA) related to health insurance coverage become ineffective before the suspension expires on January 1, 2022, the suspended sections again become operational.

### **Prior authorization**

- Exempts dental benefits offered as a part of a health benefit plan from prior authorization requirements imposed on health plan issuers.

### **Health insuring corporation quality assurance**

- Enables a health insuring corporation to use an accreditation from the Accreditation Association for Ambulatory Health Care to meet quality assurance program requirements.

### **Education on mental health, addiction parity**

- Requires the Superintendent of Insurance, in consultation with the Director of Mental Health and Addiction Services, to develop consumer education on mental health and addiction services insurance parity.
- Requires the Superintendent and Director to establish a consumer hotline to help consumers understand their insurance benefits as part of this consumer education.
- Requires the departments to jointly report to the General Assembly annually on their efforts under the program.

### **Notice of cancellation of automobile insurance**

- Authorizes an insurer to send notice of cancellation along with a bill if the cancellation is for nonpayment of premiums.



## Application for ACA waiver

- Requires the Superintendent to apply, by January 31, 2018, to the U.S. Secretary of Health and Human Services and the U.S. Secretary of the Treasury for an ACA innovative waiver regarding health insurance coverage in Ohio as mandated under continuing Insurance Law.

## Suspension of open enrollment and other insurance programs

(Sections 610.53 and 610.54 (amending Section 3 of S.B. 9 of the 130th G.A.))

The act extends from January 1, 2018, to January 1, 2022, the suspension of certain programs and requirements under Ohio's Insurance Law. Section 3 of S.B. 9 of the 130th General Assembly suspends, beginning January 1, 2014, the operation of the following programs:

- Ohio's Open Enrollment Program;
- Ohio's Health Reinsurance Program;
- Option for conversion from a group to individual contract under an existing contract with a health insuring corporation (HIC);
- Option for conversion from a nongroup contract to a contract issued on a direct payment basis under an existing contract with a HIC;
- Option for conversion from a group policy to an individual policy under an existing policy with a sickness and accident insurer.

Under the federal Patient Protection and Affordable Care Act of 2010 (ACA), because of the guaranteed availability of coverage in the individual and group markets, the programs suspended by S.B. 9, and outlined above, appear to be duplicative of the federal programs.<sup>93</sup> If the guaranteed availability of coverage and the requirements related to health insurance coverage under the ACA become ineffective prior to the expiration of the suspension, the suspended programs outlined above, in either their present form or as they are later amended, again become operational.

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<sup>93</sup> 42 U.S.C. 300gg-1 and 300gg-6.



## **Prior authorization requirements**

(R.C. 1751.72 and 3923.041)

The act exempts dental benefits offered as a part of a health benefit plan from deadlines and standards imposed on health plan issuers in relation to prior authorization requirements. A health plan issuer includes HICs, sickness and accident insurers, public employee benefit plans, and multiple employee welfare arrangements.<sup>94</sup> A prior authorization requirement is any requirement that coverage of a health service, product, or procedure is dependent on a covered individual receiving approval from the health plan issuer prior to delivery of the service, product, or procedure. Continuing law, unchanged by the act, requires that if a health plan issuer implements a prior authorization requirement, that issuer must meet certain deadlines and other standards when implementing that requirement. Under the act, these deadlines and standards would not apply to any prior authorization requirement implemented in relation to a dental benefit.

## **Health insuring corporation quality assurance**

(R.C. 1751.75)

The act enables an HIC to use an accreditation from the Accreditation Association for Ambulatory Health Care to meet quality assurance program requirements. Continuing law requires HICs to meet certain quality benchmarks, such as demonstrating that an HIC's network of providers is adequate to meet the needs of the HIC's covered individuals. The law authorizes HIC's to demonstrate compliance with these requirements via accreditation through various organizations. The act adds the Accreditation Association for Ambulatory Health Care to this list.

## **Education on mental health, addiction parity**

(R.C. 3901.90 and 5119.89)

The act requires the Superintendent of Insurance, in consultation with the Director of Mental Health and Addiction Services, to develop consumer and payer education on mental health and addiction services insurance parity. As part of that requirement, the Superintendent and Director must establish and promote a consumer hotline to collect information and help consumers understand and access their insurance benefits.

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<sup>94</sup> R.C. 1739.05, not in the act.



The act also requires the departments to jointly report annually on their efforts. The report must include information on the departments' consumer and payer outreach activities and identify trends and barriers to access and coverage in Ohio. The departments must submit the report to the General Assembly, the Joint Medicaid Oversight Committee, and the Governor by each January 30.

### **Notice of cancellation of automobile insurance**

(R.C. 3937.25 and 3937.32)

The act authorizes an insurer to send a notice of cancellation of a policy of automobile insurance along with a bill if the cancellation is due to nonpayment of policy premiums. The cancellation date must be on or after the due date of the bill and must be not less than ten days from mailing the notice. Continuing law also requires a notice of cancellation of automobile insurance to include (1) the policy number, (2) the date of the notice, (3) the effective date of the cancellation, (4) an explanation of the reason for cancellation, and (5) a statement that the policy holder is entitled to review by the Superintendent of Insurance under certain circumstances.

### **Application for ACA waiver**

(Section 305.20)

The act requires the Superintendent to apply, by January 1, 2018, to the U.S. Secretary of Health and Human Services and the U.S. Secretary of the Treasury for an ACA innovation waiver regarding health insurance coverage in Ohio as required under continuing Insurance Law. Continuing R.C. 3901.052 requires the Superintendent to apply for a waiver regarding health insurance coverage, in particular a waiver of the employer and individual insurance mandates. That section also stipulates that such an application must provide for an insurance system that provides access to affordable health insurance coverage for the residents of Ohio.



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## DEPARTMENT OF JOB AND FAMILY SERVICES

### Ohio's workforce development system (PARTIALLY VETOED)

- Replaces references to the Workforce Investment Act of 1998 with references to the federal Workforce Innovation and Opportunity Act (WIOA).
- Changes the membership of the Governor's Executive Workforce Board and modifies its duties with respect to Ohio's workforce development system.
- Requires the Governor's Office of Workforce Transformation (OWT) to undertake various tasks regarding the creation, collection, and display of data concerning Ohio's workforce development system and develop a uniform electronic application for adult training programs funded under WIOA.
- Would have required the Department of Veterans Services to establish and maintain a labor exchange and job placement website for veterans, and would have required the OhioMeansJobs website to include a link to that website instead of maintaining an independent veterans' labor exchange and job placement function (VETOED).
- Eliminates state law requirements for the membership and responsibilities of local workforce development boards, and instead requires those boards to carry out the functions described in and meet the membership requirements of WIOA.
- Modifies the requirements for written grant agreements for the allocation of funds under WIOA.
- Requires the chief elected official or officials of a local area to monitor all private and government entities that receive funds allocated under a grant agreement to ensure that the funds are used in accordance with state laws, policies, and guidance.
- Requires every local area to ensure the availability of a physical one-stop location called an "OhioMeansJobs center" in the local area for the provision of workforce development activities under WIOA.
- Requires an OhioMeansJobs center operator to enter into a memorandum of understanding with one or more public libraries to facilitate collaboration and coordination of workforce programs and education and job training resources.
- Changes the requirements for local workforce development plans and specifies that those plans must be four-year plans (as required under WIOA).



- Would have allowed the local boards to hold meetings by interactive video conference or by teleconference, regardless of the Open Meetings Act's requirements (VETOED).
- Requires the Governor, upon determining that there has been a substantial violation of a provision of WIOA, to take action to revoke approval of all or part of a local workforce development plan or to impose a reorganization plan.
- Permits OWT, in conjunction with the Ohio Library Council, to develop a brand for public libraries as "continuous learning centers."
- Requires the Director of Job and Family Services (JFS Director) to review and make any necessary changes to the criteria of workforce development programs to allow home health agency employees to participate in a program to the extent possible.

### **Comprehensive Case Management and Employment Program**

- Makes the Comprehensive Case Management and Employment Program an ongoing program, rather than one that expires July 1, 2017.
- Reduces the minimum age of participation in the Program from 16 to 14.
- Makes other revisions to the Program, including (1) permitting the JFS Director to specify in rules additional mandatory and voluntary participation groups and (2) clarifying that the Program may be funded by the TANF block grant or the Workforce Innovation and Opportunity Act.

### **Healthier Buckeye Grant pilot**

- Permits grants awarded under the Healthier Buckeye Grant Pilot Program to be expended through December 31, 2017.
- Requires the unexpended, unencumbered cash balance in the Healthier Buckeye Fund to be transferred to the General Revenue Fund on July 1, 2017, or as soon as possible thereafter.

### **Disability Financial Assistance**

- Beginning December 31, 2017, eliminates the Disability Financial Assistance Program within the Department of Job and Family Services (ODJFS).
- Requires the Executive Director of the Office of Health Transformation to ensure the establishment of a program to refer certain Medicaid recipients to services and assist certain Medicaid recipients to expedite applications for federal benefits.



## **Ohio Works First income disregard**

- Requires the JFS Director to specify in rules an initial amount of gross earned income that is to be disregarded in determining an assistance group's continued eligibility for Ohio Works First.

## **Healthy Food Financing Initiative**

- Requires the JFS Director to contract with the Finance Fund Capital Corporation to administer the Healthy Food Financing Initiative to support healthy food access in underserved communities in urban and rural areas with low and moderate income.
- Requires the JFS Director, by December 31, 2018, to provide a written progress report on the Initiative.

## **Kinship Permanency Incentive Program**

- Repeals the 48-month time limit under which a kinship caregiver may receive additional payments under the Kinship Permanency Incentive Program.
- Provides that an eligible caregiver may receive a maximum of eight payments per minor child.

## **Family and Children First Flexible Funding Pool**

- Permits a county family and children first council to create a flexible funding pool to assure access to services by families, children, and seniors in need of protective services.

## **Children's Trust Fund Board**

- Repeals the requirements that: (1) five of the members appointed to the Ohio Children's Trust Fund Board be residents of metropolitan statistical areas exceeding 400,000 in population and (2) no two of those five members be residents of the same metropolitan statistical area.

## **Child welfare applicant fitness**

- Requires the executive director of a public children services agency (PCSA), or designee, to review promptly any information relevant to evaluating an applicant's fitness before employing the applicant, including an applicant who is an intern or volunteer.



- Specifies that the information reviewed must include any child abuse and neglect reports made involving the applicant; the final disposition, or status of, the child abuse and neglect report investigations; and any underlying report documentation.
- Prohibits the name of the person or entity that made the report of child abuse or neglect or participated in making the report from being included in the information the PCSA reviews.
- Requires the JFS Director to adopt rules to implement the fitness review requirements.

### **Foster Care Advisory Group**

- Creates the Foster Care Advisory Group to advise and assist ODJFS in identifying and implementing best practices to recruit, retain, and support foster caregivers.
- Requires the Advisory Group to issue a report regarding matters affecting foster caregivers and that the Advisory Group will dissolve after the report is issued.

### **Adult protective services**

- Modifies the adult protective services statutes, effective September 29, 2018.
- Expands and modifies the list of persons required to report to a county department of job and family services (CDJFS) suspected abuse, neglect, or exploitation of certain older adults.
- Permits a county prosecutor to petition courts for orders related to the provision of adult protective services.
- Requires a CDJFS to notify a local law enforcement agency if it has reasonable cause to believe that the subject of a report of abuse, neglect, or exploitation is being or has been criminally exploited.
- Modifies provisions governing the release of information from the uniform statewide automated adult protective services information system.
- Creates the Elder Abuse Commission to formulate and recommend strategies on matters related to elder abuse and to issue a biennial report.
- Requires ODJFS to provide training for implementing the statutory provisions on adult protective services, to make educational materials available to mandatory reporters, and to facilitate interagency cooperation.

- Requires each entity that employs or is responsible for licensing or regulating mandatory reporters of abuse, neglect, or exploitation to ensure that the mandatory reporters have access to the relevant educational materials developed by ODJFS.
- Would have repealed a requirement that each CDJFS prepare a memorandum of understanding that establishes the procedures to be followed by local officials regarding cases of elder abuse, neglect, and exploitation (VETOED).
- Changes the definition of "home health agency" in the statute that shields certain entities from liability for the failure of a physician who is not an employee to obtain an informed consent from a patient prior to a surgical or medical procedure.
- Renumbers and rearranges portions of the statutes governing adult protective services and makes various technical and clarifying amendments to the law.

### **SNAP Employment and Training planning committee**

- Requires the JFS Director, in collaboration with the Chancellor of Higher Education, to convene a Supplemental Nutrition Assistance Program Employment and Training Program planning committee to develop a plan for the expansion of the program and to incorporate the plan into the annual state plan.

### **Ohio's workforce development system**

(R.C. 6301.01, 6301.02, 6301.03, 6301.04, 6301.05, 6301.06, 6301.061, 6301.07, 6301.08, 6301.09, 6301.11, 6301.12, 6301.18, 5101.20, 5101.201, 5101.214, 5101.23, and 5101.241; Section 763.10; conforming changes in numerous other R.C. sections)

#### **The federal Workforce Innovation and Opportunity Act**

(R.C. 6301.01 and 6301.02; conforming changes in numerous other R.C. sections)

Ohio's workforce development system is based, in part, on federal law. In 2014, Congress passed the "Workforce Innovation and Opportunity Act"<sup>95</sup> (WIOA). WIOA supersedes the federal "Workforce Investment Act of 1998,"<sup>96</sup> upon which much of Ohio's workforce development system is based. The act replaces references to the Workforce Investment Act of 1998 with references to WIOA throughout the Revised Code.

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<sup>95</sup> 29 United States Code (U.S.C.) 3101 *et seq.*

<sup>96</sup> Former 29 U.S.C. 2801 *et seq.*



## **Governor's Executive Workforce Board**

(R.C. 6301.04)

WIOA, like its predecessor, requires each state to have a state workforce development board.<sup>97</sup> The state board, along with Ohio's Department of Job and Family Services (ODJFS), largely oversees the implementation of WIOA and its predecessors in Ohio. Under continuing law, the Governor must establish the Governor's Executive Workforce Board and must appoint members to the Board who serve at the Governor's pleasure to perform duties under WIOA. The act requires that the following individuals be Board members:

- The Governor (required under WIOA);
- Two members of the House appointed by the Speaker;
- Two members of the Senate appointed by the Senate President (WIOA requires one member from each chamber);
- Other members required under WIOA (representing Ohio businesses, workforce, and government);
- Any additional members appointed by the Governor.<sup>98</sup>

The act also eliminates the Board's duties and instead requires the Board to do all of the following:

- Develop (as under former law), implement, and modify the state workforce development plan;
- Review statewide workforce policies and programs and recommendations on actions to be taken by the state to align workforce development programs to support a comprehensive and streamlined workforce development system;
- Recommend measures for the development and continuous improvement of the workforce development system in Ohio, including updating comprehensive state performance accountability measures;

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<sup>97</sup> 29 U.S.C. 3111.

<sup>98</sup> 29 U.S.C. 3111 and Governor's Executive Workforce Board, Board Roster, <http://workforce.ohio.gov/Portals/0/Public%20Board%20Roster%2012.9.16.pdf>.



- Continue to identify and disseminate information on promising practices in workforce development;
- Perform other work required under WIOA or requested by the Governor.

The Board's former law duties were more involved in the administration, rather than oversight as under the act, of Ohio's workforce development system.

## **Governor's Office of Workforce Transformation**

### **Ohio in-demand jobs list and employers survey**

(R.C. 6301.11, 6301.111, and 3701.916)

Under continuing law, the Governor's Executive Workforce Board, in conjunction with ODJFS and various public and private educational institutions, must develop a methodology for identifying jobs that are in demand by Ohio employers. The act requires that an analysis of jobs that pay a wage rate of 125% or more of the federal minimum wage be included in the methodology for identifying these jobs. The act additionally requires that direct care provided by a home health agency to be considered a targeted industry sector for purposes of identifying in-demand jobs in Ohio. The targeted industry sectors are identified by the Governor's Office of Workforce Transformation (OWT).

Continuing law also requires ODJFS and the public and private educational institutions, in consultation with the Board, to use the methodology to create and publish a list of in-demand jobs in Ohio and in each Ohio region and to periodically update the list.

The act requires OWT, in conjunction with ODJFS, to conduct an electronic survey of Ohio employers that identifies jobs that are in demand by those employers and use the survey results to update the in-demand jobs list. OWT must perform the initial survey and complete the first update by December 31, 2018, and subsequent surveys and updates by December 31 every two years thereafter. The act does not affect the continuing law requirement that the list be periodically updated.

### **OhioMeansJobs workforce supply tool**

(R.C. 6301.112)

The act requires OWT, in collaboration with ODJFS and the Department of Higher Education, to create and publish on the OhioMeansJobs website (see "**Electronic job placement system**," below) a workforce supply tool that uses real-time demand and supply data. OWT must provide all of the following through the tool:



- Businesses with historical information on graduates from high demand fields;
- Businesses with projections on future graduates; and
- The number of skilled workers available for work in occupations included on the list of in-demand jobs created under continuing law.

The workforce supply tool created under the act must include the entire in-demand jobs list maintained under continuing law not later than January 1, 2018.

The act requires OWT, by December 31, 2018, and in collaboration with the Departments of Higher Education and Education, to establish design teams to both:

- Identify emerging skill needs based on predictive analytics and analysis of the data from the workforce supply tool; and
- Periodically recommend innovations for responding to emerging in-demand jobs and skills.

#### **Evaluation of workforce programs**

(R.C. 107.35)

Continuing law requires ODJFS and the Departments of Higher Education and Education to provide staff support and assistance to OWT to establish criteria for evaluating the performance of state and local workforce programs. The act requires that the criteria include a measure that determines the effectiveness of a workforce program in transitioning individuals participating in any federal, state, or local means-tested public assistance program to unsubsidized employment. The act also requires the Opportunities for Ohioans with Disabilities Agency (OODA) to provide staff support and assistance to OWT.

Additionally, the act requires OWT to display metrics regarding the state's administration of the state vocational rehabilitation program administered under Title I of the federal Rehabilitation Act of 1973<sup>99</sup> on OWT's public dashboard available on the Internet in addition to metrics regarding the state's administration of primary workforce programs.

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<sup>99</sup> 29 U.S.C. 701 *et seq.*



## **Applications for WIOA programs**

(R.C. 6301.20)

The act requires OWT, in consultation with ODJFS, the Departments of Higher Education and Aging, and OODA, to develop and maintain a uniform electronic application for adult training programs funded under WIOA. The application must be developed by September 30, 2017, and be available for use by July 1, 2018.

## **Electronic job placement system**

(R.C. 6301.01 and 6301.03, with conforming changes in R.C. 3121.03, 3304.171, 3313.89, 3333.92, 4141.29, and 6301.18)

The act changes references to Ohio's electronic system for labor exchange and job placement activity, referring to the system as the "OhioMeansJobs website," rather than "OhioMeansJobs." Continuing law requires local areas to use OhioMeansJobs as the labor exchange and job placement system for the area. Under the act, no additional state or federal workforce funds may be used to build or maintain any labor exchange and job placement system that is duplicative to the OhioMeansJobs website. Former law prohibited only additional workforce funds from being used for that purpose.

## **Department of Veterans Services job placement website (VETOED)**

(R.C. 5902.09 and 6301.03)

The Governor vetoed a provision that would have required the Department of Veterans Services to maintain a website for labor exchange and job placement activity specifically for veterans. The OhioMeansJobs website would have been required to include a link to that Department of Veterans Services' website and would have been prohibited from including an independent veterans' labor exchange and jobs placement function.

## **Pilot programs**

(R.C. 6301.02)

The act allows the JFS Director to establish pilot programs to provide workforce development activities or services under federal law. Under former law, the JFS Director was allowed to establish pilot programs to provide workforce development activities or family services to individuals who did not meet eligibility criteria for those activities or services under federal law. The act also requires the JFS Director to advise the Governor's Executive Workforce Board of any pilot program, rather than requiring the Board to approve the program, as under former law.



## Local administration

### Local areas

(R.C. 6301.01; conforming changes in numerous other R.C. sections)

WIOA requires states to designate local areas through which workforce development activities under WIOA are administered.<sup>100</sup>

The act expands the definition of "local area" for purposes of Ohio's Workforce Development Law to remove references to specific local government types and instead to define "local area" broadly as a local workforce development area designated under WIOA, pursuant to Ohio's Workforce Development Law. The act also makes conforming changes to several sections outside of that Law that reference the definition.

Because of the elimination of the reference to specific types of local areas, certain provisions of the workforce development system appear to be expanded. For example, continuing law allows boards of county commissioners to enter into regional plans of cooperation to enhance the administration, delivery, and effectiveness of workforce development activities. The act allows the board to enter these plans with any local area, not just one that is a municipal corporation (see "**Written grant agreements with local areas**," below).

### Local boards

(R.C. 6301.06, 5101.214, 6301.01; repealed R.C. 330.04 and 763.05; conforming changes in numerous other R.C. sections)

Under continuing law, the chief elected official or officials (CEO) of a local area must create a local board for workforce development activities. The act eliminates state law requirements for the membership and responsibilities of that board and instead requires that the board carry out the functions described in and meet the membership requirements of WIOA (the local board must include representatives from the following areas: business, the workforce, entities administering training and educational activities, and government). The CEOs of a local area must adopt a process for appointing members to the local board for the local area. A "CEO" generally refers to the chief elected executive officer of a local government unit, rather than a specific individual based on the type of local area, as under former law. A local area may have more than one CEO; if so, those CEOs must be named in an agreement under WIOA.

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<sup>100</sup> 29 U.S.C. 3121.



The act also eliminates the authority of the CEOs of a local area to consolidate all boards and committees, including the county family services planning committee, into one board for purposes of workforce development activities.

CEOs may contract with the local board under the act. The parties must specify in the contract the workforce development activities that the local board must administer and must establish in the contract standards, including performance standards, for the local board's operation. The act eliminates the definition of "workforce development activity" and instead defines a "workforce development activity" as an activity carried out through a workforce development system.

Similarly, the act allows CEOs to contract with a government or private entity to enhance the administration of local workforce development activities for which the local board is responsible. The contracting entity need not be located in the local area in which the CEOs serve. The act additionally removes references to workforce development agencies as providers of workforce development activities throughout the Revised Code, and clarifies that the local board of a local area is the entity responsible for carrying out the workforce development activities in the local area. Under former law, a county that was a local area was allowed to designate certain entities to be its workforce development agency, or a local area that was a municipal corporation was allowed to contract with a private or government entity described above to act as the local area's workforce development agency.

The act allows the JFS Director to enter into a written agreement with one or more state agencies, state universities, and colleges to assist in the coordination, provision, or enhancement of the workforce development activities of a local board, rather than allowing it to enter into those written agreements to assist workforce development agencies.

#### **Written grant agreements with local areas**

(R.C. 5101.20, 6301.01, and 6301.05)

Under continuing law, the JFS Director must enter into written grant agreements with each local area under which allocated funds (formerly "financial assistance") are awarded for workforce development activities included in the agreements. These agreements must comply with applicable federal and state laws governing the administration of workforce development activities and, as added by the act, funding. The act requires the Director to award grants to local areas only through one of these grant agreements.

The act also modifies the required contents of these grant agreements. A written grant agreement under the act must identify as parties to the agreement the



representatives for the local area, including the CEOs, the local board, and the fiscal agent, rather than only the CEOs for the local area as under former law. Additionally, the grant agreement must provide for the incorporation of the planning region and local plan, instead of only providing for incorporation of the local workforce development plan. A "planning region" is an area consisting of two or more local areas that are collectively aligned to engage in the regional planning process as outlined in WIOA. As mentioned under "**Local areas**," above, continuing law permits these regional plans.

The act modifies certain assurances from the CEOs that must be included in a written grant agreement. It requires, the CEOs to ensure that the CEOs, subgrantees, or contractors of a local area utilize a financial management system and other accountability mechanisms that meet federal and state law requirements and, as added by the act, the policies and procedures adopted by ODJFS (rather than ODJFS requirements, as under former law).

Additionally, the act requires the CEOs to monitor all private and government entities that receive funds allocated under the grant agreement to ensure that the funds are utilized in accordance with all applicable federal and state laws and with policies and guidance issued by ODJFS and, under continuing law, to ensure compliance with the requirements of the grant agreement. Likewise, the act requires CEOs to take action to recover funds for expenditures that are unallowable under federal or state law or, under continuing law, are not used in accordance with the grant agreement.

The act also modifies slightly the assurance that the CEOs must provide with respect to amounts that the local area is responsible to reimburse because of an adverse audit or quality control finding, final disallowance of federal financial participation, or other sanction or penalty. It requires the CEOs to provide assurances that the local area or the CEOs, subgrantees, or contractors for the local area promptly remit funds to ODJFS that are payable to the state or federal government because of such an adverse finding or penalty. Under former law, the CEOs had to promptly reimburse any funds for which the local area was responsible.

And with respect to corrective action, the act requires the CEOs to provide assurances that the local area and any subgrantee or contractor of the local area will take prompt corrective action if ODJFS, the Auditor of State, or other state or federal agency determines noncompliance with state or federal law. Under former law, the parties required the CEOs to take corrective actions and only if an authorized entity determined that compliance with requirements for a workforce development duty contained in the agreement were not achieved.



## **Establishing a workforce development system**

(R.C. 6301.08, 6301.06, 5101.201, and 6301.01, with conforming changes in R.C. 4141.29 and 6301.061)

The act requires every local area to establish and administer a local workforce development system and ensure that at least one comprehensive OhioMeansJobs center is available in the local area. Under former law, each local area was required to participate in a one-stop system for workforce development activities delivered through either a physical location or by electronic means approved by the Governor's Executive Workforce Board. An "OhioMeansJobs center" is a physical one-stop center under WIOA.

A center may be supported by electronic means approved by the JFS Director. The act permits the JFS Director to enter into agreements with local boards and other OhioMeansJobs center partners to establish a workforce development system, rather than with one-stop operators and one-stop center partners as under former law.

The act eliminates the list of entities that were permitted to operate a one-stop center and instead requires that an OhioMeansJobs center be operated by an OhioMeansJobs center operator, which is an entity or consortium of entities designated or certified through a competitive process to operate an OhioMeansJobs center under WIOA. The act also eliminates a requirement that the workforce development system (formerly the local one-stop system) include a representative from a county department of job and family services.

An OhioMeansJobs center operator is required to enter into a memorandum of understanding with one or more public libraries by September 1, 2018, and every two years thereafter, to facilitate collaboration and coordination of workforce programs and education and job training resources. WIOA requires local boards to be the contracting entity.

### **Local plans**

(R.C. 6301.07)

Under continuing law, every local board must develop a plan for workforce development activities in the local area. The act eliminates the process used for plan development and approval. Instead, each local board, in partnership with the local area's CEOs, must develop a four-year local plan (as required under WIOA), and submit that plan to the Governor.



The local plan must support the strategy described in the state plan and contain descriptions of the activities of the local board as outlined in WIOA. The act requires that the local plan include the following information, in accordance with WIOA:

- Identification of strategic planning elements, including the local board's strategic vision, goals for preparing a skilled and educated workforce, and the knowledge and skills, including performance character, needed to meet the employment needs of employers in the planning region;
- A description of the workforce development system in the local area and how the local board, working with education programs and the entities that carry out core programs, will coordinate activities to expand access to employment, training, education, and supportive services to eligible individuals with barriers to employment to improve service delivery and avoid duplication;
- A determination of the local area's workforce development needs for adult and dislocated worker employment training activities, including the type and availability of activities needed;
- An assessment of the type and availability of youth workforce development activities carried out in the local area, including activities for youth with disabilities and youth receiving independent living services under continuing law;
- A description of any other information the CEOs of the local area require;
- A description of any other information the Governor requires.

Additionally, the act requires the local boards within a planning region and the CEOs of those local areas to prepare, submit to, and obtain approval from the state for a single regional plan that includes a description of the activities described in WIOA and that incorporates local plans for each local area in the region. The state must identify the regions, and designate each region as one of the following types:

- A region consisting of one local area;
- A planning region;
- An interstate planning region that is contained within two or more states and consists of labor market areas, economic development areas, or other appropriate contiguous subareas of those states.



Copies of these local plans must be made available to the public through electronic and other means and, similar to former law, members of the public must be allowed to submit comments on the proposed plan to the local board. Presentations to local news media and public hearings are examples of other means by which a local board may make a proposed plan available.

#### **Local board hearings (VETOED)**

(R.C. 6301.06)

The Governor vetoed a provision that would have allowed local boards to hold meetings by interactive video conference or by teleconference, regardless of the Open Meetings Act requirement that a member of a public body be present in person at a meeting open to the public in order to be part of a quorum or to vote. If the board wanted to hold meetings by interactive video conference or teleconference, the board would have had to adopt rules that, at a minimum, required the meetings to be conducted in a certain manner and established a minimum number of members who had to have been physically present at the primary meeting location.

#### **Gubernatorial action related to a WIOA violation**

(R.C. 5101.241)

The act requires the Governor to take action if the Governor determines that there has been a substantial violation of a specific WIOA provision and that corrective action has not been taken. In that case, the Governor must issue a notice of intent to revoke approval of all or part of the local plan affected by the violation or must impose a reorganization plan. A reorganization plan imposed may include any of the following:

- Decertifying the local board involved in the violation;
- Prohibiting the use of eligible providers;
- Selecting an alternative entity to administer the program for the local area involved;
- Merging the local area with one or more other local areas;
- Making other changes that the Governor determines to be necessary to secure compliance with the specific provision.

This corrective action is in lieu of the authority under former law that allowed the Governor, upon finding that access to basic WIOA services was not being provided in a local area, to declare an emergency and, in consultation with the CEOs of the local



area, to arrange for provision of those services through an alternative entity while the problem was pending. The former law authority was not subject to appeal, while the act's authority may be appealed and does not become effective until the time for appeal has expired or a final decision has been issued on the appeal.

### **"Continuous learning center" brand for public libraries**

(Section 763.10)

The act permits OWT, in conjunction with the Ohio Library Council or its successor organization, by June 30, 2019, to develop a brand for public libraries as "continuous learning centers" that serve as hubs for information about local in-demand jobs and relevant education and job training resources. Additionally, the act requires the State Library of Ohio to strengthen the Ohio Digital Library's online education resources to provide more accessible job training materials to adult learners. The State Library must make these changes by June 30, 2019.

### **Incentive awards**

(R.C. 5101.23)

The act allows ODJFS to provide annual incentive awards to local areas, rather than allowing it to provide those awards to workforce development agencies, as under former law. Under continuing law, ODJFS may provide these awards also to county family services agencies and the awards must be used for the purposes for which the funds are appropriated.

### **Payment for administration of local workforce development**

(R.C. 6301.03)

The act requires the JFS Director, in making allocations and payments of funds for the local administration of workforce development activities, to consult with the Governor's Executive Workforce Board, rather than allowing the Board to direct the JFS Director in these allocations and payments as under former law. Similarly, the JFS Director, rather than the Board, must adopt rules for fund administration.

### **Review of workforce development program criteria**

(R.C. 3701.916)

The act requires the JFS Director to review the criteria for any program that provides occupational training, adult education, or career pathway assistance through a grant or other source of funding to determine whether home health agency employees



may participate in the program. The JFS Director must make any necessary changes to the criteria to allow home health agency employees to participate in the program to the extent possible.

## **Comprehensive Case Management and Employment Program**

(R.C. 5116.02, 5107.10, 5116.01, 5116.03, 5116.06, 5116.10, 5116.11, 5116.12, 5116.20, 5116.21, 5116.22, 5116.23, 5116.24, and 5116.25; Section 307.210)

### **Program made ongoing**

The act makes the Comprehensive Case Management and Employment Program (CCMEP) an ongoing program, and requires ODJFS to coordinate and supervise its administration to the extent funds are available for it under the Temporary Assistance for Needy Families (TANF) block grant or WIOA. The Program's purpose is to make employment and training services available to its participants in accordance with an assessment of their needs.

Under prior law, CCMEP was to be operated only for a two-year period ending July 1, 2017. To maintain the Program, the act codifies it (i.e., places the Program in the Revised Code). The act also makes several revisions to the Program. The codification and revisions take effect September 29, 2017. Until then, the act requires that the Program continue to operate in its original form but with one immediate revision: the minimum age for participation is lowered from 16 to 14.

### **Local decision to use youth workforce investment activity funds**

Once the CCMEP codification takes effect (i.e., after September 29, 2017), each local workforce development board must decide whether to authorize the use of its federal youth workforce investment activity funds for the Program. The decision must be made for each state fiscal biennium (i.e., the two-year period that begins July 1 of an odd-numbered year) and in accordance with procedures, including procedures regarding timing, established in rules by the JFS Director. A board's decision applies to all of the counties it serves.

### **State to run Program in a county if use of funds not authorized**

If a local workforce development board decides against authorizing use of its youth workforce investment activity funds for CCMEP for a fiscal biennium, the board must use those funds in accordance with federal law governing the funds, and no TANF block grant funds are to be made available to the board or any county the board serves for the Program. ODJFS must use available TANF block grant funds to administer, or contract with a government or private entity to administer, the Program in the counties the board serves.



### **Local responsibilities if use of funds is authorized**

If a local workforce development board authorizes the use of its youth workforce investment activity funds for CCMEP for a fiscal biennium, the board, before the biennium begins, must enter into a written agreement with ODJFS that, to the extent permitted by federal law, requires the board and the counties it serves to operate the Program in accordance with the Program's requirements. Additionally, the board of county commissioners of each county the local workforce development board serves must designate either the county department of job and family services or workforce development agency to serve as the county's lead agency for the Program. The designation must be made before the biennium begins, but the board of county commissioners later may designate the other of those two entities to take over as the lead agency for the remainder of the biennium. The board of county commissioners must inform ODJFS of its designation before the biennium and of any redesignation within 60 days after the redesignation takes effect.

A lead agency is given several responsibilities regarding its administration of CCMEP in the county it serves. The responsibilities must be performed in consultation with the local workforce development board and in accordance with rules the JFS Director must adopt.

The lead agency must prepare and submit to the Department a plan containing standing procedures for determining and maintaining individuals' eligibility to participate in the Program. If the lead agency is redesignated, the new lead agency must prepare and submit to the Department a new plan within 60 days after the redesignation takes effect. The original and new plans must be included in the workforce development plan the local workforce development board must prepare under continuing law.

Additionally, the lead agency must partner with the other entity that may serve as the lead agency and subcontractors to (1) actively coordinate activities regarding the Program with the other entity and subcontractors and (2) help the lead agency, the other entity, and subcontractors use their expertise in administering the Program. A subcontractor is an entity with which the county department or workforce development agency contracts to perform, on behalf of the county department or agency, one or more of the county department's or agency's duties regarding the Program.

A lead agency is responsible for all funds received for CCMEP by the county it serves. It must use the funds in a manner consistent with federal and state law. It must coordinate this responsibility with any entity that has been designated to serve as a local grant subrecipient or a local fiscal agent under WIOA.



## Participants

The act specifies that certain groups must participate in CCMEP and certain other groups may volunteer to participate.

The following are the mandatory groups:

(1) Individuals who are considered to be work eligible for the purpose of Ohio Works First must participate as a condition of participating in Ohio Works First if they are at least 14 and not more than 24 years old. Ohio Works First is the state's cash assistance program for low-income families. It is funded with federal TANF block grant funds as well as state and county funds. A work-eligible individual is subject to work and other requirements under continuing law governing Ohio Works First.

(2) In-school youth and out-of-school youth must participate in the Program as a condition of enrollment in workforce development activities funded by WIOA. An individual is an in-school youth if the individual (a) attends school, (b) is between 14 and 21 (unless the individual has a disability), (c) has low income, and (d) meets one or more other requirements such as being basic skills deficient, an English language learner, homeless, or in foster care. An individual is an out-of-school youth if the individual (a) does not attend school, (b) is between 16 and 24, and (c) meets one or more other requirements such as being a school dropout, homeless, or in foster care.

The following are the voluntary groups:

(1) Ohio Works First participants who are not considered to be work eligible for the purpose of Ohio Works First may volunteer if they are between 14 and 24 years old.

(2) Individuals receiving benefits and services under the Prevention, Retention, and Contingency Program may volunteer if they are between 14 and 24. That Program provides short-term benefits and services (such as clothing, shelter, transportation, employment, and training) during a crisis or time of need. The benefits and services vary by county.

The act permits the JFS Director to adopt rules specifying one or more additional mandatory participation groups and one or more additional voluntary participation groups. The participation of the additional groups is subject to the availability of funds under the TANF block grant or WIOA.

If a lead agency fails to enroll in CCMEP an individual who is in a mandatory participation group and to take corrective action that ODJFS requires the agency to take as a consequence of that failure, the Department may perform, or contract with a government or private entity for the entity to perform, the agency's duties until satisfied



that the agency ensures that the duties will be performed satisfactorily. If the Department does this, it may spend funds in the county treasury appropriated by the board of county commissioners for the Program and withhold funds allocated, or reimbursements due, to the lead agency for the Program.

### **Assessments and services**

A lead agency must provide for an individual participating in CCMEP to undergo an assessment of the individual's employment and training needs. An individual opportunity plan must be created for each participant as part of the assessment. The plan must be reviewed, revised, and terminated as appropriate. The lead agency is to provide for all of these actions to occur in accordance with rules the JFS Director is to adopt.

A participant's individual opportunity plan must specify which of the following services, if any, the participant needs: (1) support to obtain a high school diploma or certificate of high school equivalence, (2) job placement, (3) job retention support, and (4) other services that aid the participant in achieving the plan's goals. The services a participant receives in accordance with the plan are inalienable by way of assignment, charge, or otherwise and exempt from execution, attachment, garnishment, and other similar processes.

### **Application of state laws**

The act provides that CCMEP is all of the following:

(1) A TANF program and therefore subject to all statutes that apply to TANF programs;

(2) A workforce development activity and therefore subject to all statutes that apply to workforce development activities;

(3) A family services duty (a duty state law requires or allows a county department of job and family services to assume) and therefore is subject to all statutes that apply to family services duties.

### **Rules**

In addition to the other rules discussed above, the act requires the JFS Director to adopt rules that are necessary to implement CCMEP. This includes rules that:

(1) Provide for the Program to help Ohio Works First participants considered to be work eligible satisfy federal work requirements; and



(2) Provide for the Program to help Ohio Works First participants satisfy other Ohio Works First requirements (including requirements in self-sufficiency contracts) and obtain other assistance or services that participants need according to assessments conducted under the Ohio Works First Law.

The rules adopted for the Program must be consistent with the plan the state files with the U.S. Secretary of Health and Human Services to receive TANF block grant funds, amendments to the plan, and any waivers regarding the plan granted by the Secretary. The rules also must be consistent with the combined workforce development plan filed with the U.S. Secretary of Labor, amendments to the plan, and any waivers regarding the plan granted by the Secretary. The rules that provide for the Program to help Ohio Works First participants satisfy federal work requirements may deviate from the state's Ohio Works First Law.

### **Healthier Buckeye Grant pilot**

(Sections 307.230 and 307.250)

The act requires the Director to permit individuals and organizations receiving grant awards under the preexisting Healthier Buckeye Grant Pilot Program to expend awards through December 31, 2017.<sup>101</sup> Under the Program, grants were awarded in FYs 2016 and 2017 to local healthier buckeye councils and other individuals and organizations based on criteria recommended by the Ohio Healthier Buckeye Advisory Council.

Regarding the cash balance in the Healthier Buckeye Fund, the act requires the unexpended, unencumbered balance to be transferred to the General Revenue Fund on July 1, 2017, or as soon as possible thereafter.

### **Disability Financial Assistance**

(Section 812.40 with conforming changes in numerous Revised Code sections; repealed Chapter 5115.)

The act eliminates the Disability Financial Assistance Program, an ODJFS program providing monthly cash benefits to low-income individuals with disabilities who do not satisfy eligibility requirements for other state or federal assistance programs, including Ohio Works First and Supplemental Security Income. The program will expire beginning December 31, 2017. The act preserves, until July 1, 2019, the authority of the Department, or a county department at the Department's request, to

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<sup>101</sup> This extension is also authorized by the recently enacted Transportation Budget. Section 610.13 of Sub. H.B. 26 of the 132nd General Assembly.



take any action to recover erroneous payments, including filing a lawsuit. Erroneous payments include payments made to a person who is not entitled to receive them, including payments made as a result of misrepresentation or fraud and payments made due to error by the recipient or the county department.

### **Winding down the program**

The act contains several provisions related to the winding down of the program, including all of the following:

(1) Beginning July 1, 2017, the Department will no longer accept any new application for disability financial assistance;

(2) Before July 31, 2017, the Department must notify recipients who have received, on or before July 1, 2017, a denial of reconsideration from the Social Security Administration for Supplemental Security Income or Social Security Disability Insurance benefits that disability financial assistance benefits will end on July 31, 2017;

(3) Beginning July 1, 2017 and ending October 1, 2017, the Department will provide disability financial assistance benefits only to recipients who have not received from the Administration a denial of reconsideration;

(4) After October 1, 2017, the Department will provide disability financial assistance benefits only to recipients who have applications for Supplemental Security Income or Social Security Disability Insurance benefits pending before the Administration and have not received a denial of reconsideration.

### **New program**

Beginning December 31, 2017, the act requires the Executive Director of the Governor's Office of Health Transformation, in cooperation with the JFS Director, the Director of Mental Health and Addiction Services, the Medicaid Director, and the Executive Director of the Opportunities for Ohioans with Disabilities Agency, to ensure the establishment of a program to both:

(1) Refer adult Medicaid recipients who have been assessed to have health conditions to employment readiness or vocational rehabilitation services;

(2) Assist adult Medicaid recipients who have been assessed to have disabling health conditions to expedite applications for Supplemental Security Income or Social Security Disability Insurance benefits.



## **Ohio Works First income disregard**

(R.C. 5107.05 and 5107.10)

The act requires the JFS Director to specify in rules an initial amount of gross earned income that is to be disregarded in determining an assistance group's continued eligibility for Ohio Works First. Prior law, in contrast, specified that the first \$250 was to be disregarded. The act maintains a requirement that 50% of the remainder of the assistance group's gross earned income also be disregarded. Ohio Works First is the state's cash assistance program for low-income families with children.

## **Healthy Food Financing Initiative**

(Section 307.35)

The act requires the JFS Director, in cooperation with the Director of Health and with the approval of the Director of the Governor's Office of Health Transformation, to contract with the Finance Fund Capital Corporation to administer the Healthy Food Financing Initiative. The Initiative is to support healthy food access in underserved communities in urban and rural low- and moderate-income areas, as defined either by the U.S. Department of Agriculture or through a methodology adopted by another governmental or philanthropic healthy food initiative.

The Finance Fund Capital Corporation must demonstrate a capacity to administer grant and loan programs in accordance with state and federal rules and accounting principles. It also must partner with one or more entities with demonstrable experience in healthy food access-related policy matters.

By December 31, 2018, the JFS Director must provide a progress report on the Initiative to the Governor, Speaker of the House, President of the Senate, and Minority Leaders of the House and Senate. The report must detail progress on (1) state funds granted or loaned, (2) the number of new or retained jobs associated with related projects, (3) the health impact of the Initiative, and (4) the number and location of healthy food access projects established or in development.

## **Kinship Permanency Incentive Program**

(R.C. 5101.802)

The act makes changes to the Kinship Permanency Incentive Program. Under law revised by the act, the Program provides incentive payments to a family member caring for a child whose parents are unable to provide care. Upon meeting certain



requirements, the eligible caregiver may receive payments at six-month intervals for a period of no more than 48 months to support the child's placement in the home.

The act repeals the 48-month time limit under which an eligible caregiver may receive payments and specifies that a caregiver may receive no more than eight total incentive payments per child.

### **Family and Children First Flexible Funding Pool**

(Section 337.160)

The act permits a county family and children first council (FCFC) to establish and operate a flexible funding pool to assure access to needed services by families, children, and older adults who need protective services. A county FCFC that desires such a pool must abide by all of the following:

- The Pool must be created and operate according to formal guidance issued by the Family and Children First Cabinet Council.
- The FCFC must produce an annual report on its use of the pooled funds. The report must conform to guidance issued by the Family and Children First Cabinet Council.
- Unless otherwise restricted, the Pool may receive transfers of state general revenues allocated to local entities to support services to families and children.
- The Pool may receive only transfers of amounts that can be redirected without hindering the objective for which the initial allocation is designated.
- The director of the local agency that originally received the allocation must approve the transfer to the Pool.

### **Children's Trust Fund Board**

(R.C. 3109.15)

The act repeals the following two requirements regarding membership on the Ohio Children's Trust Fund Board:

(1) That five of the members appointed to the board be residents of metropolitan statistical areas exceeding 400,000 in population; and



(2) That no two of those five members be residents of the same metropolitan statistical area.

## **Child welfare applicant fitness**

(R.C. 5153.113)

### **Fitness review**

The act requires the executive director of a public children services agency (PCSA), or the executive director's designee within the PCSA, to review promptly any information the PCSA determines is relevant to the evaluation of an applicant's fitness before employing the applicant. Under the act, "applicant" means a person under final consideration for appointment or employment with the PCSA as a person responsible for the care, custody, or control of a child.<sup>102</sup> An applicant also includes (1) an intern applicant or (2) a volunteer applicant. An "intern applicant" is an applicant who is a trainee who will work with or without monetary gain or compensation seeking to gain practical educational and career experience. A "volunteer applicant" is an applicant seeking to perform services voluntarily without monetary gain or compensation.

### **Review of any relevant information**

The act specifies that when evaluating an applicant's fitness, the PCSA executive director or designee must review any relevant information, including:

- Child abuse and neglect reports, if the applicant is the subject and it has been determined that abuse or neglect occurred;
- The final disposition of child abuse and neglect report investigations, or the status of the investigations if they have not been completed; and
- Any underlying documentation concerning the reports.

Under law unchanged by the act, ODJFS maintains a uniform statewide automated child welfare information system in accordance with federal law. The system includes records regarding investigations filed under Ohio law requiring the reporting and investigation of child abuse and neglect.<sup>103</sup> Presumably, the PCSA would search the system in order to complete the fitness evaluation under the act. However, the act does not expressly permit or require using the system.

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<sup>102</sup> R.C. 5153.111, not in the act.

<sup>103</sup> R.C. 5101.13, not in the act.



## **Confidentiality**

The fitness review added by the act is required notwithstanding any laws pertaining to confidentiality, including those under the county children's services law<sup>104</sup> and the law governing child abuse and neglect reporting.<sup>105</sup> In addition, the information reviewed by a PCSA executive director or designee may not include the name of the person or entity that made the child abuse or neglect report or participated in making the report.

## **Employment of applicants**

The act does not expressly state what happens if an applicant receives a negative fitness evaluation following a finding that the applicant has been the subject of a case in which it was determined that child abuse or neglect occurred. Neither does the act provide a procedure for an applicant to dispute a negative fitness evaluation. Presumably, a PCSA would not hire an applicant with a negative fitness evaluation.

## **Rules**

The act requires the JFS Director to adopt rules pursuant to the Administrative Procedure Act (R.C. Chapter 119.) to implement the requirements regarding fitness evaluations of PCSA applicants.

## **Foster Care Advisory Group**

(Section 751.10)

The act creates the Foster Care Advisory Group within ODJFS to advise and assist it in identifying and implementing best practices to recruit, retain, and support foster caregivers.

## **Membership**

The Advisory Group must consist of at least 12 members, which includes the JFS Director or the Director's designee, and the following, to be appointed by the JFS Director by September 1, 2017:

- Four foster caregivers holding valid foster home certification;
- Two representatives of two different public children services agencies;

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<sup>104</sup> R.C. 5153.17, not in the act.

<sup>105</sup> R.C. 2151.421, not in the act.



- Two representatives of two different private child placing agencies or private noncustodial agencies;
- A representative of the Ohio Family Care Association;
- A representative of the Ohio Association of Child Caring Agencies;
- A representative of the Public Children Services Association of Ohio.

The Advisory Group must have two co-chairpersons: the JFS Director or Director's designee, and another co-chairperson appointed by the other members. The Advisory Group must determine the frequency of meetings and any other administrative matters. Members serve without compensation, but must be reimbursed for necessary expenses.

### **Duties**

The Advisory Group must advise the JFS Director on matters affecting foster caregivers, which include:

- Current certification requirements;
- Ways to streamline certification requirements while maintaining quality, safety, and reliability;
- Ways to help foster caregivers best respond to children affected by parental drug use and how to deliver and sustain those supports;
- Best practices for identifying and recruiting foster caregivers.

By May 1, 2018, the Advisory Group must issue a report that addresses and makes recommendations regarding the above matters, with copies of the report going to the JFS Director, the Governor, the Speaker and Minority Leader of the House, and the President and Minority Leader of the Senate. Upon submitting the report, the Advisory Group ceases to exist.



## **Adult protective services (PARTIALLY VETOED)**

(R.C. 173.501, 173.521, 173.542, 1347.08, 2317.54, 4715.36, 5101.60, 5101.61, 5101.611, 5101.612, 5101.62, 5101.622, 5101.63, 5101.632, 5101.64 to 5101.69, 5101.691, 5101.692, 5101.70 to 5101.74, 5101.741, 5101.99, 5123.61, and 5126.31; repealed R.C. 5101.621; Section 130.33)

Effective September 29, 2018, the act makes several changes to the adult protective services statutes, including expansion of definitions, expansion of reporters of suspected abuse, neglect, or exploitation of older adults, notification of local law enforcement agencies of suspected subjects being criminally exploited, creation of the Elder Abuse Commission, and requiring ODJFS to provide training and educational materials for implementing the statutes.

### **Definitions related to abuse, neglect, or exploitation of older adults**

Under continuing law, the law covers any person age 60 or older within Ohio who is handicapped by the infirmities of aging or who has a physical or mental impairment that prevents the person from providing for the person's own care or protection and who resides in an independent living arrangement. An "independent living arrangement" is a domicile of a person's own choosing, including but not limited to a private home, apartment, trailer, or rooming house, and includes a licensed adult care facility but does not include any other state-licensed institution or facility or a facility in which a person resides as a result of voluntary, civil, or criminal commitment. The act retains these definitions but relocates the definition of "independent living arrangement."

The act retains the existing definition of abuse (the infliction upon an older adult by self or others of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish) but modifies the definitions of neglect and exploitation. Under continuing law, "neglect" means the failure of an older adult to provide for himself or herself the goods or services necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caretaker to provide the goods or services. The act adds abandonment as another form of neglect, and defines "abandonment" to mean desertion of an older adult by a caretaker without having made provision for transfer of the older adult's care. It clarifies that to constitute abandonment, the abandonment must involve the older adult's primary caretaker. A "caretaker" is the person assuming responsibility for the care of an older adult on a voluntary basis, by contract, through receipt of payment for care, as a result of a family relationship, or by court order.



Prior law defined "exploitation" to mean the unlawful or improper act of a caretaker using an older adult or an older adult's resources for monetary or personal benefit, profit, or gain when the caretaker obtained or exerted control over the older adult or resources without the older adult's consent, beyond the scope of the older adult's consent, or by deception, threat, or intimidation. Under the act, "exploitation" means the unlawful or improper act of a *person* using, *in one or more transactions*, an older adult or an older adult's resources for monetary or personal benefit, profit, or gain when the person obtained or exerted control over the older adult or resources without the older adult's consent, beyond the scope of the older adult's consent, or by deception, threat, or intimidation.

The act modifies or adds other definitions for this area of law, and the modification and additions are discussed below when the relevant area of law is discussed.

### **Mandatory reporters of abuse, neglect, or exploitation**

Continuing law requires specific individuals who, having reasonable cause to believe that an older adult is being abused, neglected, or exploited, or is in a condition that is the result of abuse, neglect, or exploitation, to immediately report the belief to the county department of job and family services (CDJFS). The act changes the list of individuals who must make a report.

#### **Retained mandatory reporters**

With some changes in terminology, the act retains the following list of mandatory reporters (substantive changes are indicated in italics in the list or are discussed following the list):

- Attorneys *admitted to the practice of law in Ohio*;
- Physicians, osteopaths, podiatrists, chiropractors, dentists, psychologists, and *registered or licensed practical nurses authorized to practice in Ohio*;
- Employees of a hospital as defined in R.C. 3701.01 (changed by the act to employees of a hospital as defined in R.C. 3727.01);
- Employees of a home health agency *as defined in R.C. 3701.881*;
- Employees of a nursing home or residential care facility, as defined in R.C. 3721.01;
- Senior service providers, limited by the act to a person who provides care or *specialized* services to an adult. The act excludes the State Long-term



Care Ombudsman and each regional ombudsman from being considered a senior service provider who must report. However, in a separate but related provision of the act, effective September 29, 2017, the Ombudsman and any regional ombudsman certified as representative of the Ombudsman's Office are already excluded from mandatory reporting. (See "**State Long-term Care Ombudsman Program – Reports of abuse, neglect, or exploitation**," in the **DEPARTMENT OF AGING** section of this analysis.)

- Peace officers;
- Coroners;
- Clergy;
- Social workers, counselors, and therapists (although changed by the act from any person engaged in social work or counseling to an individual licensed as a social worker, independent social worker, professional counselor, professional clinical counselor, marriage and family therapist, or independent marriage and family therapist).

#### **Deleted mandatory reporters**

The act deletes three categories of individuals from the list of mandatory reporters: employees of an ambulatory health facility, employees of a community mental health facility, and employees of a home for the aging. However, it generally covers the same individuals under other designations.

*Ambulatory health facility and outpatient health facility.* The act replaces "ambulatory health facility" with "outpatient health facility," defined as a facility where medical care and preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services are provided to outpatients by or under the direction of a physician or dentist. (The act makes the same change in the section of law that lists the mandatory reporters of reasonably suspected abuse or neglect of a person with a developmental disability.)

*Community mental health facility and community mental health agency.* The act replaces "community mental health facility" (a facility that provides community mental health services and is included in the comprehensive mental health plan for the alcohol, drug addiction, and mental health service district in which it is located) with "community mental health agency" (any agency, program, or facility with which a board of alcohol, drug addiction, and mental health services contracts to provide the mental health services listed in R.C. 340.09).



**Home for the aging.** The act repeals and does not replace "home for the aging." However, according to the Department of Health, "home for the aging" is an obsolete term.

**Home health agency.** The act uses the definition of "home health agency" given in R.C. 3701.881 rather than the one in former R.C. 5101.61.

As used in the act, "home health agency" means a person or government entity, other than a nursing home, residential care facility, or hospice care program, that has the primary function of providing any of the following services to a patient at a place of residence used as the patient's home: skilled nursing care, physical therapy, speech-language pathology, occupational therapy, medical social services, or home health aide services.

**Hospital.** The act replaces the definition of "hospital" as set forth in R.C. 3701.01 with the one used in R.C. 3727.01. R.C. 3701.01 defines "hospital" to include public health centers and general, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, self-care units, and central service facilities operated in connection with hospitals, and also includes education and training facilities for health professions personnel operated as an integral part of a hospital, but not to include any hospital furnishing primarily domiciliary care.

R.C. 3727.01 defines "hospital" as an institution classified as a hospital under R.C. 3701.07 (rules adopted by the Department of Health) in which diagnostic, medical, surgical, obstetrical, psychiatric, or rehabilitation care is provided to inpatients for a continuous period longer than 24 hours or a hospital operated by a health maintenance organization. "Hospital" does not include a facility licensed under R.C. Chapter 3721. (nursing homes and residential care facilities), a health care facility operated by the Department of Mental Health and Addiction Services or the Department of Developmental Disabilities, a health maintenance organization that does not operate a hospital, the office of any private licensed health care professional, whether organized for individual or group practice, or a clinic that provides ambulatory patient services and where patients are not regularly admitted as inpatients. "Hospital" also does not include an institution for the sick that is operated exclusively for patients who use spiritual means for healing and for whom the acceptance of medical care is inconsistent with their religious beliefs, accredited by a national accrediting organization, exempt from federal income taxation, and providing 24-hour nursing care pursuant to the exemption from licensing for the care of the sick when done in connection with the practice of religious tenets of any church and by or for its members.

## **New mandatory reporters**

In addition to the mandatory reporters described above, the act adds the following individuals:

- Pharmacists and dialysis technicians authorized to practice in Ohio;
- Employees of a hospital or public hospital, as defined in R.C. 5122.01. (*A hospital or inpatient unit licensed by the Department of Mental Health and Addiction Services, and any place established, controlled, or supervised by the department, or a facility that is tax-supported and under the jurisdiction of the Department*).
- Employees of a health department operated by city board of health or a general health district or the authority having the duties of a board of health;
- Employees of a community mental health agency as defined in R.C. 5122.01;
- Agents of a county humane society;
- Firefighters for a lawfully constituted fire department;
- Ambulance drivers for an emergency medical service organization;
- First responders, emergency medical technicians-basic, emergency medical technicians-intermediate, and paramedics;
- Officials employed by a local building department to conduct inspections of houses and other residential buildings;
- Certified public accountants and registered public accountants under R.C. Chapter 4701.;
- Licensed real estate brokers or real estate salespersons;
- Notaries public;
- Employees of a bank, savings bank, savings and loan association, or credit union;
- Investment advisors, as defined in R.C. 1707.01;
- Financial planners accredited by a national accreditation agency.



## **Voluntary reporters**

The act retains law that permits any person who, having reasonable cause to believe that an older adult has suffered abuse, neglect, or exploitation, to report it to the CDJFS. This continues to include the State Ombudsman and representatives of the Ombudsman's Office, to the extent permitted by federal law, as provided by the act, effective September 29, 2017 (see "**State Long-term Care Ombudsman Program – Reports of abuse, neglect, or exploitation**" in the **DEPARTMENT OF AGING** section of this analysis).

The law included a fine for anyone who violates either the mandatory or voluntary reporting provision. The act eliminates the penalty for voluntary reporters.

## **Reports to the CDJFS**

The act modifies the handling of reports of abuse, neglect, or exploitation of older adults, whether made by a mandatory or voluntary reporter. It retains the requirement that information contained in a report be made available, on request, to the older adult who is the subject of the report and to legal counsel for the older adult. It adds that if the CDJFS determines that there is a risk of harm to a person who makes a report or to the older adult who is the subject of the report, it may redact the name and identifying information related to the person who made the report.

## **Role of county prosecutors**

The act extends to county prosecutors the authority to petition courts for the following orders related to the provision of adult protective services:

(1) An order authorizing protective services for an older adult who the CDJFS determines is in need of protective services as a result of exploitation.

(2) If an older adult has consented to protective services but another person refuses to allow them, a temporary restraining order to prevent the interference with the services.

(3) An order authorizing emergency protective services and a renewal of such an order upon a showing that a continuation of the order is necessary to remove the emergency.

Under prior law, only a CDJFS was expressly authorized to petition courts for these orders.



## **Criminal exploitation**

The act requires a CDJFS to notify a local law enforcement agency if it has reasonable cause to believe that the subject of a report of abuse, neglect, or exploitation of an older adult, or of an investigation of such a report, is being or has been criminally exploited.

During the course of the local law enforcement agency's investigation of criminal exploitation, the county prosecutor may file a petition in court for a temporary restraining order against any person, including the alleged victim, who denies or obstructs access to the older adult's residence. The court must issue the temporary restraining order if it finds there is reasonable cause to believe that the older adult is being or has been abused, neglected, or exploited and access to the older adult's residence has been denied or obstructed. The act establishes that such a finding by the court is prima facie evidence that immediate and irreparable injury, loss, or damage will result, so no notice is required. After obtaining the temporary restraining order, a representative of the law enforcement agency may be accompanied to the residence by a peace officer.

## **Reimbursement for implementation (VETOED)**

The Governor vetoed a provision that would have permitted ODJFS to reimburse local law enforcement agencies and county prosecutors for all or part of the costs they incur in implementing the laws pertaining to adult protective services.

## **Adult protective services information system**

The act modifies provisions governing the release of information from ODJFS's uniform statewide automated adult protective services information system. In 2015, H.B. 64 of the 131st General Assembly required ODJFS to implement this system on a county-by-county basis. Under the act, ODJFS must release information in the system to a CDJFS that is investigating the need for protective services for an older adult and to local law enforcement agencies conducting criminal investigations, and ODJFS may release information in the registry to law enforcement agencies through the Ohio Law Enforcement Gateway.

The act repeals a provision specifying that the information contained in or obtained from the system is confidential, is not a public record, and is not subject to disclosure laws that apply to other state-implemented personal information systems. However, the act maintains a provision permitting information contained in the system to be accessed or used only in a manner, to the extent, and for the purposes authorized by law. Additionally, it does not amend a law that exempts the information in the system from public disclosure.



## **Notice of orders for protective services**

When a CDJFS petitions a court for an order authorizing the provision of protective services for an older adult, continuing law requires the CDJFS to give the older adult notice of the petition. Under prior law, that notice must have been given orally and in writing. The act permits notice to be given either orally or in writing.

### **Elder Abuse Commission**

The act creates the Elder Abuse Commission consisting of the following members:

(1) Eighteen members appointed by the Attorney General (two representatives of national organizations that focus on elder abuse or sexual violence, one person who represents the interests of elder abuse victims, one person who represents the interests of elderly persons, and one representative each of the AARP, the Buckeye State Sheriffs' Association, the County Commissioners' Association of Ohio, the Ohio Association of Area Agencies on Aging, the Board of Nursing, the Ohio Coalition for Adult Protective Services, the Ohio Domestic Violence Network, the Ohio Prosecuting Attorneys Association, the Ohio Victim Witness Association, the Ohio Association of Chiefs of Police, the Ohio Association of Probate Judges, the Ohio Job and Family Services Directors' Association, the Ohio Bankers League, and the Ohio Credit Union League); and

(2) The following ex officio members:

(a) One member of the House appointed by the Speaker, and one member of the Senate appointed by the Senate President;

(b) The following officials or their designees: the Attorney General, the Chief Justice of the Supreme Court, the Governor, the Director of Aging, the JFS Director, the Director of Health, the Director of Mental Health and Addiction Services, the Director of Developmental Disabilities, the Superintendent of Insurance, the Director of Public Safety, and the State Long-term Care Ombudsman.

Appointed members serve at the pleasure of the appointing authority. Vacancies are filled in the same manner as original appointments.

All members are voting members. The Attorney General selects the chairperson from the appointed members. The Commission meets at the call of the chairperson, but not less than four times per year. The chairperson may call special meetings and must call a special meeting at the Attorney General's request. The Commission may establish



its own quorum requirements and procedures regarding the conduct of meetings and other affairs.

Commission members serve without compensation, but they may be reimbursed for mileage and other actual and necessary expenses incurred in the performance of their official duties.

The sunset review statutes, which provide for the expiration of state public bodies unless they are renewed following a review, do not apply to the Commission.

The act requires the Commission to formulate and recommend strategies on all of the following:

- (1) Increasing awareness of and improving education on elder abuse;
- (2) Increasing research on elder abuse;
- (3) Improving policy, funding, and programming related to elder abuse;
- (4) Improving the judicial response to elder abuse victims;
- (5) Identifying ways to coordinate statewide efforts to address elder abuse.

The Commission must review current funding and report on the cost to ODJFS and the county departments of implementing its recommendations.

The Commission must issue a biennial report on a plan of action that may be used by local communities to aid in the development of efforts to combat elder abuse. The report must include the Commission's findings and recommendations described above.

The act authorizes the Attorney General to adopt rules under R.C. 111.15 as necessary for the Commission to carry out its duties.

### **Training, education, and cooperation**

The act requires ODJFS to:

- (1) Provide a program of ongoing, comprehensive, formal training on the implementation of the adult protective services statutes and require all caseworkers and their supervisors to undergo the training (*a change from the optional "ongoing, formal training" that ODJFS may provide to county departments and other agencies that implement the statutes*);



(2) Develop and make available educational materials for individuals who are required to report abuse, neglect, and exploitation; and

(3) Facilitate ongoing cooperation among state agencies on issues pertaining to the abuse, neglect, or exploitation of older adults.

The act requires each entity that employs or is responsible for licensing or regulating mandatory reporters of abuse, neglect, or exploitation of older adults to ensure that those individuals have access to the educational materials developed by ODJFS.

### **Memorandum of understanding (VETOED)**

The Governor vetoed a provision that would have repealed a law enacted in 2015 requiring each CDJFS to prepare a memorandum of understanding that establishes the procedures to be followed by local officials regarding cases of elder abuse, neglect, and exploitation.

### **Supplemental Nutrition Assistance Program, employment and training**

(Section 751.20)

Under federal law, each state participating in the Supplemental Nutrition Assistance Program (SNAP) must (1) implement an employment and training program to assist members of SNAP households gain the skills, training, and work experience necessary for obtaining regular employment and (2) prepare and submit an annual plan regarding the program to the U.S. Department of Agriculture's Food and Nutrition Service for approval.

The act requires the JFS Director, in collaboration with the Higher Education Chancellor, to do all of the following with respect to Ohio's SNAP Employment and Training Program:

(1) Convene a skills-based SNAP Employment and Training Program planning committee to develop a plan for the expansion of the Program, which must include representatives of community colleges, local workforce development boards, and nonprofit organizations providing employment and training services for low-income individuals;

(2) Identify workforce development, adult basic education, and higher education programs and resources that could serve as potential providers of education, training, and support services;



(3) Identify resources that could be reimbursed by funds from the U.S. Department of Agriculture;

(4) Develop guidance on leveraging eligible state, local, and philanthropic resources to qualify for SNAP Employment and Training Program federal match dollars that includes a description of the process to participate in the program and the system of tracking participant eligibility, enrollment, continued participation, and outcomes; and

(5) Incorporate the plan to expand a skills-based employment and training program into the annual state plan submitted to the U.S. Department of Agriculture.



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## JOINT COMMITTEE ON AGENCY RULE REVIEW

- Prohibits an agency whose rule has been invalidated by a concurrent resolution from reintroducing that rule or any version of it during the term of the General Assembly in which the concurrent resolution invalidating the rule was adopted.
- Allows the General Assembly to adopt a concurrent resolution to authorize an agency to continue rule-making procedures for an invalidated rule, but the agency may not adopt the rule until it has been submitted to the Joint Committee on Agency Rule Review and the time for legislative review of the rule has expired.

### **Agency prohibited from reintroducing invalidated rule**

(R.C. 106.042)

The act prohibits an agency whose proposed rule has been invalidated by a concurrent resolution adopted by the General Assembly from reintroducing or continuing rule-making proceedings with respect to any version of that rule for the remaining term of the General Assembly in which the proposed rule was invalidated. The General Assembly may adopt a concurrent resolution to allow the agency to begin or continue rule-making with respect to a version of an invalidated rule; however, the agency may not adopt the rule unless it was submitted to the Joint Committee on Agency Rule Review and the time for legislative review expired without the General Assembly adopting a concurrent resolution to invalidate the proposed rule.



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## JOINT EDUCATION OVERSIGHT COMMITTEE

- Authorizes the Joint Education Oversight Committee chairperson to hire and terminate employees for the Committee, subject to approval by the Speaker of the House and President of the Senate or their designees.

### Employees

(R.C. 103.47)

The act authorizes the Joint Education Oversight Committee chairperson to hire and terminate professional, technical, and clerical employees. However, the hires and terminations are subject to approval by the Speaker of the House and the President of the Senate or their designees. Prior law granted hiring and termination authority of employees to the Committee as a whole without approval by the legislative leaders.



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## JOINT LEGISLATIVE ETHICS COMMITTEE

- Requires that all moneys credited to the renamed Joint Legislative Ethics Committee Investigative and Financial Disclosure Fund be used solely for expenses related to the Committee's investigative and financial disclosure functions.

### **Joint Legislative Ethics Committee: fund**

(R.C. 101.34 and 102.02; Section 321.10)

The act changes the name of a fund in the state treasury to the Joint Legislative Ethics Committee Investigative and Financial Disclosure Fund, and expands its permitted uses. The act specifies that all moneys credited to the Fund must be used solely for expenses related to the investigative and financial disclosure functions of the Joint Legislative Ethics Committee (JLEC). Under prior law, money in the Fund, which was called the Joint Legislative Ethics Committee Investigative Fund, was authorized to be used solely for the operations of JLEC in conducting investigations.

Under continuing law, JLEC acts as an advisory body to the General Assembly and related others on questions concerning financial disclosure. JLEC also conducts investigations of General Assembly members and related others.



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## JOINT MEDICAID OVERSIGHT COMMITTEE

- Authorizes the Joint Medicaid Oversight Committee (JMOC) chairperson to hire and terminate employees for the Committee, subject to approval by the Speaker of the House and President of the Senate or their designees.
- Requires JMOC to conduct a study regarding the feasibility of implementing both a plan similar to the Healthy Indiana Plan and a high-risk pool in Ohio.

### Employees

(R.C. 103.41)

The act authorizes the Joint Medicaid Oversight Committee (JMOC) chairperson to hire and terminate professional, technical, and clerical employees for JMOC. However, the hires and terminations are subject to approval by the Speaker of the House and the President of the Senate or their designees. Under prior law, JMOC as a whole had the authority to hire these employees. JMOC is responsible for providing ongoing legislative oversight of the state's Medicaid program.<sup>106</sup>

### Health coverage study

(Section 313.20)

The act requires JMOC to conduct a study determining the feasibility of simultaneously implementing a plan that is similar to the Healthy Indiana Plan and a high-risk pool in Ohio. Under the Healthy Indiana Plan, for nondisabled Medicaid recipients between the ages of 19 and 64, traditional Medicaid is replaced with a plan that pairs high deductible health plans and health savings accounts.<sup>107</sup> A high-risk pool is a government program that provides health coverage for individuals who are uninsurable (e.g., due to preexisting conditions).<sup>108</sup> By June 30, 2018, JMOC must submit a report of its findings to the Governor and the General Assembly.

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<sup>106</sup> R.C. 103.412, not in the act.

<sup>107</sup> Indiana Family and Social Services Administration, "About the HIP Program" available at <http://www.in.gov/fssa/hip/2494.htm>.

<sup>108</sup> U.S. Centers for Medicare & Medicaid Services, "High-Risk Pool Plan (State)" available at <https://www.healthcare.gov/glossary/high-risk-pool-plan-state/>.



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## JUDICIARY/SUPREME COURT

### Temporary custody of child

- Permits an abused, neglected, dependent, unruly, or delinquent child to be placed in the temporary custody of any person approved by the juvenile court rather than any *home* approved by the juvenile court.

### Annual review hearing

- Removes the requirement for the juvenile court to continue holding case review hearings for a child subject to a legal-custody order if:
  - The child is not subject to an order of protective supervision;
  - No public children services agency or private child placing agency is providing services to the child; and
  - The court finds that further reviews are not necessary to serve the child's best interests.

### Disposition of balance after sale on execution

- Modifies the notice and disposition requirements for balances remaining after sales on execution.

### Expungement of ex parte protection orders

- Requires a court to order the expungement of an ex parte protection order if the court does not issue, after a full hearing, a protection order against a minor, a civil stalking protection order involving any person, or a civil domestic violence protection order involving a family or household member.
- Requires a court to order the expungement of an ex parte order if the court, after a hearing, determines that a temporary criminal stalking protection order involving a person other than a family or household member or criminal domestic violence protection order involving a family or household member should be revoked.

## Temporary custody of child

(R.C. 2151.353)

The act permits a juvenile court to place a child adjudicated to be an abused, neglected, or dependent child in the temporary custody of any *person* approved by the court, rather than in any *home* approved by the court as provided in former law. This change also applies for children adjudicated to be delinquent or unruly.<sup>109</sup> Under continuing law, the court may also place the child for temporary custody with a public children services agency, private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home.

## Annual review hearing

(R.C. 2151.417)

The act permits a juvenile court to stop holding annual review hearings for a child that is subject to a legal custody order if:

- The child is not subject to an order of protective supervision;
- No public children services agency or private child placing agency is providing services to the child; and
- The court finds that further reviews are not necessary to serve the child's best interests.

Under prior law, a court had to hold annual review hearings regarding a child described above to (1) review the child's case plan and placement or custody arrangement, (2) approve or review the child's permanency plan, and (3) make any changes to the case plan and placement or custody arrangement consistent with the permanency plan.

## Disposition of balance after sale on execution

(R.C. 2329.44)

The act modifies the notice and disposition requirements for the balance remaining after an execution sale made pursuant to the Execution Against Property Law if the sale generates more money than is necessary to satisfy the writ of execution. Under continuing law, unchanged by the act, if the sale generates a balance in excess of

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<sup>109</sup> R.C. 2151.354(A)(1) and 2152.19(A)(1), not in the act.



the amount necessary to satisfy the writ and the balance exceeds the statutory threshold, the court clerk must notify the judgment debtor of the balance by certified mail and must publish an advertisement of the balance if notification by certified and ordinary mail fails. The act increases the statutory threshold from \$25 to \$100. The act also requires that an advertisement run at least once rather than three times, and requires the advertisement to contain the case number, the name of the judgment debtor, and information on how to contact the clerk. The act also allows the clerk to charge the judgment debtor the actual costs incurred in providing notice, rather than charging a set fee of \$25 for providing notice if the balance is \$25 or more or \$5 if the balance is less than \$25.

If a balance from a sale is unclaimed for 90 days after the first date of publication, the act allows the clerk to dispose of the unclaimed funds in the same manner as the clerk handles other unclaimed funds in the clerk's possession.

### **Expungement of ex parte protection orders**

(R.C. 2151.34, 2903.213, 2903.214, 2919.26, and 3113.31)

Under continuing law, unchanged by the act, on the following types of protection orders, the court may issue an ex parte protection order for the safety and protection of the person to be protected by the order, and must schedule a full hearing on whether or not to grant a protection order: (a) juvenile court protection order against a minor, (b) civil stalking protection order involving any person, and (c) civil domestic violence protection order (or consent agreement) involving a family or household member. If the court, after the full hearing, refuses to grant a protection order, the act requires the court, on its own motion, to order that the ex parte order issued and all records pertaining to it be expunged after either of the following occurs: the period of the notice of appeal from the order refusing to grant a protection order has expired, or the order refusing to grant a protection order is appealed and an appellate court to which the last appeal is taken affirms that order.

Under continuing law, unchanged by the act, on the following types of temporary protection orders, the court may issue an ex parte protection order for the safety and protection of the person to be protected by the order, and, as soon as possible after its issuance, must conduct a hearing to determine whether the order should remain in effect or be modified or revoked: (a) criminal stalking protection order involving a person other than a family or household member issued as a pretrial condition of release of the offender and (b) criminal domestic violence temporary protection order involving a family or household member. The act provides that if, at the hearing, the court determines that the ex parte order should be revoked, the court,



on its own motion, must order that the ex parte order and all records pertaining to it be expunged.

The act defines "expunge" as to destroy, delete, and erase a record, as appropriate for the record's physical or electronic form or characteristic, so that the record is permanently irretrievable.



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## LAKE ERIE COMMISSION

- Eliminates the Lake Erie Resources Fund, the purposes of which duplicate the purposes of the Lake Erie Protection Fund.
- Transfers all money in the Lake Erie Resources Fund to the Lake Erie Protection Fund.

### Lake Erie Resources Fund

(R.C. 1506.23; repealed R.C. 1506.24)

The act eliminates the Lake Erie Resources Fund, which consists of money transferred from the Great Lakes Protection Fund (a multistate organization whose purpose is to improve the health of the Great Lakes and to provide resources for states to support their individual Great Lakes priorities), and any donations, gifts, and bequests. Under prior law, the purposes for which money could be spent from the Lake Erie Resources Fund duplicated the purposes for which money can be spent from the Lake Erie Protection Fund. Thus, the act requires all money in the former to be transferred to the latter. It further specifies that the Lake Erie Protection Fund may consist of money awarded to Ohio from the Great Lakes Protection Fund.



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## LEGISLATIVE SERVICE COMMISSION

- Accelerates the termination of the Ohio Constitutional Modernization Commission and requires the Commission to cease operations on or before July 1, 2017.

### Ohio Constitutional Modernization Commission

(Sections 610.38, 610.39, and 701.20)

The act accelerates the termination of the Ohio Constitutional Modernization Commission and requires it to cease operations on or before July 1, 2017. The Commission was established in 2011 by H.B. 188 of the 129th General Assembly. It was required to study the Constitution of Ohio and to make recommendations from time to time to the General Assembly for amending the Constitution.<sup>110</sup> Under prior law, the Commission was scheduled to terminate on January 1, 2018.<sup>111</sup>

The act also requires the Director of the Legislative Service Commission to attend to any matters associated with winding up the Commission's affairs.

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<sup>110</sup> R.C. 103.61 to 103.63, not in the act.

<sup>111</sup> Sections 125.12 and 125.13 of Am. Sub. H.B. 64 of the 131st General Assembly.



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## LIQUOR CONTROL COMMISSION

- Allows a retail liquor permit holder to offer a 10% discount on cases of wine that contain between six and 12 bottles, rather than allowing the discount only on cases of 12 bottles as under former law.

### Case of wine discount

(R.C. 4301.13)

The act allows a retail liquor permit holder to offer a 10% discount on cases of wine that contain between six and 12 bottles of wine. A case need not be of the same brand, variety, or volume. Under prior law, the rules of the Liquor Control Commission allowed the retailer to offer the 10% discount only on cases of 12 bottles of wine.



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## STATE LOTTERY COMMISSION

### **Deputy directors; absence of Director**

- Eliminates the requirement that the Director of the State Lottery Commission appoint deputy directors in specific areas and instead permits the Director to appoint deputy directors as needed.
- Requires the Assistant Director of the Commission, or a designated deputy director if there is no Assistant Director, to act as Director in the absence or disability of the Director.

### **Credit card use (VETOED)**

- Would have prohibited the Commission from adopting rules to allow a lottery sales agent to accept a credit card to purchase a lottery ticket, except at a video lottery terminal (VLT) (VETOED).

### **Confidentiality of VLT voluntary exclusion program**

- Authorizes the Commission to adopt rules governing a voluntary exclusion program for VLT participants.
- Requires the identity and personal information of voluntary exclusion program participants to be kept confidential.

### **Deputy directors; absence of Director**

(R.C. 3770.02)

The act eliminates the requirement that the Director of the State Lottery Commission appoint deputy directors in specific areas, such as marketing, operations, sales, and finance. Instead, it permits the Director to appoint deputy directors as needed. The act also requires the Assistant Director of the Commission, or a designated deputy director if there is no Assistant Director, to act as Director in the absence or disability of the Director.



## **Credit card use (VETOED)**

(R.C. 3770.03)

The Governor vetoed a provision that would have prohibited the Commission from adopting rules that would allow a lottery sales agent to accept a credit card to purchase a lottery ticket at any location other than a video lottery terminal (VLT).

## **Confidentiality of VLT voluntary exclusion program**

(R.C. 3770.03 and 3770.22)

The act allows the Commission to adopt rules under the Administrative Procedure Act to establish and govern a voluntary exclusion program for VLT participants. Under the act, the identity and personal information of persons participating in the voluntary exclusion program must be kept confidential, and may only be shared between the Commission, VLT sales agents, and their employees for enforcement purposes. The identity and personal information of program participants may be shared with other entities only on request of the person and agreement of the Commission.



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## DEPARTMENT OF MEDICAID

### Coverage of optional eligibility groups (VETO OVERRIDDEN)

- Eliminates the Medicaid program's authority to cover an optional eligibility group if state statutes do not address whether the program may cover the group, but permits the program to cover an optional eligibility group that is currently covered (VETO OVERRIDDEN).
- Prohibits the Medicaid program from covering an optional eligibility group that it does not currently cover unless state statutes either require the group or expressly permit the group to be covered (VETO OVERRIDDEN).

### Eligibility for expansion group (PARTIALLY VETOED)

- Would have prohibited new enrollment in the Medicaid expansion group beginning July 1, 2018 (VETOED).
- Would have prohibited continuing enrollment in the expansion group if an individual ceased to meet eligibility requirements or the federal government reduced its share of Medicaid expenditures (VETOED).
- Would have exempted from the two prohibitions described above individuals who have a mental illness or drug addiction (VETOED).
- Requires the Medicaid Director to establish a waiver program under which an individual included in the Medicaid expansion group must satisfy additional requirements to be eligible for Medicaid.

### Medicaid provider enrollment system

- Requires the Ohio Department of Medicaid (ODM) to revise, by December 31, 2018, the system by which government and private entities become and remain Medicaid providers.

### Ohio Access Success Project

- Abolishes the Ohio Access Success Project on January 1, 2019.
- Requires ODM, before that date, to transfer Medicaid recipients enrolled in the project to the Helping Ohioans Move, Expanding (HOME) Choice program or another Medicaid waiver program that provides home and community-based services.



## State plan home and community-based services

- Permits the Medicaid program to continue to cover state plan home and community-based services beyond July 1, 2017.

## Payment rates (PARTIALLY VETOED)

- Would have prohibited the implementation of a proposal to increase a Medicaid payment rate if (1) the proposal was not submitted to the Joint Medicaid Oversight Committee (JMOC), (2) JMOC voted to prohibit implementation, or (3) the General Assembly adopted a concurrent resolution prohibiting implementation (VETOED).
- Repeals a provision prohibiting Medicaid payments for services provided by a noninstitutional provider from exceeding the payment limits for the same services under Medicare.
- Requires ODM to rebase nursing facilities' cost centers at least once every five state fiscal years, instead of no more than once every ten years, and requires each cost center to be rebased for the same state fiscal years (VETO OVERRIDDEN).
- Allows, instead of prohibiting, the use of the index maximizer element of the grouper methodology used in determining nursing facilities' case-mix scores (VETO OVERRIDDEN).
- Changes the quality indicators used for the quality portion of nursing facilities' rates (VETO OVERRIDDEN).
- Requires that a new nursing facility's initial rate for tax costs be determined by dividing its projected tax costs for the calendar year in which it begins to participate in Medicaid by a 100% imputed occupancy rate if the facility submits the projected tax costs to ODM (VETO OVERRIDDEN).
- Adjusts, beginning in FY 2020, nursing facilities' rates by an amount equal to the difference between the Medicare skilled nursing facility market basket index and a budget reduction adjustment factor (VETO OVERRIDDEN).
- States the General Assembly's intent to enact laws that specify the budget reduction adjustment factor for each state fiscal year (VETO OVERRIDDEN).
- Sets the budget reduction adjustment factor at zero for a state fiscal year if the General Assembly fails to enact such a law for that year (VETO OVERRIDDEN).



- Caps the total payments for nursing facility services provided under Medicaid fee-for-service and the Integrated Care Delivery System (i.e., MyCare Ohio) at \$2,659,167,368 for FY 2018 and \$2,664,485,703 for FY 2019.
- Requires that nursing facilities' rates be decreased as necessary to ensure that the total payments equal those capped amounts (VETO OVERRIDDEN).
- Provides for the default Medicaid rate for nursing facility services determined under the alternative purchasing model to be 34%, instead of 60%, of the statewide average of the Medicaid rate for long-term acute care hospital services.
- Would have required the Medicaid payment rates for hospital services provided during FYs 2018 and 2019 to equal the rates that were in effect for those services on January 1, 2017 (VETOED).
- Requires that the Medicaid rates for certain neonatal and newborn services equal 75% of the Medicare rates for the services (VETO OVERRIDDEN).
- Requires that Medicaid rates for other services selected by the Medicaid Director be reduced to avoid an increase in Medicaid expenditures that would otherwise result from the requirements regarding the rates for neonatal and newborn services (VETO OVERRIDDEN).
- Requires ODM to establish a maximum Medicaid rate for vision care services provided during the period beginning January 1, 2018, and ending July 1, 2019, unless there are no claims data available to ODM needed to establish the rate.
- Prohibits a payment methodology for vision care services provided during that period from relying on a vision care service provider's charged amount.
- Reduces the Medicaid rates for noninstitutional laboratory, radiology, and pathology services by 5% for the period beginning January 1, 2018, and ending July 1, 2019.

### **Delayed implementation of behavioral health redesign**

- Requires ODM and the Department of Mental Health and Addiction Services to conduct a beta test before implementing updates to Medicaid billing codes or payment rates for community behavioral health services as part of the behavioral health redesign.
- Prohibits certain elements of the behavioral health redesign from being implemented before the later of January 1, 2018, or the date the beta test requirement is satisfied.



- Requires the departments, by October 1, 2017, as part of implementing those elements of the redesign, to adopt rules and make available to the public provider manuals, claims instructions, information technology resources, and other educational and training documents.

### **Medicaid managed care (PARTIALLY VETOED)**

- Would have prohibited home and community-based waiver services and nursing facility services from being included in the Medicaid managed care system (VETOED).
- Establishes a temporary study committee to examine the merits of including such services in the system.
- Would have required the General Assembly to consider and vote, on legislation that would authorize the inclusion of such services in the system (VETOED).
- Would have provided for an ongoing advisory committee to be established to advise the Joint Medicaid Oversight Committee on projects concerning the delivery of such services if the General Assembly enacts the legislation (VETOED).
- Prohibits alcohol, drug addiction, and mental health services from being included in the system before July 1, 2018 (VETO OVERRIDDEN).
- Requires ODM, if it adds to the system during FYs 2018 and 2019 more Medicaid recipients who are aged, blind, disabled, or also enrolled in Medicare, to take certain actions regarding the duties of area agencies on aging relative to home and community-based waiver services.
- Exempts from Medicaid managed care prior authorization requirements certain psychiatric drugs that are prescribed by an advanced practice registered nurse who is certified in psychiatric mental health by a national certifying organization.
- Modifies the definition of "qualified community hub" for purposes of law governing required services that Medicaid managed care organizations must provide to pregnant women or women capable of becoming pregnant.
- Authorizes the services described above to be provided by a public health nurse in lieu of or in addition to community health worker services provided by certified community health workers.
- Authorizes a public health nurse (in addition to a physician or licensed health professional specified in rules adopted by the Medicaid Director) to recommend that a Medicaid recipient receive the services described above.



- Increases to 5% (from 2%) the maximum amount of Medicaid managed care organization premiums that may be withheld by ODM for purposes of the Managed Care Performance Payment Program for FY 2018 and thereafter.
- Would have provided for 1% to be withheld for FY 2019 (VETOED).
- Prohibits ODM from implementing during the FY 2018-2019 biennium a program under which Medicaid managed care organizations receive incentives for helping Medicaid recipients attending low-performing primary schools to improve their academic performance.

### **Waiver for services at institutions for mental diseases (VETOED)**

- Would have required ODM to create a Medicaid waiver component to provide services to eligible individuals between the ages of 21 and 64 at hospitals and other facilities larger than 16 beds that are primarily engaged in providing diagnosis, treatment, or care to persons with mental diseases (VETOED).
- Would have required ODM to participate in the federal Innovation Accelerator Program to determine where, when, and how services are to be provided under the waiver component (VETOED).

### **Retention or collection of federal financial participation**

- Permits, rather than requires, ODM to retain or collect a portion of the federal financial participation obtained by a state agency or political subdivision for administering a component of the Medicaid program that was federally approved on or after January 1, 2002.

### **Third-party liability**

- Requires a liable third party to respond to an ODM request for payment of a claim within 90 business days of receiving written proof of the claim.
- Clarifies that the amount owed for care rendered to a Medicaid recipient enrolled in a Medicaid managed care organization with a provider capitation agreement is the amount the organization would have paid in the absence of an agreement.
- Authorizes ODM, when it has assigned its right of recovery to a Medicaid managed care organization, to recoup from a liable third party (beginning one year from the date the organization paid the claim) the amount the organization has not collected.

## **Franchise fee on health insuring corporation plans (PARTIALLY VETOED)**

- Imposes, for the purpose of raising revenues to pay Medicaid providers and Medicaid managed care organizations, a franchise fee on health insuring corporation plans that make basic health care services available.
- Would have required the Medicaid Director to seek federal approval to increase the amount of the franchise fee for the purpose of mitigating the effects to counties and transit authorities of Medicaid health insuring corporation transactions ceasing to be sales for the purpose of state sales tax laws (VETOED).

## **Hospital Care Assurance Program and hospital franchise permit fee**

- Continues, for two additional years, the Hospital Care Assurance Program and the franchise permit fee imposed on hospitals under the Medicaid program.

## **Drug dispensing fees**

- Permits the Medicaid Director to establish dispensing fees that vary by terminal distributor of dangerous drugs.

## **Recovery of overpayments (VETOED)**

- Would have reduced from five to three the number of years ODM had to notify a nursing facility or intermediate care facility for individuals with intellectual disabilities of certain Medicaid overpayments (VETOED).

## **Fraud, waste, and abuse**

- Requires a contract between ODM and a Medicaid managed care organization to address issues of fraud, waste, and abuse in the Medicaid program.
- Provides civil immunity for a Medicaid managed care organization that furnished information to ODM regarding potential fraud, waste, and abuse in the Medicaid program.
- Requires ODM to collect information from other government agencies regarding fraud, waste, and abuse in the Medicaid program.

## **Retained Applicant Fingerprint Database**

- Permits ODM to participate in the Bureau of Criminal Identification and Investigation's Retained Applicant Fingerprint Database system ("Rapback") to receive notices about the arrests, convictions, and guilty pleas of independent Medicaid providers of home and community-based services.



- Eliminates a requirement that such an independent provider annually undergo a Bureau-conducted criminal records check if ODM participates in the system.

### **Controlling Board authority, Medicaid expenditures (PARTIAL VETO OVERRIDDEN)**

- Provides for the Health and Human Services Fund to continue to exist for the FY 2018-2019 biennium.
- Permits the Medicaid Director to request that the Controlling Board authorize expenditures from the Fund in an amount necessary to pay for the Medicaid program's costs during the FY 2018-2019 biennium (VETO OVERRIDDEN).
- Permits the Controlling Board to authorize the expenditure unless Congress amends federal law to reduce the federal match for the expansion eligibility group (also known as Group VIII) (VETO OVERRIDDEN).

### **Residents Protection Fund**

- Requires that fines imposed by the federal government against home health agencies for failure to comply with Medicaid participation requirements be deposited into the Residents Protection Fund when disbursed to ODM on or after July 1, 2017 and used to improve the quality of certain Medicaid services.

### **Refunds and Reconciliation Fund**

- Provides for the continued deposit into the Refunds and Reconciliation Fund refunds and reconciliations for which ODM does not initially know the appropriate fund or that are to go to another government entity.

### **Health Care Services Administration Fund**

- Abolishes the Health Care Services Administration Fund and provides for money that would otherwise be deposited into it be deposited instead into the Health Care/Medicaid Support and Recoveries Fund.

### **Integrated Care Delivery System performance payments**

- For FYs 2018 and 2019, requires ODM to make performance payments to Medicaid managed care organizations that provide care to participants of the Integrated Care Delivery System, and requires ODM to withhold a percentage of their premium payments for the purpose of providing the performance payments.



## **Nursing facility demonstration project**

- Extends until June 30, 2019, a Medicaid demonstration project under which recipients receive nursing facility services in lieu of hospital inpatient services in a freestanding long-term care hospital.
- Provides for one nursing facility in Brown County, and another nursing facility in Sandusky County, to be added to the demonstration project.
- Eliminates a requirement that a nursing facility have been initially constructed, licensed to operate, and certified to participate in Medicaid after 2009 to participate in the demonstration project.

## **Nursing facility bed conversion pilot**

- Requires ODM to operate a pilot program during FYs 2018 and 2019 under which nursing facility beds located in Cuyahoga County may voluntarily be converted for use for substance use disorder treatment services.

## **Care Innovation and Community Improvement Program**

- Requires the Medicaid Director to establish the Care Innovation and Community Improvement Program for the FY 2018-2019 biennium.
- Permits a nonprofit hospital agency affiliated with a state university and a public hospital agency to participate in the Program if it operates a hospital that has a Medicaid provider agreement.
- Provides for each participating agency to receive supplemental Medicaid payments for physician and other professional services.

## **Healthy Ohio Program (PARTIALLY VETOED)**

- Declares the General Assembly's intent to use the Healthy Ohio Program as a model if Congress transforms the Medicaid program into a federal block grant.
- Would have required the Medicaid Director to resubmit not later than January 31, 2018, a request for a federal Medicaid waiver needed to implement the Healthy Ohio Program (VETOED).

## **State agency collaboration**

- Extends to FYs 2018 and 2019 pre-existing provisions that authorize the Office of Health Transformation Executive Director to facilitate collaboration between certain



state agencies for health transformation purposes and authorize the exchange of personally identifiable information regarding a health transformation initiative.

### **Temporary authority regarding employees**

- Extends through July 1, 2019, the Medicaid Director's authority to establish, change, and abolish positions for ODM and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote employees who are not subject to collective bargaining.

### **Coverage of optional eligibility groups (VETO OVERRIDDEN)**

(R.C. 5163.03 (primary) and 5162.021)

Federal Medicaid law requires states' Medicaid programs to cover certain eligibility groups (mandatory eligibility groups) and permits states' Medicaid programs to cover certain other groups (optional eligibility groups).

The act restricts the Medicaid program's authority to cover additional optional eligibility groups. The Medicaid program is no longer permitted to cover any optional eligibility group that state statutes do not address whether the program may cover. Instead, it is permitted to cover only optional eligibility groups that it already covers. Also, it is prohibited from covering any optional eligibility group not already covered unless state statutes either require or expressly permit the group to be covered. The General Assembly overrode the Governor's veto of this provision.

### **Eligibility for expansion group (PARTIALLY VETOED)**

(R.C. 5163.01, 5163.15, 5166.01, 5166.37, 5166.40, and 5166.405; Section 333.271)

The Governor vetoed a provision that would have prohibited, with certain exceptions, the Medicaid program from covering the expansion eligibility group on or after July 1, 2018. An individual enrolled on June 30, 2018, in Medicaid on the basis of being included in the expansion eligibility group would have been permitted to continue to be enrolled until the earlier of (1) the date the individual ceased to meet Medicaid eligibility requirements or (2) the date, if any, that a reduction in the federal match for the expansion eligibility group took effect if federal legislation enacted on or after July 1, 2018, reduced the federal match. Neither provision would have applied to an individual with a mental illness or drug addiction.

The act requires the Medicaid Director to establish a Medicaid waiver that establishes additional eligibility requirements for members of the Medicaid expansion



group. Under the waiver, a member of the expansion group also must satisfy at least one of the following requirements to be eligible for Medicaid:

- (1) Be at least age 55;
- (2) Be employed;
- (3) Be enrolled in school or an occupational training program;
- (4) Be participating in an alcohol and drug addiction treatment program;
- (5) Have intensive physical health care needs or serious mental illness.

### **Medicaid provider enrollment system**

(R.C. 5164.29)

The act requires the Department of Medicaid (ODM) to develop and implement revisions to the system by which government and private entities become and remain Medicaid providers. The revisions must be developed and implemented not later than December 31, 2018. ODM must create a single system of records for the Medicaid provider system and enable government and private entities to become and remain Medicaid providers for any part of the Medicaid program, including parts administered by other state or local agencies, without having to submit duplicate data to the state. The departments of Aging, Developmental Disabilities, and Mental Health and Addiction Services must participate in the development of the revisions and use the revised system.

### **Ohio Access Success Project**

(R.C. 5166.35; Section 333.200)

The act abolishes the Ohio Access Success Project on January 1, 2019. The project helps Medicaid recipients transition from residing in nursing facilities to residing in community settings. ODM must transfer all Medicaid recipients enrolled in the project to the HOME Choice program or, if that program is integrated into a Medicaid waiver program covering home and community-based services, to the same or another Medicaid waiver program. The transfers must be made before January 1, 2019.



## State plan home and community-based services

(R.C. 5164.10 with conforming changes in R.C. 5164.01; Section 333.160)

The act permits the Medicaid program to continue to cover one or more state plan home and community-based services. Prior authority to cover these state plan services expired July 1, 2017.<sup>112</sup> These state plan services are optional under federal law and, unlike the other home and community-based services that Medicaid covers, do not require a federal waiver.<sup>113</sup> To make this authority ongoing, the act codifies it (i.e., places the authority in the Revised Code). The act also makes revisions. The codification and revisions take effect September 29, 2017. Until then, the act permits Medicaid to continue to cover the state plan services in the same manner that it covered the services during FYs 2016 and 2017.

Under the act's revisions, ODM must select which state plan home and community-based services that Medicaid will cover. A Medicaid recipient may receive a state plan service if the recipient has countable income not exceeding 225% of the federal poverty line, has a medical need for the service, and meets all other eligibility requirements to be specified in rules. In contrast, the authority to cover the state plan services that expired July 1, 2017 limited eligibility to Medicaid recipients who had behavioral health issues and countable incomes not exceeding 150% of the federal poverty line. As under the expired authority, a Medicaid recipient is not required to undergo a level of care determination.

## Legislative oversight of Medicaid rate increases (VETOED)

(R.C. 5164.69 (primary), 103.41, 103.417, 5162.021, 5164.02, and 5164.021)

The Governor vetoed a provision that would have prohibited ODM and other state agencies that administer part of the Medicaid program on ODM's behalf from increasing the Medicaid payment rate for a service, by rule or otherwise, under certain circumstances.<sup>114</sup>

A proposal to increase the rate for a service would have been prohibited from being implemented if ODM or the other state agency failed to submit the proposal to the Joint Medicaid Oversight Committee (JMOC). If a proposal was to be implemented in part or whole by rule, ODM or the other state agency would have been required to

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<sup>112</sup> Section 327.190 of Am. Sub. H.B. 64 of the 131st General Assembly.

<sup>113</sup> 42 U.S.C. 1396n(i).

<sup>114</sup> On July 6, 2017, the House voted to override the Governor's veto of this item. The Senate had not acted on the override when this analysis was published.



include with the proposal a copy of the proposed rule as filed in final form under the Administrative Procedure Act (R.C. Chapter 119.). JMOC would have been required, not later than 30 days after receiving the proposal, to conduct a public hearing on the proposal and vote on whether to permit or prohibit the proposal's implementation. The proposal could not have been implemented if JMOC voted by the deadline to prohibit implementation. The proposal also could not have been implemented if the General Assembly, not later than 90 days after JMOC's deadline, adopted a concurrent resolution prohibiting implementation. The General Assembly's authority to adopt the concurrent resolution would have applied regardless of whether JMOC voted to permit the proposal's implementation or failed to vote before its deadline. These prohibitions would have applied to a proposal to increase a Medicaid payment rate regardless of whether it involved a change to the method by which the rate was to be determined or specified the actual amount of the rate increase.

To give JMOC and the General Assembly time to prohibit implementation of a proposed Medicaid rate increase, the effective date for a rule increasing a Medicaid rate could not be earlier than the 121st day after the rule was filed in final form under the Administrative Procedure Act.

### **Medicaid payment limits for noninstitutional providers**

(R.C. 5164.70; Section 333.180)

The act repeals a provision prohibiting Medicaid payments for services provided by a noninstitutional provider from exceeding the payment limits for the same services under Medicare. For purposes of this provision, a noninstitutional provider is a Medicaid provider other than a hospital, nursing facility, or ICF/IID.

### **Medicaid rates for nursing facility services (VETO OVERRIDDEN)**

(R.C. 5165.01, 5165.106, 5165.15, 5165.151, 5165.153, 5165.154, 5165.16, 5165.17, 5165.19, 5165.192, 5165.21, 5165.23, 5165.25, 5165.34, 5165.36, 5165.361, 5165.37, 5165.41, 5165.42, and 5165.52)

The act revises the formula to determine Medicaid payment rates for nursing facility services. The General Assembly overrode the Governor's veto of the revisions.

The formula has several components. There are four separate cost centers (ancillary and support costs, capital costs, direct care costs, and tax costs) and a quality payment. For nursing facilities that qualify as critical access nursing facilities, there is also a critical access incentive payment. Specific dollar amounts are added and subtracted to the sum of the amounts determined for the different components.



## **Rebasings**

A rebasing is a redetermination of nursing facilities' cost centers using information from Medicaid cost reports for a calendar year that is later than the calendar year used for the previous rebasing. Under prior law, ODM was not required to conduct a rebasing more than once every ten years. The act instead requires ODM to conduct a rebasing at least once every five fiscal years. It also requires ODM, when conducting a rebasing for a fiscal year, to conduct the rebasing for each cost center.

## **Index maximizer element**

Determining a nursing facility's Medicaid payment rate for direct care costs includes a process under which case-mix scores are determined for the nursing facility. As part of the process, ODM must use a modified version of the grouper methodology used on June 30, 1999, by the U.S. Department of Health and Human Services for prospective payment of skilled nursing facilities under the Medicare program. Prior law prohibited ODM from using the methodology's index maximizer element. The act permits ODM to use it.

## **Quality payments**

Nursing facilities earn quality payments by meeting quality indicators. The amount of a nursing facility's quality payment depends on the number of quality indicators the nursing facility meets. A nursing facility must meet at least one quality indicator to get a quality payment and the nursing facilities that meet all of the quality indicators receive the largest quality payments.

The act revises the quality indicators. There were five quality indicators under prior law. There are seven under the act.

Under prior law, a nursing facility met one of the quality indicators if not more than a target percentage of its short-stay residents had new or worsened pressure ulcers, and not more than a target percentage of long-stay (more than 100 days) residents at high risk for pressure ulcers had pressure ulcers. The act separates this single indicator into two quality indicators.

The act also separates into two quality indicators an indicator concerning antipsychotic medication. Under prior law, a nursing facility met this indicator if not more than a target percentage of its short-stay residents newly received an antipsychotic medication *and* not more than a target percentage of long-stay residents received that medication. In determining whether a nursing facility meets these quality indicators, the act requires ODM to exclude residents receiving hospice care.



Whereas prior law gave ODM the authority to specify the target percentage to be used for the quality indicators discussed above, the act sets the target percentage at the 40th percentile of nursing facilities that have data for the quality indicators.

The act eliminates a quality indicator concerning the number of residents who had avoidable inpatient hospital admissions, and adds an indicator concerning the percentage of long-stay residents who had an unplanned weight loss. ODM must set the target percentage at the 40th percentile of nursing facilities that have data for the quality indicators. Two other quality indicators are unchanged by the act.

### **Critical access nursing facilities**

The act eliminates provisions of the law governing critical access nursing facilities that were intended to be eliminated by the main operating budget act for the FY 2016-2017 biennium, H.B. 64 of the 131st General Assembly, but were apparently inadvertently line-item vetoed by the Governor. The eliminated provisions referenced other provisions of law that no longer exist.

### **New nursing facilities' initial rate for tax costs**

The method used to determine the initial Medicaid payment rates for new nursing facilities differs from the method used to determine the rates for other nursing facilities, because ODM does not have Medicaid cost reports and certain other information for the new nursing facilities. The initial rate is adjusted at the beginning of the next fiscal year to reflect new rate calculations for all nursing facilities.

The act provides for a new nursing facility's initial rate for tax costs to be determined by dividing its projected tax costs for the calendar year in which it begins to participate in Medicaid by a 100% imputed occupancy rate *if the nursing facility submits the projected tax costs to ODM*. If a nursing facility does not submit the projected tax costs, its initial rate for tax costs is the median rate for tax costs for the peer group in which it is placed for determining its rates for ancillary and support costs. Under prior law, all new nursing facilities' initial rates for tax costs were those median rates.

### **Market basket index and budget reduction adjustment factor**

One of the revisions the act makes to the formula concerns a \$16.44 add-on, which became part of the formula on July 1, 2016. The act maintains the add-on for FYs 2018 and 2019. Beginning with the first fiscal year in a group of consecutive fiscal years for which a rebasing is conducted after FY 2020, the add-on is the amount of the add-on for the preceding fiscal year. (See "**Rebasings**" above.) For other fiscal years beginning with 2020, the add-on is the sum of the following:



(1) The amount of the add on for the immediately preceding fiscal year;

(2) The difference between (a) the Medicare skilled nursing facility market basket index determined for the federal fiscal year that began during the state fiscal year preceding the state fiscal year for which the rate is being determined and (b) the budget reduction adjustment factor for the fiscal year for which the rate is being determined.

The act states that it is the General Assembly's intent to specify in statute the factor to be used for a fiscal year as the budget reduction adjustment factor. That factor cannot exceed the Medicare skilled nursing facility market basket index determined for the federal fiscal year that begins during the state fiscal year preceding the fiscal year for which the factor is being determined. If the General Assembly fails to specify the factor in statute, the budget reduction adjustment factor is zero.

The act also provides for the difference between the Medicare skilled nursing facility market basket index and the budget reduction adjustment factor to be part of the manner in which the rates for the cost centers are determined beginning with FY 2020, other than the first fiscal year in a group of consecutive fiscal years for which a rebasing is conducted.

## **Caps on nursing facility payments**

(Section 333.165)

### **Amount of caps**

The act provides that the total amount of payments made by ODM under the fee-for-service component of the Medicaid program and by Medicaid managed care organizations under the Integrated Care Delivery System (i.e., MyCare Ohio) for nursing facility services provided during FYs 2018 and 2019 cannot exceed the following:

(1) For FY 2018, \$2,659,167,368;

(2) For FY 2019, \$2,664,485,703.

### **Possible rate reductions (VETO OVERRIDDEN)**

ODM must do all of the following in conjunction with LeadingAge Ohio, the Academy of Senior Health Sciences, and the Ohio Health Care Association:

(1) Monitor the payments made under Medicaid fee-for-service and the Integrated Care Delivery System for nursing facility services provided during those fiscal years;



(2) Beginning with the calendar quarter ending December 31, 2017, and each calendar quarter thereafter during FY 2018 and FY 2019, project whether the total payments to be made for the fiscal year will exceed the cap the act sets for the fiscal year;

(3) If the total payments to be made for FY 2018 or FY 2019 are projected to exceed the cap for the fiscal year, determine the percentage by which each nursing facility's rate under Medicaid fee-for-service and the Integrated Care Delivery System need to be reduced for the following calendar quarter to ensure that the total payments for the fiscal year will equal the cap for the fiscal year.

If a rate reduction has to be made, each nursing facility's rate must be reduced by the percentage so determined. The reduction is to take effect on the first day of the following calendar quarter and ODM must notify LeadingAge Ohio, the Academy of Senior Health Sciences, and the Ohio Health Care Association of the percentage reduction at least 30 days before it is to take effect.

The General Assembly overrode the Governor's veto of these requirements.

### **Alternative purchasing model for nursing facility services**

(R.C. 5165.157)

The act modifies the alternative method for determining the Medicaid rate for nursing facility services provided to Medicaid recipients with specialized health care needs by discrete units of nursing facilities. ODM must set the alternative rate at either a certain percentage of the statewide average Medicaid rate for long-term acute care hospital services or another amount determined in accordance with a methodology that includes improved health outcomes as a factor. Prior law set the percentage at 60%. The act lowers the percentage to 34%.

### **Medicaid rates for hospital services (VETOED)**

(Section 333.240)

The Governor vetoed a provision that generally would have required the Medicaid payment rate for a hospital service provided between July 1, 2017, and June 30, 2019, to equal the rate for the same type of service that was in effect on January 1, 2017. An exception would have applied for any rate change resulting from a hospital payment rate rebasing or recalibration by ODM on July 1, 2017.



## Medicaid rates for neonatal and newborn services (VETO OVERRIDDEN)

(R.C. 5164.78)

The act requires that the Medicaid payment rates for certain neonatal and newborn services equal 75% of the Medicare payment rates for the services in effect on the date the services are provided to Medicaid recipients eligible for them. This requirement applies to the following neonatal and newborn services:

- (1) Initial care for normal newborns;
- (2) Subsequent day, hospital care for normal newborns;
- (3) Same day, initial history and physical examination and discharge for normal newborns;
- (4) Initial neonatal critical care for children not more than 28 days old;
- (5) Subsequent day, neonatal critical care for children not more than 28 days old;
- (6) Subsequent day, pediatric critical care for children at least 29 days old but less than two years old;
- (7) Initial neonatal intensive care;
- (8) Subsequent day, neonatal intensive noncritical care for children weighing less than 1,500 grams;
- (9) Subsequent day, neonatal intensive noncritical care for children weighing at least 1,500 grams but not more than 2,500 grams; and
- (10) Subsequent day, neonatal care for children weighing more than 2,500 grams but not more than 5,000 grams.

Payment rates for other Medicaid services selected by the Medicaid Director must be less than the amount of the rates in effect on September 29, 2017, so that the cost of the rates for the neonatal and newborn services listed above do not increase Medicaid expenditures. The Director is prohibited from selecting for rate reduction any Medicaid service for which the rate is determined in accordance with state statutes.

The General Assembly overrode the Governor's veto of these requirements.



## **Vision Care Services**

(Section 333.184)

The act requires ODM to establish a maximum Medicaid rate for vision care services provided during the period beginning January 1, 2018, and ending July 1, 2019, unless there are no claims data available to ODM needed to establish the rate. The act prohibits a payment rate for the services from relying only on a vision care service provider's charged amount.

## **Noninstitutional laboratory, radiology, and pathology services**

(Section 333.300)

The act requires that the Medicaid rates for noninstitutional laboratory, radiology, and pathology services provided during the period beginning January 1, 2018, and ending July 1, 2019, be 5% lower than the rates for the services in effect on December 31, 2017.

## **Delayed implementation of behavioral health redesign**

(R.C. 5164.761 (primary) and 5164.01; Section 333.260)

ODM, in collaboration with the Governor's Office of Health Transformation and the Department of Mental Health and Addiction Services, developed proposals to revise the Medicaid program's coverage of community behavioral health services, including revisions to Medicaid billing codes and payments rates. This is commonly known as the behavioral health redesign. Community behavioral health services are alcohol and drug addiction services and mental health services provided by community providers.

The act requires ODM and the Department of Mental Health and Addiction Services to conduct a beta test before they update Medicaid billing codes or payment rates for community behavioral health services as part of the redesign. Any Medicaid provider of community behavioral health services may volunteer to participate in the beta test. An update may not be implemented outside of the beta test until at least half of the Medicaid providers participating in the test are able to submit a clean claim that is properly adjudicated within 30 days after it is submitted. Clean claim is a term defined in a federal Medicaid regulation as a claim that can be processed without obtaining additional information from the service provider or a third party. It includes a claim with errors originating in a state's claims system. It does not include a claim from



a provider who is under investigation for fraud or abuse or a claim under review for medical necessity.<sup>115</sup>

The act prohibits any of the following changes to Medicaid coverage of community behavioral health services from being implemented before January 1, 2018, or the date the beta test requirement is satisfied:

- (1) Aligning billing codes for the services to national standards;
- (2) Redefining mental health pharmacologic management and substance use disorder medical/somatic services as medical services;
- (3) Separating and repricing the services and providing for lower acuity service coordination and support services;
- (4) Requiring practitioners who are employed by a community behavioral health services provider and render the services to obtain a Medicaid provider agreement and be reported on Medicaid claims for the services;
- (5) Requiring community behavioral health services providers to submit claims for the services to a third party responsible for some or all of the costs of the services before the providers submit Medicaid claims for the services.

The Medicaid Director and Director of Mental Health and Addiction Services must do both of the following by October 1, 2017, as part of the changes discussed above: (1) adopt rules and (2) complete and make available to the public provider manuals, claims instructions, information technology resources, and other educational and training documents.

### **Medicaid managed care**

Continuing law requires ODM to establish a care management system, which is more commonly called the Medicaid managed care system. The act makes a number of changes to the law governing the system.

#### **Elimination of requirement to include certain services**

(R.C. 5162.70)

The Medicaid Director is required by continuing law to limit the growth in the per recipient per month cost of the Medicaid program. The Director must achieve the growth limit through certain actions. The act eliminates one of these actions: the

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<sup>115</sup> 42 C.F.R. 447.45(b).



Director is no longer required to integrate in the Medicaid managed care system the delivery of physical health, behavioral health, nursing facility, and home and community-based services.

**Including long-term care services (PARTIALLY VETOED)**

(R.C. 5167.03 (primary), 103.43, and 5167.01; Sections 333.270, 333.283, and 333.284)

The Governor vetoed a provision that would have prohibited home and community-based waiver services and nursing facility services from being included in the Medicaid managed care system.<sup>116</sup> The provision would not have prohibited (1) participants of the Integrated Care Delivery System (i.e., MyCare Ohio) from being required or permitted to obtain such services under the system or (2) Medicaid recipients who receive such services from being designated for voluntary or mandatory participation in the system in order to receive other health care services included in the system.

The act establishes the Patient-Centered Medicaid Managed Care Long-Term Services and Supports Study Committee to examine the merits of including in home and community-based waiver services and nursing facility services in the Medicaid managed care system. The study committee must include the following members:

- (1) The chair of the House Finance Subcommittee on Health and Human Services;
- (2) The chair of the House Aging and Long-Term Care Committee;
- (3) The chair of the Senate Finance Health and Medicaid Subcommittee;
- (4) The chair of the Senate Health, Human Services, and Medicaid Committee;
- (5) The Executive Director of the Office of Health Transformation or Director's designee;
- (6) The Medicaid Director or Director's designee;
- (7) The Director of Aging or Director's designee;
- (8) The Director of Health or Director's designee;
- (9) The State Long-Term Care Ombudsman or Ombudsman's designee;

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<sup>116</sup> On July 6, 2017, the House voted to override the Governor's veto of this item. The Senate had not acted on the override when this analysis was published.



(10) One representative of each of the following organizations, as appointed by the organization's chief executive: LeadingAge Ohio, the Academy of Senior Health Sciences, the Ohio Aging Advocacy Coalition, the Ohio Assisted Living Association, the Ohio Association of Health Plans, the Ohio Association of Area Agencies on Aging, the Ohio Council for Home Care and Hospice, the Ohio Health Care Association, the Ohio Olmstead Task Force, the Universal Health Care Action Network Ohio, AARP Ohio, and the Center for Community Solutions.

Appointments to the study committee must be made by July 29, 2017. Members are to serve without compensation or reimbursement, except to the extent that serving on the committee is part of their usual duties. The Speaker and Senate President must appoint co-chairpersons from among the committee's legislative members. ODM must provide the committee any needed administrative assistance.

When examining the merits of including the services in the system, the study committee must:

(1) Consider available information about the Medicaid waiver created as part of the Integrated Care Delivery System and the Medicaid program's coverage of nursing facility services;

(2) Estimate the costs that the state, Medicaid managed care organizations, providers, and Medicaid recipients would incur;

(3) Address any redundancies in rules governing the services and the terms and conditions of contracts with Medicaid managed care organizations;

(4) Estimate the projected benefits that Medicaid recipients would realize;

(5) Consider policies and procedures that are intended to promote efficient implementation and administration of including the services in the system;

(6) Recommend systems that can be used in either Medicaid managed care long-term care services or supports or fee-for-services Medicaid to reward providers of long-term care services and supports that meet specified quality measures.

The study committee must complete a report by December 31, 2018. The report must include the committee's recommendations regarding costs, benefits, and policies. The committee must submit its report to the Governor, General Assembly, and JMOC and make it available to the public. On the report's submission, the committee ceases to exist.



The Governor vetoed a provision that would have required the General Assembly to consider and vote on legislation authorizing the inclusion of home and community-based waiver services and nursing facility services in the Medicaid managed care system beyond their inclusion in the Integrated Care Delivery System.<sup>117</sup> If the General Assembly enacted such legislation, the Patient-Centered Medicaid Long-Term Care Delivery System Advisory Committee would have been created effective on the date that the legislation took effect.

In contrast to the temporary study committee discussed above, the advisory committee would have been ongoing. It would have had the same type of membership as the temporary study committee. JMOC staff would have been required to provide administrative assistance and ODM would have been required to provide updates about the inclusion of home and community-based waiver services and nursing facility services in the Medicaid managed care system. The ongoing advisory committee would have been required to advise JMOC on projects that measure improvements to the delivery of the services and periodically recommend to the Medicaid Director policy changes to make additional improvements. It also would have been required to complete quarterly reports regarding its work. The reports would have had to be submitted to the General Assembly and JMOC.

#### **Including behavioral health services (PARTIAL VETO OVERRIDDEN)**

(R.C. 5167.04 (primary), 103.41, and 103.416)

Under prior law, ODM was required to begin including alcohol, drug addiction, and mental health services in the Medicaid managed care system *not later than* January 1, 2018. Before that date, any proposal by ODM to include all or part of the services in the system was subject to review by JMOC and ODM was permitted to implement the proposal only if JMOC approved it. JMOC was required to monitor ODM's actions in preparing to implement and implementing such a proposal until June 30, 2018. Beginning January 1, 2018, any such proposal was subject to JMOC's monitoring, but not JMOC's approval.

The act generally eliminates these provisions. The requirement that alcohol, drug addiction, and mental health services be included in the Medicaid managed care system is retained, but they are prohibited from being included before July 1, 2018. The General Assembly overrode the Governor's veto of this prohibition. JMOC must monitor on a quarterly basis ODM's preparations to include the services in the system and

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<sup>117</sup> On July 6, 2017, the House voted to override the Governor's veto of this item. The Senate had not acted on the override when this analysis was published.



periodically monitor ODM's inclusion of the services in the system once they begin to be included.

### **Duties of area agencies on aging**

The act requires ODM, if it expands the inclusion of the aged, blind, and disabled Medicaid eligibility group or Medicaid recipients who are also eligible for Medicare in the Medicaid managed care system during the FY 2018-2019 biennium, to do both of the following for the remainder of the biennium:

(1) Require area agencies on aging to be the coordinators of home and community-based waiver services that the recipients receive and permit Medicaid managed care organizations to delegate to the agencies full-care coordination functions for those and other health care services;

(2) In selecting Medicaid managed care organizations, give preference to organizations that will enter into subcapitation arrangements with area agencies on aging under which the agencies perform, in addition to other functions, network management and payment functions for services that those recipients receive.

### **Prior authorization for psychiatric drugs**

(R.C. 5167.12)

The act exempts from Medicaid managed care prior authorization requirements certain psychiatric drugs that are prescribed by either a certified nurse practitioner or a clinical nurse specialist who is certified in psychiatric mental health by a national organization approved by the Nursing Board. Under prior law, these drugs were exempt from prior authorization requirements only if they were prescribed by (1) a physician who was, through the Medicaid managed care organization's credentialing process, allowed to provide care as a psychiatrist or (2) a psychiatrist who practiced at a community mental health services provider whose services were certified by the Department of Mental Health and Addiction Services.

### **Local boards of health as community hubs; public health nurses**

(R.C. 5167.173)

Law modified in part by the act requires Medicaid managed care organizations to provide or arrange for female Medicaid recipients who are pregnant or capable of becoming pregnant to receive services by certified community health workers who work for, or are under contract with, a qualified community hub. Under prior law, a "qualified community hub" was defined as a central clearinghouse for a network of community care coordination agencies that met the following criteria:



(1) Demonstrated that it used an evidence-based, pay-for-performance community care coordination model endorsed by the federal Agency for Healthcare Research and Quality, the National Institutes of Health, and the Centers for Medicare and Medicaid Services (or their successors) to connect at-risk individuals to health, housing, transportation, employment, education, or other social services;

(2) Demonstrated that it had achieved, or was engaged in achieving, certification from a national hub certification program; and

(3) Had a plan, approved by the Medicaid Director, specifying how the community hub ensured that children received specified developmental screenings.

The act modifies all three criteria necessary to be a qualified community hub:

--First, a central clearinghouse may use certified community health workers or public health nurses in lieu of being endorsed by the national organizations and agencies;

--Second, a central clearinghouse may be a local board of health instead of having achieved, or being engaged in achieving, certification from a national hub certification program; and

--Third, as a result of local boards of health being authorized by the act to serve as central clearinghouses, a board may submit a plan approved by the Medicaid Director specifying how it ensures that the children served by it receive the appropriate developmental screenings.

The act also authorizes Medicaid managed care organizations to provide or arrange for eligible female Medicaid recipients to receive services provided by a public health nurse (in lieu of or in addition to community health worker services, as provided for under prior law). Moreover, it authorizes a public health nurse to recommend that a Medicaid recipient receive the services. (Under prior law, only a physician or other licensed health professional specified in rules was authorized to make that recommendation.) For conforming purposes, the act makes other changes related to the authority of public health nurses and the provision of services to eligible female Medicaid recipients.

### **Premium payment withholdings (PARTIALLY VETOED)**

(R.C. 5167.30; Section 333.50)

The act increases to 5% (from 2%) the maximum amount of a Medicaid managed care organization's premium payments that ODM may withhold for the Managed Care



Performance Payment Program, under which Medicaid managed care organizations receive payments for meeting performance standards. The Governor vetoed a provision that would have limited the amount withheld during FY 2019 to 1%.

### **Managed care academic performance incentives**

(Section 333.223)

The act prohibits ODM from implementing during the FY 2018-2019 biennium a program under which Medicaid managed care organizations receive incentives for helping its Medicaid enrollees who attend low-performing primary schools to improve their academic performance.

### **Waiver for services at institutions for mental diseases (VETOED)**

(R.C. 5166.38)

The Governor vetoed a provision that would have required the Department to administer a Medicaid waiver component to provide services to eligible individuals between the ages of 21 and 64 at institutions for mental diseases, which are hospitals and other facilities of more than 16 beds primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases. The provision would have required the Department to participate in the Centers for Medicare and Medicaid Services' Innovation Accelerator Program to determine where, when, and how the waiver services were to be provided.

### **Retention or collection of federal financial participation**

(R.C. 5162.40)

The act modifies ODM's authority to retain or collect a portion of the federal financial participation obtained by a state agency or political subdivision that administers one or more components of the Medicaid program that was federally approved on or after January 1, 2002. Prior law required ODM to retain or collect between 3% and 10% of the federal financial participation. Under the act, ODM is permitted, instead of required, to retain or collect up to 10% of the federal financial participation, which matches continuing law with respect to Medicaid components that were federally approved before January 1, 2002.



## **Third-party liability**

Federal law<sup>118</sup> generally provides that Medicaid is the payer of last resort for a Medicaid recipient's medical costs. Accordingly, if a Medicaid recipient has one or more additional sources of coverage for health care services (insurance, recovery from a tortfeasor, or coverage from another program), that other source must be billed before Medicaid. This concept is known as "third-party liability." Ohio law reflects this policy.

### **Deadline for third-party payments**

(R.C. 5160.40)

The act requires a liable third party to respond to an ODM request for payment of a claim not later than 90 business days after receipt of written proof of the claim, either by paying the claim or issuing a written denial to ODM. A business day is any day of the week excluding Saturday, Sunday, or a legal holiday.

### **Medicaid managed care**

#### **Amount of recovery**

(R.C. 5160.37, with a conforming change in R.C. 5160.401)

Under continuing law not modified by the act, an individual who receives medical assistance (from Medicaid, the Children's Health Insurance Program, or the Refugee Medical Assistance Program) gives an automatic right of recovery to ODM or a county department of job and family services against the liability of a third party for the cost of medical assistance paid on the recipient's behalf. In the case of a recipient who receives medical assistance through a Medicaid managed care organization, continuing law specifies that ODM's or the county department's claim is the amount the managed care organization pays for medical assistance rendered to the recipient (even if that amount exceeds the amount that ODM or the county department pays to the organization for the recipient's medical assistance). The act clarifies that this provision applies only to a Medicaid managed care organization that does not have a capitation agreement with a provider. For a Medicaid managed care organization with a capitation agreement, the act specifies that ODM's or the county department's claim is the amount the managed care organization would have paid in the absence of a capitation agreement.

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<sup>118</sup> 42 U.S.C. 1396a(a)(25).



## **Right of recoupment**

(R.C. 5160.40)

Continuing law unchanged by the act requires a liable third party to treat a Medicaid managed care organization as ODM for a claim if the Medicaid recipient received a medical item or service through the organization and ODM assigned its right of recovery for the claim to the organization. The act authorizes ODM, even if it assigned its right of recovery to the managed care organization, to recoup from the third party the amount that was assigned to the organization but was not collected. ODM may initiate recoupment beginning one year after the managed care organization paid the claim.

## **Health insuring corporation franchise fee (PARTIALLY VETOED)**

(R.C. 5168.75, 5168.76, 5168.761, 5168.77, 5168.78, 5168.79, 5168.80, 5168.81, 5168.82, 5168.83, 5168.84, 5168.85, and 5168.86)

### **Imposition of franchise fee**

The act imposes a monthly franchise fee on health insuring corporation plans (policies, contracts, certificates, or agreements of a health insuring corporation under which the corporation pays for, reimburses, provides, delivers, arranges for, or otherwise makes available basic health care services).<sup>119</sup> A plan is exempt from the franchise fee if it (1) covers only supplemental health care services or specialty health care services, (2) is a health benefits plan for federal government employees and subjecting the plan to the franchise fee would violate federal law, or (3) is a Medicare Advantage Plan.

The franchise fee is to have a component based on Ohio Medicaid member months and another component based on other Ohio member months. Ohio Medicaid member months are months in which a state resident who is a Medicaid recipient is enrolled in a health insuring corporation plan. Other Ohio member months are months in which a state resident who is not a Medicaid recipient is enrolled in a health insuring corporation plan.

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<sup>119</sup> Continuing law defines "basic health care services" as the following when medically necessary: physician's services (except when such services are supplemental), inpatient hospital services, outpatient medical services, emergency health services, urgent care services, diagnostic laboratory services, diagnostic and therapeutic radiologic services, diagnostic and treatment services (other than prescription drug services) for biologically based mental illnesses, preventive health care services (including voluntary family planning services, infertility services, periodic physical examinations, prenatal obstetrical care, and well-child care), and routine patient care for patients enrolled in an eligible cancer clinical trial. Experimental procedures are not basic health care services. (R.C. 1751.01, not in the act.)



The franchise fee is to be first imposed for the month of July 2017.

The franchise fee may not be imposed, however, unless there is a federal waiver authorizing it issued by the U.S. Secretary of Health and Human Services. The waiver is needed because of federal law that places restrictions on states' use of health care-related taxes to raise revenues for the nonfederal share of Medicaid costs.<sup>120</sup> If the federal government determines that the franchise fee is an impermissible health care-related tax, ODM must do either of the following as appropriate:

(1) Modify the imposition of the franchise fee, including, if necessary, the amount of the fee, in a manner needed for the federal government to reverse its decision;

(2) Take all necessary actions to stop imposing the franchise fee until the determination is reversed.

### **Amount of the franchise fee**

#### **Default amount**

The act provides for separate calculations to be made in determining a default amount of a health insuring corporation plan's franchise fee. The first calculation concerns the number of a plan's Ohio Medicaid member months and the second calculation concerns the number of its other Ohio member months.

The act does not establish the specific formula to determine the part of the franchise fee that is based on Ohio Medicaid member months. Instead, it requires ODM to determine the amount as part of the process of determining the annual capitated payments rates to be paid to Medicaid managed care organizations. It also requires that the following rates be used as part of the determination:

<b>Cumulative Monthly Total Number of Medicaid Recipient Enrollees as of the Portion of a Fiscal Year That Has Ended</b>	<b>Applicable Rate</b>
For the first 250,000	\$56
For 250,001 to 500,000	\$45
For 500,001 and above	\$26

The act establishes the formula to determine the part of the franchise fee that is based on other Ohio member months. This part is to be determined by multiplying the number of other Ohio member months that the health insuring corporation plan had for the month by the applicable rate or rates. The applicable rate or rates depends on the

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<sup>120</sup> 42 U.S.C. 1396b(w).



cumulative total number of other Ohio member months the health insuring corporation plan had for all of a fiscal year's months that ended before the beginning of the month in which the franchise fee is due. The following table shows the applicable rate or rates:

Cumulative Monthly Total Number of Other Enrollees as of the Portion of a Fiscal Year That Has Ended	Applicable Rate
For the first 150,000	\$2
For 150,001 and above	\$1

**Higher amount if CMS grants formal approval (VETOED)**

The Governor vetoed a provision that would have required the Medicaid Director to ask the U.S. Centers for Medicare and Medicaid Services (CMS) whether the franchise fee may be increased above the default amount in a manner to raise up to an additional \$207 million per fiscal year without causing it to be an impermissible health care-related tax under federal law.<sup>121</sup> The Director would have been required to collaborate with the County Commissioners Association of Ohio and the Director of Budget and Management in preparing the question, and submit it to CMS by October 1, 2017.

If CMS informed the Director that the franchise fee may be so increased, the Director would have been required to request that CMS provide formal approval as soon as possible. On receipt of the formal approval, the Director would have been required to increase the franchise fee as needed to raise as much of the additional \$207 million per fiscal year as CMS specified in the formal approval. The increase would have gone into effect on the later of July 1, 2018, or the earliest date the formal approval permitted. It would have had to be applied proportionately across health insuring corporation plans. The increase was not to be applied on or after July 1, 2024.

**Cap**

The total revenue raised by the franchise fee during a fiscal year is subject to a cap that may result in ODM refunding a portion of the fee. If the total franchise fees imposed on all health insuring corporations during a fiscal year exceeds a certain amount of the net patient revenue for all health insuring corporations for that fiscal year, and 75% or more of all health insuring corporations receive enhanced Medicaid payments or other state payments equal to 75% or more of their total franchise fees, ODM must refund the excess amount of the fees to the health insuring corporations.

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<sup>121</sup> On July 6, 2017, the House voted to override the Governor's veto of this item. The Senate had not acted on the override when this analysis was published.



The percentage used for this calculation is set by federal law. Currently, it is 6%.<sup>122</sup> If the percentage changes during a fiscal year, the percentage in effect before the change is to be used for the part of the fiscal year before the change takes effect, and the new percentage is to be used for the remainder of the fiscal year.

### **Due dates**

The part of the franchise fee based on Ohio Medicaid member months is to be paid monthly. It is due on the fifth business day of the month following the month for which it is imposed. The other part is to be paid in one annual payment, which is due on September 30 of the calendar year in which the fiscal year for which it is imposed ends.

If a health insuring corporation administers multiple plans, it must pay the total amount due for all of the plans under the part of the franchise fee based on Ohio Medicaid member months in one payment, and pay the total amount due for all of the plans under the other part in one payment, too.

### **Submission of information and access to documentation**

ODM may request that a health insuring corporation provide it documentation it needs to verify the amount of the franchise fees imposed on the corporation's plans and to ensure the corporation's compliance with state law governing the franchise fee. On receipt of the request, the health insuring corporation must provide ODM the requested documentation. ODM also may review relevant documents possessed by other entities for the purpose of making the verifications.

### **Recovering underpayments**

ODM must notify a health insuring corporation if it determines that the franchise fee the corporation paid is less than the amount it should have paid. The corporation must pay the amount due. However, the corporation may request a reconsideration of ODM's determination. A reconsideration may be requested solely on the grounds that the Department made a material error in making the determination. The request must be received by ODM not later than 15 days after it notifies the corporation of the determination, and must include written materials setting forth the basis for the reconsideration. If the request is timely made, ODM must reconsider the determination and issue a final decision within 30 days after it receives the request.

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<sup>122</sup> 42 U.S.C. 1396b(w)(4)(C)(ii).



## **Penalty for late payment**

ODM may impose a penalty on a health insuring corporation that fails to pay the full amount of a franchise fee when due. The amount of the penalty is 10% of the amount due for each month or fraction thereof that the franchise fee is overdue.

## **Use of funds raised by the franchise fee (PARTIALLY VETOED)**

The act creates in the state treasury the Health Insuring Corporation Franchise Fee Fund. All payments and associated penalties paid by health insuring corporations must be deposited into the Fund. Money in the Fund must be used to make Medicaid payments to Medicaid providers and Medicaid managed care organizations. Any interest or other investment proceeds earned on the money must be credited to the Fund and used to make those payments.

The vetoed provision that would have required the Medicaid Director to seek CMS approval to increase the amount of the franchise fee also would have required the Director of Budget and Management to have the additional funds periodically transferred from the Health Insuring Corporation Franchise Fee Fund to the Permissive Tax Distribution Fund. The transfers' purpose would have been to mitigate the reduced sales tax revenues of counties and transit authorities caused by Medicaid health insuring corporation transactions being removed from the sales tax (see "**Medicaid provider sales tax cessation and transition payments**" in the **DEPARTMENT OF TAXATION** section of this analysis). The Tax Commissioner would have been required to provide for the equitable distribution of the transferred amounts to each county and transit authority that levied a permissive sales tax on such transactions on July 1, 2017.

## **Rules**

The Medicaid Director is permitted to adopt rules as necessary to implement the franchise fee on health insuring corporation plans. The rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

## **Hospital Care Assurance Program and hospital franchise permit fee**

(Sections 610.40 and 610.41 (amending Sections 125.10 and 125.11 of H.B. 59 of the 130th G.A.))

The act continues the Hospital Care Assurance Program for two additional years. The program was scheduled to end October 16, 2017, but under the act is to continue until October 16, 2019. Under the program, hospitals are annually assessed an amount based on their total facility costs, and government hospitals make annual intergovernmental transfers. ODM distributes to hospitals money generated by the



assessments and intergovernmental transfers along with federal matching funds generated by them. 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. The assessment is to end October 1, 2019, rather than October 1, 2017. The assessment is in addition to the Hospital Care Assurance Program, but like that program, it raises money to help pay for the Medicaid program. To distinguish the assessment from the Hospital Care Assurance Program, it is sometimes called a hospital franchise permit fee.

### **Drug dispensing fees**

(R.C. 5164.752 and 5164.753)

In July of every even-numbered year, ODM is required by continuing law to initiate a confidential survey of the cost of dispensing drugs incurred by terminal distributors of dangerous drugs in Ohio. Each terminal distributor that is a Medicaid provider of drugs must participate in the survey. The act extends the deadline for the survey to be completed and its results published from October 31 of the year in which it is conducted to November 30.

The act also permits the Medicaid Director to establish dispensing fees that vary by terminal distributor, taking into consideration the volume of drugs a terminal distributor dispenses under Medicaid or any other criteria the Director considers relevant. Prior law required the Director to establish a single dispensing fee for all terminal distributors.

### **Recovery of overpayments (VETOED)**

(R.C. 5164.57)

ODM has statutory authority to recover a Medicaid payment from a provider if ODM notifies the provider of the overpayment during the five-year period following the state fiscal year in which the overpayment was made. The Governor vetoed a provision that would have reduced the recovery period to three years, in the case of an overpayment made to a nursing facility or intermediate care facility for individuals with intellectual disabilities that ODM determined from data in its possession, or in the possession of another state agency, at the time ODM made the determination.



## **Fraud, waste, and abuse**

### **Managed care organizations**

(R.C. 5167.18 and 5167.34)

The act requires each contract ODM enters into with a managed care organization to require the organization to comply with federal and state efforts to identify fraud, waste, and abuse in the Medicaid program.

The act provides civil immunity to a Medicaid managed care organization, and its officers, employees, or other associated persons, in a civil action for damages for furnishing information to ODM regarding potential Medicaid fraud, waste, or abuse.

### **Collection of information**

(R.C. 5162.16)

The act requires each government entity that administers a component of the Medicaid program to inform ODM if it has reasonable cause to believe that an instance of fraud, waste, or abuse has occurred in the Medicaid program. The Department must collect the information in the Medicaid data warehouse system.

## **Retained Applicant Fingerprint Database**

(R.C. 109.5721, 5164.34 and 5164.341 with conforming changes in R.C. 4749.031, 5101.32, 5160.052, and 5164.37)

The act permits ODM to participate in the Bureau of Criminal Identification and Investigation's Retained Applicant Fingerprint Database to receive notices about the arrests, convictions, and guilty pleas of independent Medicaid providers of home and community-based services under a Medicaid program the Department administers. The database, commonly known as "Rapback," notifies participating public offices and private parties when an individual the office or party employs, licenses, or approves for adoption is arrested for, is convicted of, or pleads guilty to any offense.

If ODM participates in the database, the independent providers will no longer be required to undergo annual criminal records checks conducted by the Bureau. Despite not undergoing the annual check, an independent provider may still lose the provider's Medicaid provider agreement if a notice from database indicates that the provider has been convicted of, or pleaded guilty to, an offense that disqualifies individuals from holding Medicaid provider agreements as independent providers. An individual seeking an initial Medicaid provider agreement as an independent provider still must undergo a Bureau-conducted criminal records check.



## **Controlling Board authorization, Medicaid expenditures (PARTIAL VETO OVERRIDDEN)**

(Sections 333.33 and 333.34)

The act provides for the Health and Human Services Fund to continue during the FY 2018-2019 biennium. The Fund was originally created by the main operating budget act for the FY 2016-2017 biennium, H.B. 64 of the 131st General Assembly.

The act permits the Medicaid Director to request the Controlling Board to authorize expenditures from the Fund in an amount necessary to pay for the costs of the Medicaid program during the FY 2018-2019 biennium. The General Assembly overrode the Governor's veto of this authority. The Controlling Board may authorize the expenditure if Congress has not amended the federal law governing the federal match for the expansion eligibility group (also known as Group VIII).

### **Residents Protection Fund**

(R.C. 5162.66)

The act requires that the following be deposited into the existing Residents Protection Fund: the portions of fines and corresponding interest that are imposed by the federal government against home health agencies for failure to comply with Medicaid participation requirements and dispersed to ODM on or after July 1, 2017. The money must be used to improve the quality of Medicaid services provided by Medicare-certified home health agencies.

### **Refunds and Reconciliation Fund**

(R.C. 5162.65 and 5101.074)

The act codifies (i.e., places in the Revised Code) the Refunds and Reconciliation Fund. The Fund was originally created for the FY 2014-2015 biennium and was extended for the FY 2016-2017 biennium.<sup>123</sup> Codifying the Fund provides for its ongoing existence.

The act specifies that the Fund is in the state treasury and requires that money ODM receives from a refund or reconciliation be deposited into the Fund if ODM does not know the appropriate fund for the money at the time it receives the money, or if the money is to go to another government entity. The act also requires that the Department

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<sup>123</sup> Section 323.400 of Am. Sub. H.B. 59 of the 130th General Assembly and Section 327.170 of Am. Sub. H.B. 64 of the 131st General Assembly.



of Job and Family Services transfer for deposit into the Fund money it receives from a refund or reconciliation related to the Medicaid program.

Money in the Fund, including money transferred by the Department of Job and Family Services, must be transferred to the appropriate fund once the appropriate fund is identified or, if the money is supposed to go to another government entity, transferred to the other government entity.

### **Health Care Services Administration Fund**

(R.C. 5162.52 with conforming changes in R.C. 5162.12, 5162.40, 5162.41, 5164.31, 5165.1010, 5168.01, 5168.06, 5168.07, 5168.10, 5168.11, and 5168.99; repealed R.C. 5162.54)

The act abolishes the Health Care Services Administration Fund. Money that would otherwise have been deposited into that fund instead must be deposited into the Health Care/Medicaid Support and Recoveries Fund. This includes the following:

(1) Fees charged for Medicaid recipient or claims payment data, data from reports of nursing facility audits, or extracts or analyses of such data, other than the portion of the fees used to pay a contractor to receive and process requests for the data, extracts, or analyses;

(2) ODM's share of federal funds that a state agency or political subdivision obtains for administering a part of the Medicaid program on ODM's behalf;

(3) ODM's share of federal supplemental Medicaid payments to a provider owned or operated by a state agency or political subdivision;

(4) Application fees charged to entities seeking to enter into, or revalidate, a Medicaid provider agreement;

(5) Fines imposed on nursing facilities when an audit includes certain adverse findings; and

(6) Assessments imposed on hospitals, and intergovernmental transfers made by governmental hospitals, under the Hospital Care Assurance Program.

The act revises one of the purposes for which money in the Health Care/Medicaid Support and Recoveries Fund is to be used. Instead of using the money for contracts, ODM is to use the money for costs associated with the administration of the Medicaid program. Additionally, ODM is to continue to use the money to pay for Medicaid services.



## **Integrated Care Delivery System performance payments**

(Section 333.60)

ODM is authorized under continuing law to implement a demonstration project to test and evaluate the integration of care received by individuals dually eligible for Medicaid and Medicare. In statute the project is called the Integrated Care Delivery System.<sup>124</sup> It may be better known, however, as MyCare Ohio.

For FYs 2018 and 2019, the act requires ODM to provide performance payments to Medicaid managed care organizations that provide care under the Integrated Care Delivery System. If participants receive care through Medicaid managed care organizations under the system, ODM must both:

(1) Develop quality measures designed specifically to determine the effectiveness of the health care and other services provided to participants by Medicaid managed care organizations; and

(2) Determine an amount to be withheld from the Medicaid premium payments paid to Medicaid managed care organizations for participants.

For purposes of the amount to be withheld from premium payments, ODM must establish a percentage amount and apply the same percentage to all Medicaid managed care organizations providing care to participants of the Integrated Care Delivery System. Each organization must agree to the withholding as a condition of receiving or maintaining its Medicaid provider agreement. The act provides that a Medicaid managed care organization providing care under the system is not subject to withholdings under the Medicaid Managed Care Performance Payment Program for premium payments attributed to participants of the system during FYs 2018 and 2019.

## **Nursing facility demonstration project**

(Sections 610.38 and 610.39 (amending Section 327.270 of H.B. 64 of the 131st G.A.))

The act requires that ODM request federal approval to extend until June 30, 2019, a demonstration project under which Medicaid recipients receive nursing facility services in participating nursing facilities in lieu of hospital inpatient services in freestanding long-term care hospitals. The demonstration project was established by H.B. 64 of the 131st General Assembly, the main operating budget act for the FY 2016-2017 biennium, and was to be operated for two years ending January 1, 2018, but had not been implemented when this act passed.

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<sup>124</sup> R.C. 5164.91, not in the act.



The act also requires ODM to seek federal approval to modify the demonstration project. Under prior law, ODM had to select four nursing facilities to participate. To the extent possible, the four nursing facilities had to be located in Cuyahoga, Franklin, Hamilton, and Lucas counties. The act requires ODM to add two additional nursing facilities. To the extent possible, one must be located in Brown County and the other must be located in Sandusky County. Continuing law permits ODM to select a nursing facility located in another county if necessary to find nursing facilities that meet the requirements for participation.

Another modification concerns the requirements that nursing facilities must meet to participate in the demonstration project. The act eliminates the requirement that a nursing facility must have been initially constructed, licensed to operate, and certified to participate in Medicaid after 2009.

### **Nursing facility bed conversion pilot program**

(Section 333.230)

The act requires ODM to operate a pilot program during FYs 2018 and 2019 under which owners of nursing facilities located in Cuyahoga County may voluntarily cease to use one or more beds for nursing facility services and instead use them for substance use disorder treatment services. To convert the use of a bed, the following requirements must be met:

(1) The bed cannot be occupied by an individual receiving nursing facility services or be needed for an individual seeking such services.

(2) The Department of Health must (a) reduce the nursing facility's Medicaid certified capacity and corresponding nursing home licensed capacity by the bed being converted if other beds in the nursing facility will continue to be used for nursing facility services after the conversion or (b) terminate the nursing facility's Medicaid certification and nursing home license if no beds in the facility will continue to be used for nursing facility services.

(3) The substance use disorder treatment services for which the bed is to be used must satisfy the standards for certification by the Director of Mental Health and Addiction Services and, if the owner of the bed seeks state or federal funds or funds administered by a board of alcohol, drug addiction, and mental health services to pay for the services, be certified by the Director.

The Department of Health and the Department of Mental Health and Addiction Services must assist ODM with the pilot program. ODM must complete a report about the pilot program by October 1, 2019. The report must include recommendations about



making the pilot program a permanent and statewide program. It must be submitted to the Governor, General Assembly, and JMOC. It also must be made available to the public.

## **Care Innovation and Community Improvement Program**

(Section 333.320)

The act requires the Medicaid Director to establish the Care Innovation and Community Improvement Program for the FY 2018-2019 biennium. Any nonprofit hospital agency affiliated with a state university and any public hospital agency may volunteer to participate if it operates a hospital that has a Medicaid provider agreement. The nonprofit and public hospital agencies that participate in the program are responsible for the state share of the program's costs and must make or request the appropriate government entity to make intergovernmental transfers to pay for the costs. The Director must establish a schedule for making the transfers.

Each participating hospital agency must undertake at least one of the following tasks in accordance with strategies, and for the purpose of meeting goals designed to benefit Medicaid recipients, the Medicaid Director is to establish:

(1) Sustain and expand community-based patient centered medical home models;

(2) Expand access to community-based dental services;

(3) Improve the quality of community care by creating and sharing best practice models for emergency department diversions, care coordination at discharge and during transitions of care, and other matters related to community care;

(4) Align community health improvement strategies and goals with the State Health Improvement Plan and local health improvement plans;

(5) Expand access to ambulatory drug detoxification and withdrawal management services;

(6) Train medical professionals on evidence-based protocols for opioid prescribing and drug addiction risk assessments;

(7) In collaboration with other nonprofit and public hospital agencies that also do this task, create and implement a plan to assist rural areas to (a) expand access to cost-effective detoxification, withdrawal management, and prevention services for opioid addiction and (b) disseminate evidence-based protocols for opioid prescribing and drug addiction risk assessment.



If a hospital agency chooses the task to expand access to ambulatory drug detoxification and withdrawal management services, or the task to create and implement a plan to assist rural areas, it must give priority to the areas of the community it serves with the greatest concentration of opioid overdoses and deaths. Regardless of the task chosen, a hospital agency must submit annual reports to JMOC summarizing its work on the task and progress in meeting the program's goals.

Each participating hospital agency is to receive 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 average commercial rates for the services. The Director may terminate, or adjust the amount of, the payments if funding for the program is inadequate.

The Director must establish 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 process must be established by January 1, 2018. The Director may terminate a hospital agency's participation if the Director determines that it is not performing at least one of the tasks discussed above or making progress in meeting the program's goals.

The act establishes in the state treasury the Care Innovation and Community Improvement Program Fund and requires that all intergovernmental transfers made under the program to be deposited into it. Money in the Fund and the corresponding federal funds must be used to make the supplemental payments to hospital agencies under the program.

## **Healthy Ohio Program (PARTIALLY VETOED)**

(Sections 333.273 and 333.280)

The act declares the General Assembly's intent to use the Healthy Ohio Program as a model for making medical assistance available to the state's qualifying residents if Congress transforms the Medicaid program into a federal block grant. The Healthy Ohio Program is a Medicaid waiver proposal under which certain Medicaid eligibility groups would enroll in comprehensive health plans and contribute to Buckeye accounts. The main operating budget act for the 131st General Assembly, H.B. 64, required ODM to seek federal approval for the waiver, but the U.S. Centers for Medicare and Medicaid Services (CMS) denied the waiver request in September 2016.



The Governor vetoed a provision that would have required the Medicaid Director to resubmit to CMS a request for a federal waiver needed to implement the Healthy Ohio Program.<sup>125</sup> The request would have had to be made by January 31, 2018.

### **State agency collaboration for health transformation initiatives**

(R.C. 191.04 and 191.06; Section 803.20)

The act extends through FYs 2018 and 2019 the Office of Health Transformation's authority to facilitate the coordination of operations and exchange of information between certain state agencies ("participating agencies"). Originally granted for FY 2013, and since extended through FY 2017, the specified purpose of this authority is to support agency collaboration for health transformation purposes, including modernization of Medicaid, streamlining health and human services programs, and improving the quality, continuity, and efficiency of health care and health care support systems. The Office's Executive Director, or the Executive Director's designee, must identify each health transformation initiative in Ohio that involves two or more participating agencies and that permit or require an interagency agreement. For each health transformation initiative identified, the Executive Director or the designee, in consultation with each participating agency, must adopt one or more operating protocols.

As a result of the extension, participating agencies may continue to exchange, through FY 2019, personally identifiable information for purposes related to or in support of a health transformation initiative that has been identified as described above. If a participating agency uses or discloses personally identifiable information, it must do so in accordance with all operating protocols adopted as described above that apply to the use or disclosure.

### **Temporary authority regarding employees**

(Section 333.20)

The act extends until July 1, 2019, the Medicaid Director's authority to establish, change, and abolish positions for ODM, and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote employees who are not subject to the state's public employees collective bargaining law.

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<sup>125</sup> On July 6, 2017, the House voted to override the Governor's veto of this item. The Senate had not acted on the override when this analysis was published.



H.B. 59 of the 130th General Assembly granted the Director this authority from July 1, 2013, to June 30, 2015. H.B. 64 of the 131st General Assembly extended it until June 30, 2017.

The 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.<sup>126</sup> The Director's actions must comply with a federal regulation establishing standards for a merit system of personnel administration. If an employee in the E-1 pay range is assigned, reassigned, classified, reclassified, transferred, reduced, or demoted to a position in a lower classification, the Director, or in the case of a transfer outside ODM, 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 either Director takes under this provision are not subject to appeal to the State Personnel Board of Review.

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<sup>126</sup> An exempt employee is a permanent full-time or permanent part-time employee paid directly by warrant of the Director of Budget and Management whose position is included in the job classification plan established by the Director of Administrative Services, but who is not subject to collective bargaining law. (R.C. 124.152, not in the act.)



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## STATE MEDICAL BOARD

### Physician licensure

- Eliminates references to certificates to practice issued to physicians and instead refers to licenses to practice.
- Repeals the law requiring the State Medical Board to administer an examination for physicians seeking to practice in Ohio and instead requires each physician to pass an examination prescribed in rules adopted by the Board.
- Makes changes to the process by which physicians seek licensure.
- Modifies the schedule for renewal of physician licenses.
- Combines the renewal fee and penalty required to reinstate or restore a physician license that has been suspended due to nonrenewal.
- Authorizes the Board to permit a physician who has failed to complete continuing medical education requirements to agree in writing to complete the education and pay a fine of up to \$5,000, in lieu of the Board taking disciplinary action.

### Clinical research faculty certificates

- Authorizes the Board to issue a clinical research faculty certificate to a podiatrist licensed in another jurisdiction who wishes to practice podiatric medicine and surgery incidental to teaching or research duties in Ohio.
- Requires the Board to provide a renewal notice at least one month before the expiration of any clinical research faculty certificate.

### Training certificates

- Makes valid for an initial period of three years, instead of one year, a training certificate to practice medicine and surgery or osteopathic medicine and surgery.

### Medication-assisted treatment – standards for prescribers

- Requires a prescriber to give a patient for whom medication-assisted treatment for drug addiction is clinically appropriate (or that patient's representative) information about all drugs approved by the U.S. Food and Drug Administration (FDA) for medication-assisted treatment.



- Imposes referral requirements on prescribers when a patient chooses to be treated with, and meets clinical criteria for, treatment with methadone or a controlled substance containing buprenorphine and the prescriber does not meet federal requirements to prescribe those drugs.
- Requires the Medical and Nursing Boards to adopt rules establishing procedures to be followed by Board-regulated prescribers in the use of all FDA-approved drugs used in medication-assisted treatment, and requires the rules to be consistent for all prescribers.
- Authorizes the Department of Mental Health and Addiction Services to determine a prescriber's compliance with the act's provisions on medication-assisted treatment if the prescriber works for a community addiction services provider.
- Limits to 30 the number of patients that a prescriber who fails to comply with the act's provisions on medication-assisted treatment may treat with medication-assisted treatment at one time, regardless of where the prescriber practices.

### **Limited branches of medicine**

- Requires the Board to provide a renewal notice one month before the expiration of a certificate to practice a limited branch of medicine.
- Combines the renewal fee and the penalty required to reinstate or restore a certificate to practice a limited branch of medicine that has been suspended due to nonrenewal.
- Requires an individual who provides cosmetic therapy, massage therapy, or other professional service in a salon to maintain an electronically generated license certification or registration or the individual's professional license or certificate.

### **Criminal records checks – radiologist assistants and genetic counselors**

- Includes radiologist assistants and genetic counselors in the general law governing criminal records checks of applicants for professional licensure and makes conforming changes.

### **Physician Assistant Policy Committee**

- Eliminates the per diem compensation for members of the Physician Assistant Policy Committee.



## Physician licensure

(R.C. 4731.14 and 4731.52 (primary), 4731.09, 4731.091, 4731.281, and 4731.56 with conforming changes in R.C. 102.02, 102.022, 102.03, 124.93, 911.11, 2925.01, 3702.304, 3702.307, 3702.72, 4503.15, 4765.01, 5123.47, 5120.22, and numerous sections in Chapter 4731.; repealed R.C. 4731.11, 4731.12, 4731.13, 4731.141, 4731.29, 4731.53, 4731.54, 4731.55, 4731.57, and 4731.571)

### Licenses to practice

With respect to physicians, including podiatrists, who are authorized to practice by the State Medical Board, the act eliminates references to certificates to practice issued by the Board and instead refers to licenses to practice; however, the Board may continue to issue the following certificates: certificates to practice massage therapy or cosmetic therapy, training certificates, certificates to practice in state-operated institutions, clinical research faculty certificates, special activity certificates, telemedicine certificates, certificates of conceded eminence, visiting clinical professional development certificates, and certificates to recommend medical marijuana.<sup>127</sup>

### Examination requirements

The act repeals the requirement that the Board administer an examination for individuals seeking to practice in Ohio as physicians, including as podiatrists. The individual must instead pass an examination prescribed in rules adopted by the board.

The act repeals related provisions regarding applications for examination, issuing certificates of preliminary education, and qualifications for examination.

### Applications for physician licensure

In place of the age, character, and educational qualifications required for examination under prior law, the act instead requires these same conditions to be satisfied when an individual applies for a license.

The act eliminates both the \$300 issuance fee that must be paid before the Board authorizes a physician, including a podiatrist, to practice in Ohio and the \$35 certificate of preliminary education fee. It instead requires an applicant for licensure to pay a \$305 fee when submitting an application.

The act also eliminates the law establishing a separate application procedure for physicians, including podiatrists, who are licensed in another state and seek to practice

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<sup>127</sup> R.C. 4731.17, not in the act, 4731.291, 4731.292, 4731.293, 4731.294, 4731.295, 4731.296, 4731.297, not in the act, 4731.298, and 4731.30, not in the act.



in Ohio. It instead requires most applicants seeking to practice in Ohio to comply with a single application procedure. However, a separate procedure is maintained for those seeking an expedited license to practice by endorsement, under which applicants who meet specific eligibility requirements receive enhanced services from the Board.<sup>128</sup>

### **English language proficiency**

The act exempts the following from the requirement that an individual educated outside of the U.S. demonstrate proficiency in spoken English before the Board may authorize the individual to practice as a physician (other than as a podiatrist) in Ohio:

(1) An individual licensed in another state who has been actively engaged in practice for the five years before the individual sought authority to practice from the Board;

(2) An individual who, at the beginning of that five-year period, was receiving graduate medical education and, upon completion, has been licensed in another state and actively engaged in practice.

### **Limited osteopathic medicine and surgery**

The act repeals the law allowing a person who was authorized to practice limited osteopathic medicine and surgery on January 1, 1980, to continue to practice in accordance with statutory limits in effect on that date.

### **Renewals**

The act modifies the schedule governing the renewal of licenses held by physicians and podiatrists, including the deadlines for the Board to provide renewal notices and for license holders to submit renewal applications. It also eliminates the requirement that a renewal application list the names and addresses of advanced practice registered nurses with whom the physician or podiatrist collaborates. It instead requires the application to indicate whether the applicant for renewal currently collaborates with any advanced practice registered nurse.

### **Reinstatement or restoration**

When seeking to reinstate a license that has been suspended for two years or less following a failure to renew, the act requires the physician or podiatrist to pay to the Board a single fee of \$405, rather than pay the \$305 renewal fee and \$100 penalty. Similarly, to restore a license that has been suspended for more than two years due to a

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<sup>128</sup> R.C. 4731.291.



failure to renew, the physician or podiatrist must pay a single fee of \$505, rather than the \$305 renewal fee and \$200 penalty.

### **Failure to complete continuing medical education**

(R.C. 4731.282 (primary), 4731.22, and 4731.281)

If the Board finds that a physician (including a podiatrist) who certified completion of the continuing medical education required to renew, reinstate, or restore a license did not complete those requirements, the act permits the Board to do either of the following:

(1) Take disciplinary action against the physician, impose a fine, or both;

(2) Permit the physician to agree in writing to complete the continuing medical education and pay a fine.

If the Board takes disciplinary action, its finding must be made pursuant to an adjudication under the Administrative Procedure Act and by an affirmative vote of at least six of its 12 members. A fine, whether paid voluntarily by the physician or imposed by the Board, must be an amount specified by the Board, not exceeding \$5,000.

Under prior law, the Board likewise was authorized to impose a fine of up to \$5,000, in addition to or instead of disciplinary action, if it found that a physician (including a podiatrist) failed to complete continuing education requirements. But the prior law provided that, if the Board imposed only a fine and took no other action, it could not conduct an adjudication under the Administrative Procedure Act. Also, prior law did not explicitly provide for a physician to agree in writing to a civil penalty.

### **Clinical research faculty certificates**

(R.C. 4731.293)

The act authorizes the Board to issue a clinical research faculty certificate to practice podiatric medicine and surgery under similar terms and conditions as a clinical research faculty certificate to practice medicine and surgery or osteopathic medicine and surgery under law unchanged by the act. A podiatrist who holds the certificate is permitted to practice podiatric medicine and surgery incidental to teaching or research duties at a college of podiatric medicine and surgery or a teaching hospital affiliated with such a college.

The act changes the deadline for the Board to provide a renewal notice to the holder of a clinical research faculty certificate from three months to one month before expiration.



## Training certificates

(R.C. 4731.291)

Under law unchanged by the act, a training certificate may be granted to an unlicensed individual seeking to pursue an internship, residency, or clinical fellowship related to the practice of medicine and surgery or osteopathic medicine and surgery. The act makes a training certificate valid for an initial period of three years, with annual renewal thereafter for up to two additional years. Under former law, the certificate was valid for an initial period of one year and it could be renewed annually for a maximum of five years.

## Medication-assisted treatment – standards for prescribers

(R.C. 3715.08, 4723.50, 4723.51, 4723.52, 4730.40, 4730.55, 4730.56, 4731.83, and 5119.363)

### Information on all FDA-approved drugs

The act requires a prescriber to give to a patient for whom medication-assisted treatment for drug addiction is clinically appropriate (or that patient's representative) information about all drugs approved by the U.S. Food and Drug Administration for medication-assisted treatment. A "prescriber" for this purpose is a physician or an advanced practice registered nurse (APRN) or physician assistant (PA) with prescriptive authority.

The drug information must be provided orally and in writing. The prescriber or the prescriber's delegate must note in the patient's medical record when the information was provided and make the record available to Medical and Nursing Board employees on their request. If the patient chooses treatment with a controlled substance containing buprenorphine and the treatment is clinically appropriate for the patient and meets generally accepted standards of medicine, the prescriber must refer the patient to a prescriber who meets federal requirements.<sup>129</sup> If the patient chooses treatment with methadone and the treatment is clinically appropriate for the patient and meets generally accepted standards of medicine, the prescriber must refer the patient to a community addiction services provider licensed by the Department of Mental Health

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<sup>129</sup> The federal requirements were established by the Drug Addiction Treatment Act of 2000. Under them, a qualified physician may apply for a waiver to treat opioid dependency with approved buprenorphine products. U.S. Substance Abuse and Mental Health Services Administration, *Qualify for a Physician Waiver*, <https://www.samhsa.gov/medication-assisted-treatment/buprenorphine-waiver-management/qualify-for-physician-waiver>. The Comprehensive Addiction and Recovery Act, enacted in 2016, authorizes APRNs and PAs to prescribe controlled substances containing buprenorphine in office-based settings until October 1, 2021. U.S. Substance Abuse and Mental Health Services Administration, *CARA Act*, <https://www.samhsa.gov/medication-assisted-treatment/qualify-nps-pas-waivers>.



and Addiction Services (DMHAS). In either case, the prescriber or the prescriber's delegate must make a notation in the patient's medical record naming the practitioner or provider to whom the patient was referred and specifying when the referral was made.

### **Rules on prescribing standards and procedures**

The Medical and Nursing Boards must adopt rules in accordance with the Administrative Procedure Act establishing standards and procedures to be followed by the prescribers regulated by them in the use of all drugs approved for medication-assisted treatment, including controlled substances in schedules III, IV, and V. The rules must address detoxification, relapse prevention, patient assessment, individual treatment planning, counseling and recovery supports, diversion control, and other topics selected by the boards after considering best practices in medication-assisted treatment. Each board may apply the rules to all circumstances in which a prescriber prescribes drugs for use in medication-assisted treatment, or limit their application to prescriptions for patients being treated in office-based practices or other practice types or locations specified by each board. The rules for each type of prescriber must be consistent with each other.

### **DMHAS authority to determine compliance**

The act authorizes the Director of Mental Health and Addiction Services to adopt rules that authorize DMHAS to determine a prescriber's compliance with the provisions on medication-assisted treatment, described above, if the prescriber works for a community addiction services provider.

### **Penalties**

A prescriber who fails to comply with the act's requirements is prohibited from treating more than 30 patients at one time with medication-assisted treatment. This has the effect of preventing a noncompliant prescriber from treating up to 100 patients through a federal law that allows a prescriber, in some cases, to obtain a waiver of the federal 30-patient limit that otherwise applies.<sup>130</sup> The act specifies that its 30-patient limit on noncompliant prescribers applies even if the treatment occurs at a drug treatment facility or other related locations.

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<sup>130</sup> U.S. Substance Abuse and Mental Health Services Administration, *Qualify for a Physician Waiver*, <https://www.samhsa.gov/medication-assisted-treatment/buprenorphine-waiver-management/qualify-for-physician-waiver>.



## **Formularies for APRNs and PAs**

The act requires both the exclusionary drug formulary adopted by the Nursing Board that applies to APRNs with prescriptive authority and the PA drug formulary adopted by the Medical Board to permit eligible APRNs and PAs to prescribe both:

--A controlled substance containing buprenorphine used in medication-assisted treatment; and

--Oral and long-acting opioid antagonists.<sup>131</sup>

## **Certificates to practice limited branches of medicine**

(R.C. 4731.15)

The act changes the deadline for the Board to provide a renewal notice for a certificate to practice a limited branch of medicine from six months to one month before expiration. Accordingly, it eliminates a requirement that the certificate holder submit a renewal application and fee three months before the certificate expires. The limited branches of medicine are: massage therapy, cosmetic therapy, naprapathy, and mechanotherapy.

The act also combines renewal fees and penalties for late renewal of a certificate. Under prior law, if a certificate was suspended for failure to timely renew, it could be reinstated within two years after the suspension date for a \$100 renewal fee and a \$25 penalty. If the certificate had been suspended for more than two years, it could be restored for the \$100 fee and a \$50 penalty. The act combines the renewal fee with the respective penalties, resulting in a \$125 fee for reinstatement and a \$150 fee for restoration.

## **Documentation to provide certain services in a salon**

(R.C. 4713.56)

The act adds an option to the documentation that an individual who provides cosmetic therapy, massage therapy, or other professional service in a salon must maintain and that can be produced upon inspection or request. It requires an individual

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<sup>131</sup> An "opioid antagonist" is a drug that (1) binds to the opioid receptors and competes with or displaces opioid agonists at the opioid receptor site but does not activate the receptors, effectively blocking the receptor and preventing or reversing the effect of an opioid agonist and (2) is not a controlled substance. Examples are naloxone and naltrexone (brand name, Vivitrol®). National Alliance of Advocates for Buprenorphine Treatment, *Thorough Technical Explanation of Buprenorphine*, available at [https://www.naabt.org/education/technical\\_explanation\\_buprenorphine.cfm](https://www.naabt.org/education/technical_explanation_buprenorphine.cfm).



to maintain either an electronically generated license certification or registration or the individual's professional license or certificate, as under continuing law. The act retains the requirement that the individual maintain state-issued photo identification.

### **Criminal records checks – radiologist assistants and genetic counselors**

(R.C. 4776.01 and 4776.20)

The act includes radiologist assistants and genetic counselors in the general law governing criminal records checks of applicants for professional licensure and makes conforming changes.

### **Physician Assistant Policy Committee**

(R.C. 4730.05)

The act eliminates per diem compensation for members of the Physician Assistant Policy Committee for the discharge of official duties. Members continue to be reimbursed for necessary and actual expenses incurred in the performance of official duties.



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## DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES

### Community addiction services

- Revises the conditions under which the Department of Mental Health and Addiction Services (DMHAS) may issue to a board of alcohol, drug addiction, and mental health services (ADAMHS board) a waiver regarding the location of ambulatory detoxification and medication-assisted treatment.
- Requires that the waiver be time-limited and specify whether it is for ambulatory detoxification, medication-assisted treatment, or both.
- Eliminates DMHAS's authority to issue to an ADAMHS board a time-limited waiver of a requirement that the board's community-based continuum of care include all of the essential elements required by state law.
- Gives DMHAS discretion to disapprove an ADAMHS board's proposed budget in whole or in part, rather than requiring disapproval of the budget in whole, for failure to make the essential elements of a community-based continuum of care available in the board's service district.

### Mental health crisis stabilization centers

- Requires the ADAMHS boards to establish and administer, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, six mental health crisis stabilization centers.

### Medication-assisted treatment in drug courts

- Creates a medication-assisted drug court program to provide addiction treatment to persons who are dependent on opioids, alcohol, or both.
- Requires community addiction services providers to provide specified treatment to the participants in the program based on the individual needs of each participant.

### Pilot program for mental health courts

- Requires DMHAS to conduct a pilot program to provide mental health services and recovery supports to criminal offenders with mental health conditions.
- Requires community mental health providers to provide specified mental health services and recovery supports to the pilot program's participants based on the individual needs of each participant.



## **Psychotropic drug reimbursement for county jails**

- Establishes the Psychotropic Drug Reimbursement Program, through which county jails are to be reimbursed by DMHAS for psychotropic drugs dispensed to inmates.
- Requires DMHAS, based on factors it considers appropriate, to allocate an amount to each county for reimbursement of those psychotropic drug costs.

## **Block grants for prevention and treatment of substance abuse**

- Requires DMHAS and the Department of Medicaid to jointly serve as the designated agency for the purpose of a maintenance-of-effort requirement that applies to federal funds for the prevention and treatment of substance abuse and related activities.

## **County Hub Program to Combat Opioid Addiction**

- Creates the County Hub Program to Combat Opioid Addiction, and requires each ADAMHS board to operate the Program for each county the board serves.

## **All Roads Lead to Home**

- Requires DMHAS to create the All Roads Lead to Home Program to provide information and assistance to individuals struggling with drug addiction.
- Requires that the Program include a media campaign conducted at least twice annually, an interactive website, and a 24-hour hotline operated by a call center.

## **Opioid addiction treatment website and mobile app**

- Requires the Development Services Agency, DMHAS, and the Ohio State University to collaborate to develop a website and mobile device application that provide resources and information regarding opioid addiction treatment services.

## **Residential state supplement**

- Eliminates statutory provisions that specified the types of living arrangements in which individuals must have resided to qualify for the Residential State Supplement program, and instead requires all eligibility requirements to be established by rule.
- Eliminates provisions that specified procedures for referring applicants who may have mental health needs for an assessment by a community mental health services provider.



## **Data collection and sharing, multi-system youth**

- Requires the DMHAS Director to establish a strategy for data collection and sharing by agencies that serve multi-system youth.
- Requires the Director to submit a report to the Governor and General Assembly on the parameters of the strategy and the cost to implement the strategy.

## **Confidentiality of quality assurance records**

- Adds improving the safety and security of persons who administer medical and mental health services in DMHAS hospitals and programs to the duties of a quality assurance program it administers, thereby making records associated with that activity confidential.

## **Dispute resolution – ADAMHS board contracts**

- Eliminates a provision that authorized an ADAMHS board, a facility, or a community addiction or mental health services provider to apply to the DMHAS Director for assistance in resolving an ADAMHS board contract dispute through a third party dispute resolution process.

## **Former Bureau of Recovery Services**

- Maintains preexisting responsibilities regarding recovery services that were given to DMHAS when the Bureau of Recovery Services in the Department of Rehabilitation and Correction was abolished.

## **Technical changes**

- Updates a reference to DMHAS's Office of Support Services with a reference to Ohio Pharmacy Services, its current name.
- Specifies that any reference to either the former Department of Mental Health or the former Department of Alcohol and Drug Addiction Services is to be construed as referring to the Department of Mental Health and Addiction Services.



## **Community addiction services**

(R.C. 5119.221 with conforming changes in R.C. 340.032, 340.033, 340.08, 5119.01, and 5119.22)

### **Waiver regarding location of certain addiction services**

The act revises the conditions under which the Department of Mental Health and Addiction Services (DMHAS) may issue to a board of alcohol, drug addiction, and mental health services (ADAMHS board) a waiver regarding the location of ambulatory detoxification and medication-assisted treatment, and requires that such a waiver be time-limited. Absent a waiver, each ADAMHS board must make ambulatory detoxification and medication-assisted treatment available in its service district beginning July 1, 2017. These are part of an array of addiction services and recovery supports for all levels of opioid and co-occurring drug addiction that must be included in each ADAMHS board's community-based continuum of care.

To be able to issue a waiver, DMHAS is required by the act to determine that (1) the board has made reasonable efforts to make ambulatory detoxification and medication-assisted treatment available within its service district and (2) ambulatory detoxification and medication-assisted treatment can be made available through one or more contracts between the board and community addiction services providers that are located not more than 30 miles beyond the service district's borders. Prior law, in contrast, did not require DMHAS to make the reasonable efforts determination, and instead required it to make, in addition to the 30-miles determination, a determination that the time it takes for residents of the service district to travel to a community addiction services provider that provides ambulatory detoxification and medication-assisted treatment was not a significant barrier to successful treatment.

The act requires that each waiver specify the amount of time for which it is in effect and whether it applies to ambulatory detoxification, medication-assisted treatment, or both.

### **Waiver regarding essential elements of continuum of care**

The act eliminates DMHAS's authority to waive for a limited period of time a requirement that an ADAMHS board's community-based continuum of care include all of the essential elements specified in continuing law. Under prior law, DMHAS could issue the waiver only after determining that the board had made reasonable efforts to include in the continuum of care the essential elements being waived.



## **Disapproving part of an ADAMHS board's proposed budget**

The act gives DMHAS the discretion to disapprove an ADAMHS board's proposed budget in whole *or in part* if the board fails to make the essential elements of a community-based continuum of care available in its service district. In contrast, prior law required DMHAS to disapprove a proposed budget *in whole* under that circumstance.

## **Mental health crisis stabilization centers**

(Section 337.50(F))

The act requires DMHAS to allocate among the ADAMHS boards, in each of FY 2018 and FY 2019, \$1.5 million for six mental health crisis 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. One center is to be located in each of the six state psychiatric hospital regions established by the Department.

DMHAS must conduct an analysis of each center and submit its findings to the Governor and General Assembly by June 30, 2019.

ADAMHS boards must ensure that each mental health crisis stabilization center complies with all of the following:

(1) It must admit individuals before and after they receive treatment and care at hospital emergency departments or freestanding emergency departments.

(2) It must admit individuals before and after they are confined in state correctional institutions, local correctional facilities, or privately operated and managed correctional facilities.

(3) It must have a Medicaid provider agreement.

(4) It must be located in a building previously constructed for another purpose.

(5) It must admit individuals who have been identified as needing the stabilization services provided by the center.

(6) It must connect individuals when they are discharged from the center with community-based continuum of care services and supports.



## **Medication-assisted treatment in drug courts**

(Section 337.70)

The act requires DMHAS to conduct a program to provide addiction treatment, including medication-assisted treatment and recovery supports, to persons who are eligible to participate in a medication-assisted treatment (MAT) drug court program. The program is to be conducted in a manner similar to programs that were established and funded by the previous two main appropriations acts.

In conducting the program, DMHAS 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 objectives of the program. DMHAS also may collaborate with the ADAMHS board that serves the county in which a participating court is located and with the local law enforcement agencies serving that county.

DMHAS must conduct its program in collaboration with those courts of Allen, Butler, Clermont, Clinton, Columbiana, Coshocton, Crawford, Cuyahoga, Franklin, Gallia, Hamilton, Hardin, Highland, Hocking, Jackson, Lake, Lorain, Lucas, Mahoning, Marion, Medina, Mercer, Montgomery, Muskingum, Ottawa, Richland, Ross, Stark, Summit, Trumbull, Tuscarawas, Union, and Warren counties that are conducting MAT drug court programs. If any of the specified counties do not have a MAT drug court program, DMHAS must conduct its program in collaboration with a court with a MAT drug court program in another county. DMHAS may also 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 DMHAS's program. The participants are to be selected because of their dependence on opioids, alcohol, or both. Those who are selected must either be criminal offenders or involved in a family drug or dependency court. They must meet the legal and clinical eligibility criteria for the MAT drug court program and be active participants in that program. The total number of participants in DMHAS's program at any time is limited to 1,500, subject to available funding. DMHAS may authorize additional participants in circumstances it considers appropriate. After being enrolled, a participant must comply with all of the MAT drug court program's requirements.

### **Treatment**

Only a community addiction services provider is eligible to provide treatment under DMHAS's program. The provider must:



(1) Provide treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the provider;

(2) Assess potential program participants to determine whether they would benefit from treatment and monitoring;

(3) Determine, based on the assessment, the treatment needs of the participants;

(4) Develop individualized goals and objectives for the participants;

(5) Provide access to long-lasting antagonist therapies, partial agonist therapies, or full agonist therapies, that are included in the program's medication-assisted treatment;

(6) Provide other types of therapies, including psychosocial therapies, for both substance abuse and any co-occurring disorders;

(7) Monitor program compliance through the use of regular drug testing, including urinalysis, of the participants; and

(8) 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.

In the case of medication-assisted treatment, the following conditions apply:

- A drug may only be used if the drug has been federally approved for use in treating dependence on opioids, alcohol, or both, or for preventing relapse into the use of opioids, alcohol, or both.
- One or more drugs may be used, but each drug that is used must constitute long-acting antagonist therapy or partial or full agonist therapy.
- If a drug constituting partial or full agonist therapy is used, the program must provide safeguards, such as routine drug testing or participants, to minimize abuse and diversion of the drug.

## Planning

To ensure that funds appropriated to support DMHAS'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 medication-assisted treatment for program participants. The plans must ensure the following:

(1) The development of an efficient and timely process for review of eligibility for health benefits for all program participants;

(2) 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;

(3) 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, and medication for long-acting injectable antagonist therapies and partial or full agonist therapies; and

(4) 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.

### **Program reports**

The act requires DMHAS, by September 29, 2017, to select a research institution to evaluate the program, as conducted during FY 2018 and FY 2019. DMHAS must select an institution that has experience in evaluating multiple court systems across jurisdictions in both rural and urban regions, experience evaluating the use of agonist and antagonist therapies in MAT drug court programs, a record of producing material for scientific publications, expertise in health economics, experience with patient issues involving ethics and consent, and an internal review board.

The research institution must prepare a report of its evaluation of DMHAS's program by December 31, 2019. It must be submitted to the Governor, Chief Justice of the Supreme Court, Senate President, Speaker of the House, DMHAS, Department of Rehabilitation and Correction, and any other agency with which the DMHAS collaborates in conducting the program.

Copies of the report that had to be completed by June 30, 2017, on the DMHAS's MAT drug court program operated under the previous main appropriations act, H.B. 64 of the 131st General Assembly, still must be distributed by the research institution that prepared the report.



## **Pilot program for mental health courts**

(Section 337.71)

The act requires DMHAS to conduct a pilot program to provide mental health services and recovery supports to criminal offenders who are eligible to participate in a certified mental health court program and who are selected because of their mental health conditions. The purpose of the pilot program is to reduce recidivism into criminal behavior by assisting participants in addressing their mental health needs, including providing access to mental health drugs.

In conducting the pilot program, DMHAS must collaborate with the Ohio Supreme Court, the Department of Rehabilitation and Correction, and any other state agency that may be of assistance in accomplishing the program's objectives. DMHAS may also collaborate with the ADAMHS board that serves the county in which a participating court is located and with the local law enforcement agencies serving that county.

DMHAS must conduct the pilot program in the courts of Franklin and Warren counties that are conducting certified mental health court programs. If either of the counties does not have a certified mental health court program, DMHAS must conduct the pilot program in a court with a certified mental health court program in another county. DMHAS also may conduct the pilot program in any other court with a certified mental health court program.

### **Mental health services and recovery supports**

Only a community mental health services provider may provide mental health services and recovery supports under the pilot program. The provider must:

(1) Use an integrated service delivery model that consists of care coordination between a prescriber and the community mental health services provider;

(2) Assess potential participants to determine whether they would benefit from participation in the pilot program;

(3) Based on those assessments, determine the participants' mental health services needs;

(4) Develop individualized goals and objectives for participants;

(5) As part of the mental health services under the pilot program, provide access to mental health drugs, including federally approved atypical antipsychotics that are administered or dispensed in a long-acting injectable form;



(6) As part of the recovery supports under the pilot program, provide supports that are patient-specific and help eliminate barriers to treatment, including assistance with housing, transportation, child care, job training, obtaining a driver's license or state identification card, and any other relevant matter;

(7) Address any co-occurring disorders;

(8) Monitor the participants' compliance with the pilot program.

### **Program report**

By August 30, 2017, DMHAS must develop a plan for evaluating the pilot program. The evaluation must include performance measures that reflect the pilot program's purpose. DMHAS must prepare a report of its evaluation, including data derived from the performance measures. The report must be completed within six months after the pilot program concludes and be submitted to the Governor, Chief Justice of the Ohio Supreme Court, Senate President, Speaker of the House, Department of Rehabilitation and Correction, and any other agency with which DMHAS collaborated in conducting the pilot program.

### **Psychotropic drug reimbursement for county jails**

(R.C. 5119.19; Section 337.10)

The act creates the Psychotropic Drug Reimbursement Program to be administered by DMHAS. The Program's purpose is to provide state reimbursement to counties for the cost of psychotropic drugs that are dispensed to inmates of county jails. The act generally defines "psychotropic drug" as a drug that has the capability of changing or controlling mental health functioning or behavior through direct pharmacological action, including antipsychotics, antidepressants, anti-anxiety medications, and mood stabilizing medications. Stimulants prescribed for the treatment of attention deficit hyperactivity disorder are excluded.

DMHAS, based on factors it considers appropriate, must allocate an amount to each county. The act authorizes the DMHAS Director to adopt rules in accordance with the Administrative Procedure Act to implement the Program.

### **Block grants for prevention and treatment of substance abuse**

(Section 337.170)

The act requires that DMHAS and Department of Medicaid jointly serve as the designated agency for the purpose of a maintenance-of-effort requirement that applies to federal funds for the prevention and treatment of substance abuse and related



activities. DMHAS remains the designated agency for all other purposes regarding federal funds for mental health services available under Part B of Title XIX of the Public Health Service Act.<sup>132</sup>

## **County Hub Program to Combat Opioid Addiction**

(R.C. 340.30)

The act creates the "County Hub Program to Combat Opioid Addiction." The program has four purposes:

- (1) To strengthen county and community efforts to prevent and treat opioid addiction;
- (2) To educate youth and adults about the dangers of opioid addiction and the negative effects it has on society;
- (3) To promote family building and workforce development as ways of combating opioid addiction in communities; and
- (4) To encourage community engagement in efforts to address the purposes described above.

The Program must be administered by each ADAMHS board. If the service district a board represents consists of more than one county, the board must administer the Program in each county.

By January 1, 2020, each ADAMHS board must submit a report to DMHAS summarizing its work on, and progress toward, addressing each of the Program's purposes. DMHAS must aggregate the reports received from the boards and submit a statewide report to the Governor and General Assembly.

## **All Roads Lead to Home Program**

(R.C. 5119.48)

The act requires DMHAS to create the All Roads Lead to Home Program. The Program must include three initiatives aimed at assisting individuals suffering from drug addiction: a media campaign, a website, and a 24-hour hotline.

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<sup>132</sup> 42 U.S.C. 300x *et seq.*



## **Media campaign**

As part of the media campaign, DMHAS must develop public service announcements and make the announcements available to television and radio outlets. The announcements must be made available beginning January 1, 2018, and at least twice annually: once between January and March and, as part of National Recovery Month, once in September.

In addition, the media campaign must:

(1) Include messages to reduce the stigma associated with seeking help for drug addiction;

(2) Provide directions for people who are in need of drug addiction assistance to a web-based location that includes information on where to find help for drug addiction, information on intervention and referral options, and contact information for assistance from ADAMHS boards;

(3) Prioritize its efforts in media markets that have the highest rates of drug overdose deaths in Ohio; and

(4) Utilize television and radio public service announcements provided to media outlets, as well as Internet advertising models such as low-cost social media outlets.

## **Website**

DMHAS must create, before January 1, 2018, a website with the following components:

(1) If reasonably available for use, an evidence-based self-reporting screening tool approved by DMHAS's medical director;

(2) Community detoxification and withdrawal management options and community treatment options;

(3) A searchable database of certified substance abuse providers organized by zip code;

(4) Information on recovery supports, including recovery housing; and

(5) Clinical information regarding what a person may expect during detoxification, withdrawal, and treatment.

The act authorizes DMHAS to contract with private vendors for the creation and maintenance of the interactive website.



## **Hotline**

Lastly, the act requires DMHAS to provide a 24-hour hotline, operated by a call center, that is intended to help individuals access addiction services.

## **Opioid addiction treatment website and mobile app**

(Section 259.90)

The act requires the Development Services Agency, DMHAS, and the Ohio State University to collaborate to develop a website and mobile device application that provide resources and information regarding opioid addiction treatment services.

## **Residential State Supplement**

(R.C. 5119.41 with conforming changes in R.C. 173.14 and 5119.34; repealed R.C. 340.091)

The act eliminates statutorily established eligibility requirements for the Residential State Supplement (RSS) program. The eliminated provisions (1) required that an individual reside in a residential care facility, assisted living program, or class two residential facility and (2) excluded from the RSS program an individual who resides in a living arrangement that houses more than 16 individuals unless the DMHAS Director waived the size limitations for that individual. In the absence of these statutory provisions, all eligibility requirements are to be established in rules adopted by the DMHAS Director and the Medicaid Director.

The act eliminates a requirement that an RSS administrative agency to refer an individual enrolled in the RSS program to a community mental health services provider for an assessment if the agency was aware that the individual had mental health needs. It eliminates a corresponding law that required each ADAMHS board to contract with a provider to perform the assessments and provide ongoing monitoring and discharge planning.

The act makes other conforming changes and technical corrections to reflect previous enactments regarding the RSS program.

## **Data collection and sharing, multi-system youth**

(Section 337.163)

The act requires the DMHAS Director, in the Director's position as the chairperson of the Ohio Family and Children First Cabinet Council, to establish a strategy for data collection and sharing by agencies that serve multi-system youth. The



act defines "multi-system youth" as a youth who is in need of services from two or more of the following: the child welfare system, the mental health and addiction services system, the developmental disabilities system, or the juvenile court system.

When establishing the strategy, the Director must consider that the purpose of the data collection and sharing is to determine resource utilization, service utilization trends and gaps, and monitor outcomes. The Director must ensure that the strategy, when implemented, is able to identify and monitor the availability of evidence-based services that target multi-system youth before and after implementation of the behavioral health redesign, as well as before and after community behavioral health services are made a component of Medicaid managed care.

The Director must submit a report to the Governor and General Assembly on the cost to implement the strategy, as well as the parameters of that strategy, by December 31, 2017.

### **Confidentiality of quality assurance records**

(R.C. 5122.32)

Under continuing law, DMHAS administers a quality assurance program. As part of the program, it must systematically review and improve the safety and security of persons receiving medical and mental health services within DMHAS and its hospitals and community setting programs. The act adds that the program must also systematically review and improve the safety and security of persons *administering* those services. Pursuant to continuing law, the associated quality assurance records are not public records, are confidential, and may be used only in the course of the proper functions of a quality assurance program. Therefore, the quality assurance records concerning the safety and security of persons administering services are confidential.

### **Dispute resolution – ADAMHS board contracts**

(R.C. 340.03)

Under continuing law, an ADAMHS board contract with facilities for the operation of facility services and with community addiction and mental health services providers for the provision of addiction and mental health services. The act eliminates a provision that authorized the DMHAS Director to require both parties to a contract to submit to a third-party dispute resolution process if one party proposed not to renew the contract or proposed new terms.



## **Former Bureau of Recovery Services**

(Section 337.80)

H.B. 64 of the 131st General Assembly abolished the Bureau of Recovery Services in the Department of Rehabilitation and Correction on June 30, 2015, and transferred all of its functions, assets, and liabilities to DMHAS. The act maintains these preexisting provisions regarding the transfer.

Under the act, DMHAS must continue to complete any business regarding recovery services that the Department of Rehabilitation and Correction started before, but did not complete by, June 30, 2015. Rules, orders, and determinations pertaining to the former Bureau continue in effect until DMHAS modifies or rescinds them, and any reference to the former Bureau continues to be deemed to refer to DMHAS or its director, as appropriate. All of the former Bureau's employees continue to be transferred to DMHAS and retain their positions and benefits, subject to the layoff provisions pertaining to state employees under continuing law. Rights, obligations, and remedies continue to exist unimpaired despite the transfer and DMHAS must continue to administer them.

## **Technical changes**

(R.C. 125.035 and 5119.011)

The act updates a reference to DMHAS's Office of Support Services with a reference to Ohio Pharmacy Services, its current name.

The act specifies that any reference to either the former Department of Mental Health or the former Department of Alcohol and Drug Addiction Services is to be construed as referring to the Department of Mental Health and Addiction Services. It also makes a similar specification with regard to the directors of these former agencies. The agencies were consolidated in 2013 by H.B. 59 of the 130th General Assembly.



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## DEPARTMENT OF NATURAL RESOURCES

### State Park Maintenance Fund

- Creates the State Park Maintenance Fund, and requires the Department of Natural Resources (ODNR) to use Fund money only for maintenance, repair, and renovation projects at state parks that are approved by the ODNR Director.
- Authorizes the ODNR Director to request the Director of Budget and Management (OBM) to annually transfer cash to the State Park Maintenance Fund in an amount not exceeding 5% of the annual average revenue received by the State Park Fund.
- For FY 2018:
  - Requires, on July 1, 2017, or as soon as possible thereafter, that the ODNR Director certify 5% of the average of the previous five years of deposits in the State Park Fund to OBM.
  - Authorizes OBM to transfer up to \$1.5 million from the State Park Fund to the State Park Maintenance Fund at that time.
- Prohibits ODNR from using money in the State Park Maintenance Fund to construct new facilities.

### Wildfire suppression payments

- Increases the money annually available for wildfire suppression payments from ODNR to local firefighting agencies or companies from up to \$100,000 to up to \$200,000.
- Eliminates the Wildfire Suppression Fund and the required annual transfer of money from the State Forest Fund to it for wildfire suppression payment purposes.
- Requires wildfire suppression payments to be made directly from the State Forest Fund.
- Replaces the Chief of the Division of Forestry with the ODNR Director or the Director's designee as the state agent responsible for distributing money for wildfire suppression payments to firefighting agencies or companies.

### Injection Well Review Fund

- Eliminates the Injection Well Review Fund.



- Requires the 15% portion of permit fees collected under the injection well permit program that were deposited in the Injection Well Review Fund to instead be deposited in the Geological Mapping Fund.
- Requires the permit fees deposited in the Geological Mapping Fund to be used by specified Divisions within ODNR to execute ODNR's duties under the Class II injection well permit program.

### **Property tax valuation of oil and gas reserves (VETOED)**

- Would have specified that a discounted cash flow formula used to value certain producing oil and gas reserves for property tax purposes is the only method for valuing all oil and gas reserves.

### **Oil and Gas Well Fund**

- Requires the OBM Director, in consultation with the Chief of the Division of Oil and Gas Resources Management, to establish an accounting code to track expenditures from the Oil and Gas Well Fund that are associated with plugging idle and orphaned wells.

### **Oil and Gas Leasing Commission (VETOED)**

- Would have required the Speaker of the House and the President of the Senate to appoint the four appointed members of the Oil and Gas Leasing Commission instead of the Governor.

### **Liability coverage for oil and gas wells**

- Authorizes a board of county commissioners of a county that is an owner of an oil and gas well to comply with liability coverage requirements by participating in a joint self-insurance pool in accordance with the law governing those pools.
- Allows liability insurance companies *approved* to do business in Ohio, in addition to liability insurance companies authorized to do business in Ohio as under continuing law, to provide coverage to an owner of any oil and gas well.

### **Mine Regulation and Safety Fund**

- Eliminates the Unreclaimed Lands Fund, the Surface Mining Fund, the Mining Regulation Fund, and the Coal Mining Administration and Reclamation Reserve Fund and consolidates them into a new fund called the Mining Regulation and Safety Fund.



- Allocates all money that was credited to the consolidated Funds to the Mining Regulation and Safety Fund.
- Specifies that the purposes for and the authorized expenditures from the consolidated Funds now apply to the Mining Regulation and Safety Fund.
- Reallocates money derived from the severance tax on coal (including coal mined by surface mining), salt, limestone, dolomite, sand, gravel, clay, sandstone or conglomerate, shale, gypsum, or quartzite to the new Fund in specified percentages.
- Prohibits Fund money that is derived from severance taxes from the mining of limestone, dolomite, sand, or gravel from being used for coal mining and reclamation purposes.

### **Surface mining safety inspections**

- Eliminates the requirement that the Chief of the Division of Mineral Resources Management conduct at least two safety inspections following a year in which a surface mining operation identified a lost-time accident rate that was greater than the national average.
- Instead of the above requirement, requires the Chief to conduct at least two safety inspections during the year following an inspection conducted by the federal Mine Safety and Health Administration that found three or more violations per day.
- Authorizes the Chief, in consultation with a statewide association that represents the surface mining industry, to adopt rules establishing exceptions to the safety inspection requirement.

### **Dam construction filing fee and annual fee**

- Eliminates the statutorily imposed filing fee schedule for dam construction permits, and requires the Chief of the Division of Water Resources to adopt rules establishing the fee schedule.
- Eliminates the statutorily imposed fee schedule for annual fees required to be submitted by owners of Class I, Class II, or Class III dams, and requires the Chief to adopt rules establishing the annual fee schedule.

### **Aquatic species**

- Requires the Chief of the Division of Wildlife to establish a risk assessment policy for aquatic species.



- Requires the risk assessment policy to provide for both:
  - An evaluation of overall risk of a species based on best available biological information derived from professionally accepted science and practices; and
  - A determination of whether a species should be listed as an injurious aquatic invasive species.

### **Nonresident hunting and fishing permits and licenses**

- Increases the nonresident fees for a deer or wild turkey permit, hunting license, or fishing license.
- Specifies that a nonresident on active duty in the U.S. Armed Forces, while on leave or furlough, is eligible to obtain a deer or wild turkey permit at the resident rate.

### **Game quadruped includes elk**

- Adds elk to the list of game quadruped animals, which effectively allows ODNR to regulate and manage the propagation, preservation, and protection of elk.

### **State Park Maintenance Fund**

(R.C. 1501.08; Section 343.20)

The act creates the State Park Maintenance Fund, and requires the Department of Natural Resources (ODNR) to use money in the Fund for maintenance, repair, and renovation projects at state parks that are approved by the ODNR Director. The act authorizes the ODNR Director to request the Director of Budget and Management (OBM) to annually transfer cash to the State Park Maintenance Fund from the State Park Fund in an amount not exceeding 5% of the average revenue received by the State Park Fund. However, for FY 2018, it does both of the following:

(1) Requires, on July 1, 2017, or as soon as possible thereafter, that the Director certify 5% of the average of the previous five years of deposits in the State Park Fund to OBM; and

(2) Authorizes OBM to transfer up to \$1.5 million from the State Park Fund to the State Park Maintenance Fund at that time.

ODNR cannot use money in the State Park Maintenance Fund to construct new facilities. In order to receive money for projects, the Chief of the Division of Parks and



Watercraft must submit to the Director a list of projects. The Chief must include with each request a description of necessary maintenance, repairs, and renovations at state park facilities, and the Director must determine which projects are eligible for disbursement from the Fund. The Chief may not begin any project for which a request was submitted before obtaining the Director's approval.

### **Wildfire suppression payments**

(R.C. 1503.141 and 1503.05)

The act revises procedures for wildfire suppression payments made to local firefighting agencies and companies. First, it increases the money annually available for the payments from up to \$100,000 to up to \$200,000. Next, it eliminates the Wildfire Suppression Fund, from which the payments had been made, and, accordingly, the required annual transfer of money to it from the State Forest Fund for the payments. Instead, it requires the payments to be made directly from the State Forest Fund. Finally, it replaces the Chief of the Division of Forestry with the Director, or the Director's designee, as the state agent responsible for distributing money for wildfire suppression payments to firefighting agencies or companies.

### **Injection Well Review Fund**

(R.C. 1505.09 and 6111.046; repealed R.C. 1501.022)

The act eliminates the Injection Well Review Fund and redirects the 15% of the permit fees collected under the injection well permit program that were previously deposited in it to the Geological Mapping Fund. ODNR's use of the money from the permit fees appears to remain unchanged. The Divisions of Mineral Resources Management, Oil and Gas Resources Management, Geological Survey, and Water Resources in ODNR used money in the Injection Well Review Fund to pay expenses under the Class II injection well program. That program generally governs the underground injection into wells of wastes derived from oil and gas operations. The money redirected to the Geological Mapping Fund under the act generally must be used for the same purposes as the money previously deposited in the Injection Well Review Fund.

### **Property tax valuation of oil and gas reserves (VETOED)**

(R.C. 5713.051; Section 757.50)

The Governor vetoed a provision that would have stated that the "only method" for valuing oil and gas reserves is to employ an existing discounted cash flow formula. Under continuing law retained as a result of the Governor's veto, this formula appears



to apply only for the purposes of calculating the tax value of oil and gas reserves exploited by an active well that was not the subject of a recent arm's length sale.

The act would have specified that county auditors could employ no other method to determine the tax value of all oil or gas reserves, even in the absence of a developing and producing well. It is not clear how the act would have changed the property tax valuation methods of oil and gas reserves that existed prior to the act, if it would have changed them at all. It could have simply confirmed the Tax Commissioner's rule that suggests that undeveloped oil and gas reserves may be valued only according to that formula. Conversely, the act's new language could have overridden continuing law's explicit admonition that the discounted cash value formula applies only to producing oil and gas reserves. It also is not clear whether the act would have required county auditors to apply the discounted cash flow formula to oil and gas reserves exploited by a well and recently sold at arm's length or to undeveloped oil and gas mineral interests recently sold at arm's length.<sup>133</sup>

The act would have stated that it clarifies the General Assembly's intent that the discounted cash flow formula "continues to represent" the only method of valuing oil and gas reserves for property tax purposes. The valuation changes, if any, would have applied with respect to property added to the tax list, or charged with past-due tax, on or after September 29, 2017.

## **Oil and Gas Well Fund**

(R.C. 1509.071)

The act requires OBM, in consultation with the Chief of the Division of Oil and Gas Resources Management, to establish an accounting code to track expenditures from the Oil and Gas Well Fund for the following purposes:

- (1) Plugging idle and orphaned wells;
- (2) Restoring surface lands at idle and orphaned wells; and

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<sup>133</sup> Article XII, Section 2 of the Ohio Constitution requires that, for property tax purposes, "[l]and and improvements thereon shall be taxed by uniform rule according to value." This provision is generally referred to as the "uniform rule." The Ohio Supreme Court has repeatedly held that the best method of determining a property's tax value for complying with the uniform rule is the actual price paid for property in an arm's-length transaction. Only in the absence of such a sale has the Court held that the uniform rule permits the use of other factors to determine a property's taxable value. See *State ex rel Park Inv. Co. v. Bd. of Tax Appeals*, 170 Ohio St. 410 (1964), *Berea City Sch. Dist. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269 (2005), and *Cummins Property Services, L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516 (2008).



(3) Correcting conditions that the Chief has reasonably determined are causing imminent health or safety risks at an idle or orphaned well or well for which the owner cannot be reached.

Under continuing law, the Chief must spend at least 14% of the revenue credited to the Fund during the previous fiscal year for the above purposes. The Fund consists of money collected from forfeitures of bonds posted for remedying idle and orphaned wells, but also includes money collected from oil and gas severance taxes and other sources under the law governing oil and gas, such as permit fees, fines, and civil penalties.<sup>134</sup>

### **Oil and Gas Leasing Commission (VETOED)**

(R.C. 1509.71)

The Governor vetoed a provision that would have required the Speaker of the House and the President of the Senate to appoint four of the five members of the Oil and Gas Leasing Commission instead of the Governor.<sup>135</sup> The Governor was required to appoint the four members by October 30, 2011, but has not yet done so. The act would have required the Speaker to appoint two members from a list of at least four persons recommended by a statewide organization representing the oil and gas industry. The President would have had to appoint one member of the public with expertise in finance or real estate and one member representing a statewide environmental or conservation organization. Because the Governor has not appointed the members of the Commission, and the Commission generally is the legal means by which state lands may be leased for oil and gas exploration, it appears there currently is not a mechanism by which the state may enter into oil and gas leases with respect to state land.

### **Liability coverage for oil and gas wells**

(R.C. 1509.07)

The act authorizes a board of county commissioners of a county that is an owner of an oil and gas well to comply with the oil and gas well liability coverage requirements by participating in a joint self-insurance pool in accordance with the law governing those pools.

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<sup>134</sup> R.C. 1509.02, not in the act.

<sup>135</sup> On July 6, 2017, the House voted to override the Governor's veto of this item. The Senate had not acted on the override when this analysis was published.



The act also allows liability insurance companies *approved* to do business in Ohio, in addition to liability insurance companies *authorized* to do business in Ohio as under law unchanged by the act, to provide coverage to an owner of any oil and gas well.

### Mine Regulation and Safety Fund

(Repealed R.C. 1513.181, 1513.30, 1514.06, and 1561.48; Section 512.90; conforming changes in numerous other R.C. sections)

The act eliminates the Unreclaimed Lands Fund, the Surface Mining Fund, the Mining Regulation Fund, and the Coal Mining Administrative and Reclamation Reserve Fund and consolidates them into a new fund called the Mining Regulation and Safety Fund. All money that was credited to the consolidated Funds must be credited to the Mining Regulation and Safety Fund. Likewise, all money that was in those consolidated funds is transferred to the new Fund. The purposes for and expenditures authorized from the consolidated funds now apply to the new Fund. Under prior law, the consolidated funds, the revenue source for each of the consolidated funds, and the authorized uses of each of the consolidated funds were as follows:

<b>Funds consolidated into the new Mining Regulation and Safety Fund</b>		
<b>Abolished fund name</b>	<b>Source of revenue</b>	<b>Authorized uses</b>
Unreclaimed Lands Fund	Was derived from all of the following: (1) money received from the sale of reclaimed lands, or in payment for easements, leases, or royalties, (2) money collected from liens that result from specified reclamation activities, and (3) a portion of the money collected from the coal severance tax and a portion of the severance tax on limestone, dolomite, or gravel.	Was used for the following purposes: (1) reclaiming land affected by mining, or controlling mine drainage for which no cash was held in the continuing Reclamation Forfeiture Fund or the eliminated Surface Mining Fund, (2) purchasing any eroded land, including land affected by strip mining, for which no cash was held in the continuing Reclamation Forfeiture Fund, and (3) making grants for the payment of up to 75% of reclamation expenses incurred by specified entities regarding unreclaimed land affected by mining before April 10, 1972.
Surface Mining Fund	Was derived from all of the following: (1) Surface mining permit fees; (2) Annual filing and acreage fees collected from surface or in-stream mining operations; (3) Collection of liens imposed on a	Was used for the following purposes: (1) reclaiming land affected by surface or in-stream mining under specified circumstances, (2) administering and enforcing the law governing surface mining, and (3) mine safety and first aid training.



<b>Funds consolidated into the new Mining Regulation and Safety Fund</b>		
<b>Abolished fund name</b>	<b>Source of revenue</b>	<b>Authorized uses</b>
	<p>surface or in-stream mine operator for forfeiting a performance bond;</p> <p>(4) Civil penalties assessed and criminal fines imposed for violating the laws governing surface mining;</p> <p>(5) Criminal fines imposed for violating the law governing usage of roads in connection with surface mining operations;</p> <p>(6) Mine safety training fees for surface or in-stream mine operators;</p> <p>(7) Safety, first aid, and rescue class fees for miners;</p> <p>(8) A portion of the money collected from limestone, dolomite, and sand and gravel severance taxes; and</p> <p>(9) Clay, sandstone or conglomerate, shale, gypsum, and quartzite severance taxes.</p>	
Mining Regulation Fund	Was derived from money collected from both of the following: (1) certification/recertification for mine-related employment, and (2) criminal fines for violating laws governed by the Division of Mineral Resources Management.	Was used for paying the operating expenses of the Division.
Coal Mining Administration and Reclamation Reserve Fund	Was derived from both of the following: (1) a portion of the money collected from the coal severance tax, and (2) transfers from the Unreclaimed Lands Fund.	Was used for the administration and enforcement of the law governing coal mining and for reclaiming land affected by coal mining under specified circumstances.

### **Severance tax allocation**

(R.C. 5749.02 and 1514.11)

The act allocates money generated from certain severance taxes to the new Mining Regulation and Safety Fund as follows:



Severance tax	Severance tax (unchanged by the act)	Disbursement of money generated from tax under prior law	Disbursement of money generated from tax under the act
Coal	10¢ per ton of coal removed from the ground	-- 80.95% to the Coal Mining Administration and Reclamation Fund;  -- 14.29% to the Unreclaimed Lands Fund; and  -- 4.76% to the Geological Mapping Fund (this Fund is not consolidated under the act*)	100% to the Mining Regulation and Safety Fund
Salt	4¢ per ton of salt removed from the ground	100% to the Geological Mapping Fund	100% to the Mining Regulation and Safety Fund
Limestone, dolomite, or sand and gravel	2¢ per ton of limestone, dolomite, or sand and gravel removed from the ground	-- 50% to the Surface Mining Fund;  -- 42.5% to the Unreclaimed Lands Fund; and  -- 7.5% to the Geological Mapping Fund	-- 92.5% to the Mining Regulation and Safety Fund  -- 7.5% to the Geological Mapping Fund
Clay, sandstone or conglomerate, shale, gypsum, or quartzite	1¢ per ton of clay, sand or conglomerate, shale, gypsum, or quartzite removed from the ground	100% to the Surface Mining Fund	100% to the Mining Regulation and Safety Fund
Coal mined by surface mining methods	1.2¢ per ton of coal mined by surface mining methods removed from the ground	100% to the Unreclaimed Lands Fund	100% to the Mining Regulation and Safety Fund

\* The Geological Mapping Fund is used by the Division of Geological Survey to map and make public reports on the geology, geologic hazards, energy and mineral resources of Ohio, and for Department's duties under the injection well program (see, "**Injection Well Review Fund**," above).



The act also prohibits money credited to the Mining Regulation and Safety Fund that is derived from severance taxes from the mining of limestone, dolomite, sand, or gravel (aggregates) from being used for coal mining and reclamation purposes. Therefore, that money may only be used for reclaiming areas of land affected by surface or in-stream mining related to aggregates and for operating expenses of the Division of Mineral Resources Management.

### **Surface mining safety inspections**

(R.C. 1514.41)

The act replaces the requirement that the Chief of the Division of Mineral Resources Management conduct at least two inspections of a surface mining operation during a year following a year in which a safety inspection identifies a lost-time accident rate greater than the national average. Instead, the Chief must conduct a minimum of two safety inspections of a surface mining operation during a year following a year in which an inspection by the U.S. Mine Safety and Health Administration found three or more violations per day.

The Chief may, in consultation with a statewide association that represents the surface mining industry, adopt rules establishing exceptions to the safety inspection requirement.

### **Dam construction filing fee and annual fee**

(R.C. 1521.06 and 1521.063)

The act removes the statutorily imposed filing fee schedule for dam construction permits, and requires the Chief of the Division of Water Resources to adopt rules establishing the fee schedule. Under continuing law, a person who seeks a permit to construct a dam must file plans and specifications with the Chief along with a filing fee. The filing fee schedule set forth under prior law was as follows:

- (1) For the first \$100,000 of estimated cost, a fee of 4%;
- (2) For the next \$400,000 of estimated cost, a fee of 3%;
- (3) For the next \$500,000 of estimated cost, a fee of 2%; and
- (4) For all costs exceeding \$1 million, a fee of 0.5%.

The act also removes the statutorily imposed schedule for the annual fees that owners of Class I, Class II, and Class III dams must submit to the Division, and requires



the Chief to adopt rules establishing the annual fee schedule. Under prior law, the owners had to pay an annual fee to the Division by June 30, as follows:

(1) For a Class I dam, \$300 plus \$10 per foot of height of the dam, 5¢ per foot of length of the dam, and 5¢ per acre-foot of water impounded by the dam;

(2) For a Class II dam, \$90 plus \$6 per foot of height of the dam, 5¢ per foot of length of the dam, and 5¢ per acre-foot of water impounded; and

(3) For a Class III dam, \$90 plus \$4 per foot of height of the dam, 5¢ per foot of length of the dam, and 5¢ per acre-foot of volume of water impounded.

The act retains the specification that the annual fee schedule must be based on the height and linear foot length of the dam, and the per-acre-foot of volume of water impounded by the dam.

### **Aquatic species**

(R.C. 1531.06)

The act requires the Chief of the Division of Wildlife to establish both of the following before September 29, 2018:

(1) A definition of injurious invasive aquatic species; and

(2) A risk assessment policy regarding aquatic species that provides for both:

--An evaluation of overall risk of a species based on best available biological information derived from professionally accepted science and practices in fisheries or aquatic invasive species management; and

--A determination of whether a species should be listed as an injurious aquatic invasive species.

The Chief must adopt rules necessary to administer the act's provisions regarding aquatic species.

### **Nonresident hunting and fishing permits and licenses**

(R.C. 1533.10, 1533.11, 1533.12, and 1533.32)

The act increases the fees for nonresident applicants for a deer or wild turkey permit, a hunting license, or a fishing license so that the fees are as follows:



Type of permit/license	Fee under:		Difference
	Prior law	The act	
Deer permit – nonresident, ages 18-65	\$23	\$74	Increase of \$51
Deer permit – nonresident, under 18	\$11.50	\$74	Increase of \$62.50
Deer permit, nonresident, over 65	\$23	\$74	Increase of \$51
Wild turkey permit – nonresident, ages 18-65	\$23	\$28	Increase of \$5
Wild turkey permit – nonresident, under 18	\$11.50	\$28	Increase of \$16.50
Wild turkey permit, nonresident, over 65	\$23	\$28	Increase of \$5
*Nonresident hunting license, ages 18 and over, nonreciprocal state	\$124	\$174	Increase of \$50
*Nonresident hunting license, under 18, nonreciprocal state	\$9	\$174	Increase of \$165
*Nonresident apprentice hunting license, 18 and over, nonreciprocal state	\$124	\$174	Increase of \$50
*Nonresident apprentice hunting license, under 18, nonreciprocal state	\$9	\$174	Increase of \$165
*Nonresident fishing license, over 15, nonreciprocal state	\$39	\$49	Increase of \$10

\* A nonreciprocal state is a state that does not have a hunting or fishing agreement with Ohio.

Prior law did not delineate between a nonresident and a resident deer and wild turkey permit. Therefore, the act creates a nonresident deer permit and wild turkey permit for nonresidents of all ages. It also specifies that a nonresident on active duty in the U.S. Armed Forces, while on leave or furlough, is eligible to obtain a deer or wild turkey permit at the resident rate. A person on active duty can also obtain hunting and fishing license at the resident rate under continuing law.



## **Game quadruped includes elk**

(R.C. 1531.01)

The act adds elk to the list of game quadruped animals, which effectively allows ODNR to regulate and manage the propagation, preservation, and protection of elk.



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## OHIO BOARD OF NURSING

- Eliminates the requirement that the Board of Nursing's Executive Director be a registered nurse with at least five years' experience in the practice of nursing.
- Permits an individual to practice nursing at a free-of-charge therapeutic camp located in Ohio without holding a license issued by the Board of Nursing, if the individual is authorized to practice nursing in another state and volunteers at the camp.
- Permits an applicant for a license to practice as a licensed practical nurse to meet educational requirements by successfully completing a practical nurse education program approved by the U.S. Air Force.

### Executive Director

(R.C. 4723.05)

Beginning January 21, 2018, the act eliminates the requirement that the Board of Nursing's Executive Director be a registered nurse of this state with at least five years of experience in the practice of nursing as a registered nurse.

### Therapeutic recreation camps – out-of-state nurses

(R.C. 4723.32)

In order to practice nursing in Ohio, an individual must hold a current, valid license issued by the Board of Nursing.<sup>136</sup> Continuing law permits a nurse authorized to practice in another jurisdiction to engage in the practice of nursing or perform nursing-related activities in Ohio without a Board-issued license if specified conditions are met. To the list of activities that may be performed without a license, the act adds the provision of nursing care at a free-of-charge camp accredited by the SeriousFun Children's Network for individuals with chronic diseases. For a nurse to be eligible for this exemption, the nurse must:

(1) Provide documentation to the camp's medical director that the nurse holds a current, valid license to practice nursing from another state;

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<sup>136</sup> R.C. 4723.03 and 4723.44, not in the act.



(2) Provide nursing care only at the camp or in connection with camp events or activities occurring off camp grounds;

(3) Provide nursing services without compensation; and

(4) Provide nursing care within Ohio for not more than 30 days per calendar year.

In addition, the free-of-charge camp must have a medical director who is authorized to practice medicine in Ohio.

### **LPN licensure – educational requirements**

(R.C. 4723.09)

The act allows an applicant for a license to practice as a licensed practical nurse (LPN) to meet educational requirements by successfully completing a practical nurse education program approved by the U.S. Air Force as either of the following: (1) the community college of the Air Force associate degree in practical nursing technology or (2) the Allied Health Program, for students who graduated the program before 2016. This is an alternative to completing a nursing education program approved by either the Board of Nursing or a board that is a member of the National Council of State Boards of Nursing, or a practical nurse course offered or approved by the U.S. Army, as permitted by continuing law.



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## OPPORTUNITIES FOR OHIOANS WITH DISABILITIES AGENCY

- Removes the requirement that the Opportunities for Ohioans with Disabilities Agency (OODA) receive Controlling Board approval to release funds for its program to provide personal care assistance for individuals with severe physical disabilities.
- Changes "person with a disability" to "eligible individual with a disability" throughout the Worker Retraining Law.
- Expands the definition of "physical or mental impairment."
- Specifies the types of activities and items for which maintenance payments may be used.
- Requires OODA to implement an order of selection if vocational rehabilitation services cannot be provided to all eligible individuals with disabilities in Ohio who apply for services.

### Fund authority for personal care assistance program

(R.C. 3304.41)

The act eliminates the requirement that the Opportunities for Ohioans with Disabilities Agency (OODA) receive Controlling Board approval to release funds for OODA's program to provide personal care assistance for individuals with severe physical disabilities to live and work independently.

### Definitions and terms

(R.C. 3304.11, with conforming changes in numerous other R.C. sections)

The act makes the following changes to definitions and terms used in the Worker Retraining Law:

- Replaces the term "person with a disability" with "eligible individual with a disability";
- Expands the definition of "physical or mental impairment" to mean any physiological, mental, or psychological disorder, rather than a physical or mental condition that materially limits, contributes to limiting, or will



probably result in limiting a person's activities or functioning if not corrected, as under former law;

- Specifies the types of activities and items for which maintenance payments may be used (see "**Maintenance payments**," below);
- Replaces the definition of "vocational rehabilitation services" formerly used with the definition adopted in the rules implementing the federal Rehabilitation Act of 1973, which focuses more on job training and work-based learning experiences than diagnostic services;<sup>137</sup>
- Replaces the term "visually impaired person" with "individual who is blind" throughout the Worker Retraining Law;
- Makes conforming changes throughout the Worker Retraining Law.

### **Maintenance payments**

(R.C. 3304.11 and 3304.19, with conforming changes in R.C. 2329.66)

The act revises the definition of "maintenance" to specify the types of activities and items for which maintenance payments may be used. It defines "maintenance" as monetary support provided to an individual for expenses such as food, shelter, and clothing that exceed the individual's normal expenses. The excess expense must be necessitated by the individual's participation in an assessment to determine the individual's eligibility and need for vocational rehabilitation services or the individual's receipt of vocational rehabilitation services under an individualized plan for employment to be considered maintenance. Under former law "maintenance" meant money payments made to persons with disabilities who needed financial assistance for their subsistence during their vocational rehabilitation.

The act also specifies that any maintenance provided under the Worker Retraining Law is not transferrable or assignable at law or in equity, instead of living maintenance, as under former law.

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<sup>137</sup> 29 U.S.C. 701 *et seq.*



## **Order of selection**

(R.C. 3304.17)

The act requires OODA to implement an order of selection in accordance with the Rehabilitation Act of 1973 if vocational rehabilitation services cannot be provided to all eligible individuals with disabilities in Ohio who apply for services.

Under continuing law, OODA must provide vocational rehabilitation services to all eligible individuals with disabilities, including any eligible individual with a disability who is eligible under the terms of an agreement or arrangement with another state or with the federal government.



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## STATE BOARD OF PHARMACY

### Terminal and wholesale distributors of dangerous drugs

#### Terminal distributor licensure

- Eliminates category I and limited category I terminal distributor licenses.
- Requires the State Board of Pharmacy to adopt rules specifying when a licensed terminal distributor must provide updated application documentation.

#### Wholesale distributor licensure

- Changes the registration for wholesale distributors into a license for manufacturers, outsourcing facilities, third-party logistics providers, repackagers, and wholesale distributors of dangerous drugs.
- Transfers requirements governing registration as a wholesale distributor to the new types of licenses and specifies that any of the license types may be issued as a category II or category III license.
- Generally specifies that a licensed manufacturer, outsourcing facility, third-party logistics provider, repackager, or wholesale distributor may engage in the distribution of dangerous drugs, in addition to the sale of the drugs.

#### License renewal

- Requires license renewal to be on a schedule specified by the Board, with the effective period not to exceed 24 months unless the Board extends the period for purposes of adjusting license renewal schedules.
- Increases license fees and adjusts the fees to reflect biennial renewal.
- Prohibits a license holder that fails to renew from engaging in certain conduct related to dangerous drugs until a valid license is issued.
- Permits the Board to enter into agreements with other states, federal agencies, and other entities to exchange information concerning licensing and inspection and to investigate alleged violations.

#### Discipline

- Authorizes the Board to restrict or limit a license and to reprimand or place a license holder on probation.



- Authorizes the Board to impose disciplinary sanctions for additional causes, including other causes set forth in rules adopted by the Board.
- Specifies that when a hearing is required, if the licensee does not timely request a hearing, the Board is not required to hold a hearing and may adopt a final order with its findings, including any sanctions imposed.
- Specifies that the Board is not required to seal, destroy, redact, or otherwise modify its records of disciplinary proceedings notwithstanding a court's sealing of conviction records.

### **Summary suspension**

- Authorizes the Board to suspend a license without a hearing if the Board determines there is clear and convincing evidence that the method of possessing dangerous drugs presents a danger of immediate and serious harm to others.
- Specifies that a summary license suspension is void on the 121st day, as opposed to the 91st day, after the suspension if the Board has not issued its final adjudication before that date.

### **Pharmacist and pharmacy intern licensure**

- Adjusts the license renewal schedule for pharmacists and pharmacy interns from annually to a period specified by the Board in rules that is generally not to exceed 24 months.
- Prohibits a pharmacist or pharmacy intern who fails to timely renew from engaging in the practice of pharmacy until a valid license is issued.
- Modifies licensure and other fees charged by the Board.
- Eliminates a requirement that the Board issue identification cards to licensed pharmacists and pharmacy interns.
- Requires the Board to adopt rules defining "good moral character" for licensing purposes.

### **Investigative records and subpoenas**

- Makes information the Board receives during an investigation of a license holder generally confidential, but allows the Board to share the information with law enforcement agencies, other professional licensing boards, and other governmental agencies.



- Authorizes the Board, when investigating alleged violations of Board statutes and rules, to issue subpoenas, take depositions, and examine and copy records.

### **Unlicensed pain management clinics**

- Authorizes the Board to impose a fine for violation of pain management clinic licensure requirements when any person violates those requirements, rather than only when the violator is an otherwise licensed terminal distributor.

### **OARRS drug database**

- Requires the Board to provide from its drug database, commonly known as the Ohio Automated Rx Reporting System or OARRS, information related to a drug court program participant if requested by a judge of a certified drug court.
- Requires the Board to provide OARRS information related to a deceased person if requested by the examining coroner.
- Requires the Board to provide a hospital's peer review committee with OARRS information regarding a prescriber for evaluation, supervision, or disciplinary purposes.
- Authorizes the Board to provide a health care professional licensing agency with OARRS information related to a person acting as an expert witness in an investigation being conducted by the agency.
- Authorizes the Board to provide a prescriber with a summary of the prescriber's prescribing record from OARRS.
- Authorizes the Board to provide a pharmacy with a summary of the pharmacy's dispensing record from OARRS.
- Authorizes the Board to provide OARRS information to a prescriber or pharmacist without request.
- Authorizes the Board to provide to the Department of Medicaid records of requests for OARRS information made by a prescriber who treated a Medicaid recipient.
- Requires terminal distributors to submit to OARRS any other data fields recognized by the American Society for Automation in Pharmacy and specified in Board rules.
- Authorizes the Board to accept for inclusion in OARRS information from other sources, including other state agencies.



- Extends the period for which the Board must retain information in OARRS to at least five years and requires the Board to make the information accessible to authorized persons during that time.
- Authorizes the Board to retain patient identifying information beyond five years if necessary to serve an investigatory or public health purpose.

## **Medical Marijuana Control Program**

### **Criminal records checks**

- Eliminates the requirement that the results of criminal records checks of prospective employees of entities licensed under the Medical Marijuana Control Program be reported to those entities.
- Clarifies that the results are to be reported instead to the Board or Department of Commerce.
- Identifies the Board and Department as "licensing agencies," but only with respect to persons seeking employment with the Program's licensed entities.

### **Patient or caregiver registration**

- Eliminates the requirement that a physician certify as part of an application for patient or caregiver registration that the physician has informed the patient that the benefits of medical marijuana outweigh its risks.

## **Terminal and wholesale distributors of dangerous drugs**

### **Terminal distributors of dangerous drugs**

(R.C. 4729.54 with conforming changes in R.C. 4729.51)

#### **Licensure categories**

Under continuing law, terminal distributors of dangerous drugs are licensed in categories. The category of the license determines the drugs that the person may possess, have custody and control of, and distribute. The act eliminates category I and limited category I licenses, which were for single dose injections of intravenous fluids, such as saline, and other fluids specified in rule. The act continues category II and III and limited category II and III licenses, which are for dangerous drugs, including controlled substances.



The act also eliminates a requirement that every terminal distributor license indicate on its face the category of licensure, and for a limited category license, specification that the licensee can possess, have custody or control of, and distribute only the dangerous drugs listed in the license application.

### **Application for licensure**

Continuing law requires an application for licensure to state the category of license the person is seeking. For a limited category license application, it must include a list of the dangerous drugs the person is seeking to possess. The act eliminates a requirement that the list of drugs be notarized.

For an applicant that is an emergency medical service (EMS) organization, the act eliminates a provision requiring notarization of the standing orders or protocols that must be submitted with the application, but adds a physician signature requirement to a provision that requires submission of a list of dangerous drugs the organization's units may carry. The act eliminates a requirement that an EMS organization licensed as a terminal distributor must immediately notify the State Board of Pharmacy of changes to its standing orders or protocols that were submitted with its application. Instead, the act requires the Board to adopt rules specifying when the Board must be notified of changes to any of the documentation that was submitted with the application.

Similar changes are made for applications on behalf of animal shelters. The act eliminates the notarization requirement for submitted protocols, standing orders, or lists of dangerous drugs to be administered. It requires the Board to adopt rules specifying when the Board must be notified of changes to any of the documentation that was submitted with the application.

### **Wholesale distributors of dangerous drugs**

(R.C. 4729.52 (primary), 4729.01, 4729.51, and 4729.53, with conforming changes in R.C. 3719.04, 3719.07, 3719.08, 4729.78, and 4729.84; repealed R.C. 3719.02, 3719.021, 3719.03, and 3719.031)

The act changes the registration requirement for wholesale distributors of dangerous drugs into a license requirement, with new licensure distinctions created according to the activities being performed. Specifically, the act requires manufacturers, outsourcing facilities, third-party logistics providers, repackagers, and wholesale distributors to obtain the license. Under prior law, those entities were not specifically referred to by name, but according to representatives of the Board, were registered as wholesale distributors. The act applies all of the requirements that previously applied for registration as a wholesaler to its licensure of manufacturers, outsourcing facilities,



third-party logistics providers, repackagers, and wholesale distributors, with the changes discussed below.

### **Definitions**

The act establishes and modifies statutory definitions of activities involving drug distribution, as follows:

"Third-party logistics provider" – defined by the act as a person that provides or coordinates warehousing or other logistics services pertaining to dangerous drugs, including distribution, but does not take ownership of the drugs or have responsibility to direct sale or disposition.

"Repackager of dangerous drugs" – defined by the act as a person that repacks and relabels dangerous drugs for sale or distribution.

"Outsourcing facility" – defined by the act as a facility that is engaged in the compounding and sale of sterile drugs and is registered with the U.S. Food and Drug Administration.

"Manufacturer" – modified by the act by excluding a prescriber from the definition. (Under the act, a manufacturer is a person, other than a pharmacist or prescriber, who manufactures and sells dangerous drugs.)

"Sale" or "sell" – modified by the act by adding that the definition also includes distributing, brokering, or giving away, and specifying that transferring includes transfer by passage of title, physical movement, or both. Sale or sell also continues to include delivery, transfer, exchange, or gift.)

### **License categories and classifications**

The act specifies that the license of a manufacturer, outsourcing facility, third-party logistics provider, repackager, or wholesale distributor can be a category II or category III license. As for terminal distributors, the category of license determines which dangerous drugs the holder may possess, have custody or control of, and distribute. The act also permits the Board to create classification types for the licenses in rule.

### **Application for licensure**

For persons not residing in Ohio, the act permits the Board to issue a license if the person meets the Board's licensure requirements, as verified by a state, federal, or other entity recognized by the Board, and pays the required licensure fee. Continuing law also permits the Board to license persons who do not reside in Ohio if the person



possesses a current and valid license issued by another state that has licensure qualifications comparable to Ohio's requirements. The act adds that the person must be physically located in the other state that issued the license.

**Provisions affecting terminal and wholesale distributors, manufacturers, outsourcing facilities, third-party logistics providers, and repackagers**

(R.C. 4729.52, 4729.54, 4729.56, 4729.561, 4729.57, 4729.571, 4729.59, 4729.60, and 4729.62 with conforming changes in R.C. 2925.23, 4729.58, 4729.61, and 4729.83)

**Renewal schedules**

The act specifies that licenses for terminal distributors, manufacturers, outsourcing facilities, third-party logistics providers, repackagers, and wholesale distributors are valid for a period to be specified in rules. The period cannot exceed 24 months unless the Board extends it in rule to adjust license renewal schedules. This is in place of prior law that specified licenses were valid for 12 months.

A licensed terminal distributor that fails to renew by the renewal date is prohibited under the act from engaging in the retail sale, possession, or distribution of dangerous drugs until a valid license is issued. A licensed manufacturer, outsourcing facility, third-party logistics provider, repackager, or wholesale distributor that fails to timely renew is prohibited from engaging in manufacturing, repackaging, compounding, or distributing until a valid license is issued.

The act specifies that if a renewal application has not been submitted by the 61st day after the renewal date, the license is considered void and cannot be renewed, but the license holder may reapply for licensure.

**Fees**

The act increases license renewal fees to account for biennial registration and otherwise modifies the fees, as shown in the following two tables:

<b>Terminal Distributors</b>		
<b>License</b>	<b>Prior Law (Annual)</b>	<b>The Act (Biennial)</b>
Issuance and renewal of a category II or limited category II license	\$112.50	\$320



<b>Terminal Distributors</b>		
<b>License</b>	<b>Prior Law (Annual)</b>	<b>The Act (Biennial)</b>
Issuance and renewal of a category III or limited category III license	\$150	\$440
Issuance and renewal of a license to a person practicing veterinary medicine	\$40	\$120
Additional penalty for reinstatement of license not timely renewed	\$55	\$110

<b>Manufacturers, outsourcing facilities, third-party logistics providers, repackagers, and wholesale distributors</b>		
<b>License</b>	<b>Prior Law (Annual)</b>	<b>The Act (Biennial)</b>
Issuance and renewal of a category II license	\$750	\$1,900
Issuance and renewal of a category III license	N/A*	\$2,000
Additional penalty for reinstatement of license not timely renewed	\$150	\$300

\* Prior law did not prescribe multiple categories of licenses for wholesale distributors.

### **Discipline**

Regarding the Board's authority to impose sanctions on terminal distributors, manufacturers, outsourcing facilities, third-party logistics providers, repackagers, and wholesale distributors, the act authorizes the Board to restrict or limit licenses and to reprimand license holders or place them on probation. This is in addition to its preexisting authority to impose a fine or to suspend, revoke, or refuse to grant or renew a license. For manufacturers, outsourcing facilities, third-party logistics providers,



repackagers, and wholesale distributors, the act increases the fine that may be imposed to \$2,500 (from \$1,000).

The act also adds causes for which the Board may impose discipline. For terminal distributors, in addition to the conduct specified in continuing law, the Board may impose sanctions for (1) conviction of a felony and (2) any other causes set forth by the Board in rules. For manufacturers, outsourcing facilities, third-party logistics providers, repackagers, and wholesale distributors, in addition to the conduct specified in continuing law, the Board may impose sanctions for (1) falsely or fraudulently promoting a controlled substance to the public, (2) violating the federal Food, Drug, and Cosmetic Act or Ohio's Pure Food and Drug Law, and (3) any other causes set forth by the Board in rules.

### **Summary suspension**

For terminal distributors, manufacturers, outsourcing facilities, third-party logistics providers, repackagers, and wholesale distributors, the act authorizes the Board to suspend a license without a hearing if it determines that there is clear and convincing evidence that the method used to *possess* dangerous drugs presents a danger of immediate and serious harm to others. This is in addition to the Board's preexisting authority to impose a summary suspension if the method of *distributing* presents such an immediate danger.

The act specifies that a summary license suspension is void on the 121st, instead of the 91st, day after the suspension if the Board has not issued its final adjudication.

### **Board records of licensees**

The act continues to require the Board to make available a roster of persons licensed as terminal distributors, manufacturers, outsourcing facilities, third-party logistics providers, repackagers, and wholesale distributors. However, it eliminates a provision requiring the Board to make open for public examination its register of their names, addresses, and date of licensure.

### **Pre-sale and pre-purchase investigations**

The act modifies the investigation that a terminal distributor must conduct before purchasing dangerous drugs at wholesale by requiring it to query the Board's roster of licensees before purchasing. A terminal distributor may rely on an annual query to meet this requirement. For manufacturers, outsourcing facilities, third-party logistics providers, repackagers, and wholesale distributors, the act requires them to query the Board's roster of licensees before selling or distributing dangerous drugs at wholesale.



The requirements to query the Board's roster are in place of prior law that required (1) wholesalers to obtain from the purchaser a certificate indicating the purchaser is licensed and (2) terminal distributors to obtain from the seller the seller's registration certificate. Because the certificates no longer are exchanged, the act eliminates a provision prohibiting any person from making or furnishing a false certificate in those circumstances.

### **Ceasing to engage in authorized activities**

The act authorizes the Board to specify a time frame in rule within which a terminal distributor, manufacturer, outsourcing facility, third-party logistics provider, repackager, or wholesale distributor must notify the Board if the person ceases to engage in the activities for which the license was issued. Under prior law, no time frame for the notice was specified.

### **Agreements with other states, federal agencies, and other entities**

The act authorizes the Board to enter into agreements with other states, federal agencies, and other entities to exchange information concerning licensing and inspection of terminal distributors, manufacturers, outsourcing facilities, third-party logistics providers, repackagers, and wholesale distributors located within or outside Ohio, and to investigate alleged violations of the laws and rules governing distribution of drugs by them. Any information received pursuant to such an agreement is subject to the same confidentiality requirements that apply to the agency or entity from which the information was received and cannot be released without prior authorization from that agency or entity. For agreements pertaining to manufacturers, outsourcing facilities, third-party logistics providers, repackagers, and wholesale distributors, the act also specifies that information received is subject to confidentiality and disclosure provisions that generally apply to the Board's investigations under the act (see "**Investigative records**," below).

### **Notice of hearings**

The act provides that if notice of an opportunity for a hearing is required, but a license holder does not make a timely request for a hearing, the Board is not required to hold a hearing. The Board may adopt a final order that contains the Board's findings and may impose any of the sanctions listed above.

### **Sealing of records**

The act provides that, notwithstanding continuing law, the sealing of the following criminal records does not have an effect on the Board's action or any sanction imposed: records of any conviction, guilty plea, judicial finding of guilt resulting from a plea of no contest, or a judicial finding of eligibility for a pretrial diversion program or



intervention in lieu of conviction. Under the act, the Board is not required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

## **Pharmacist and pharmacy intern licensure**

### **License renewal**

(R.C. 4729.12 and 4729.13)

The act replaces annual licensure of pharmacists and pharmacy interns with a period to be specified in rules adopted by the Board. The period cannot exceed 24 months unless the Board extends it in rule to adjust license renewal schedules. A pharmacist or pharmacy intern who fails to renew by the renewal date is prohibited under the act from engaging in the practice of pharmacy until a valid license is issued by the Board.

For renewal of a license that has expired for more than three years, the act requires an applicant to comply with criminal records check requirements that apply to initial licensees, and pass an examination as required by law unchanged by the act.

### **Licensure and other fees**

(R.C. 4729.15)

The act adjusts the license renewal fees for pharmacists and pharmacy interns to account for biennial registration. It also further increases fees for pharmacists, as follows:

<b>Pharmacists</b>		
<b>License</b>	<b>Prior Law (Annual)</b>	<b>The Act (Biennial)</b>
Renewal of pharmacist's license before it expires	\$97.50	\$250
Renewal of pharmacist's license expired for less than three years	\$135	\$287.50

The act also increases to \$35, from \$10, the fee for certifying licensure and grades for reciprocal licensure.



The act extends a continuing fee waiver for active duty members of the U.S. Armed Forces to the spouses of active duty members.

### **Other changes**

(R.C. 4729.06, 4729.08, 4729.09, 4729.11, 4729.12, 4729.15, 4729.16, and 4729.67; repealed R.C. 4729.14)

### **Identification cards and display of licenses**

Related to the Board's transition to electronic licensure, the act eliminates a requirements that the Board issue pocket identification cards to pharmacists and pharmacy interns and that pharmacists and pharmacy interns carry them while practicing pharmacy. The act also eliminates a requirement to display a license at the principal place where the pharmacist or intern practices.

### **Good moral character**

The act requires the Board to define in rule what it means to be of "good moral character" for purposes of pharmacist and pharmacy intern licensure.

### **Pharmacy internship program director**

The act eliminates a provision authorizing the Board to appoint a director of its pharmacy internship program.

### **Investigative records and subpoenas**

(R.C. 4729.23 and 4729.24)

### **Investigative records**

The act generally makes information the Board receives during an investigation of a license holder confidential, and provides that the information is not subject to discovery in any lawsuit. Any record that identifies a patient, confidential informant, or individual who files a complaint with the Board, or may reasonably lead to the person's identification, is not a public record and is not subject to inspection or copying under disclosure laws that apply to other state-implemented personal information systems.

The act requires the Board to conduct all investigations or inspections and proceedings in a manner that protects the confidentiality of patients, confidential informants, and complainants. It must not make public the names or any other identifying information of these individuals, unless the individual consents or, in the case of a patient, a waiver of the patient privilege exists. The consent or waiver is not



required if the Board has reliable and substantial evidence that no bona fide physician-patient relationship exists.

The act permits the Board, for good cause shown, to disclose or authorize disclosure of information gathered pursuant to an investigation.

On request, the act also allows the Board to share any information it receives pursuant to an investigation or inspection, including patient records and patient record information, with law enforcement agencies, other licensing boards, and other state or federal governmental agencies that are prosecuting, adjudicating, or investigating alleged violations of statutes or rules. An agency or board that receives the information must generally comply with the same confidentiality requirements that apply to the Board. Any information the Board receives from a state or federal agency is subject to the same confidentiality requirements as the agency from which it was received and must not be released by the Board without prior authorization from that agency.

The act's confidentiality provisions also apply to any Board activity that involves continued monitoring of a license holder for substance abuse treatment or recovery purposes as part of or following any disciplinary action the Board takes against a license holder.

### **Subpoenas**

The act allows the Board, when investigating alleged violations, to issue subpoenas, take depositions, examine and copy and compel the production of books, accounts, papers, records, documents, and other tangible objects, and compel the attendance of witnesses. If a person fails to comply with a Board-issued subpoena, the Board may apply to the Franklin County Court of Common Pleas for an order compelling the production of persons or records.

A subpoena for patient record information may be issued only with the approval of the Board's executive director and president or the president's designee, in consultation with the Attorney General's Office. Before issuing the subpoena, the executive director and the Attorney General's Office must determine whether there is probable cause to believe that (1) the complaint filed alleges, or an investigation has revealed, a violation of any of the statutes governing pharmacists or drugs or any Board rule, (2) the records sought are relevant to the alleged violation and are material to the investigation, and (3) the records cover a reasonable period of time surrounding the alleged violation.

A Board-issued subpoena may be served by a sheriff, sheriff's deputy, or a Board employee. A subpoena may be served by delivering a copy of it to the person named in the subpoena or by leaving it at the person's usual residence.



The Board may adopt rules in accordance with the Administrative Procedure Act establishing procedures to be followed in issuing subpoenas, including procedures regarding payment for and service of subpoenas.

### **Unlicensed pain management clinics**

(R.C. 4729.552)

Continuing law authorizes the Board to impose a fine of up to \$5,000 for the operation of a pain management clinic without a category III terminal distributor license with a pain management clinic classification. The act permits the Board to impose that fine on any person who operates a pain management clinic without the required license, not just a licensed terminal distributor as under former law.

### **OARRS drug database**

(R.C. 4729.80; conforming changes in R.C. 4729.75, 4729.84, and 4729.86)

#### **Access to database information**

Continuing law authorizes the Board to establish a drug database to monitor the misuse and diversion of controlled substances and other dangerous drugs. The Board's database, known as the Ohio Automated Rx Reporting System (OARRS), is used to provide information about prescription drug use to prescribers and others. In addition to the OARRS information the Board continues to be authorized or required to provide, the act provides the following:

(1) The Board may provide information requested by an agency that licenses health care professionals relating to a government expert witness in an active investigation being conducted by the agency.

(2) The Board must provide information requested by a judge of a drug court certified by the Ohio Supreme Court relating to a current or prospective participant of a drug court program.

(3) The Board must provide information requested by the examining coroner, deputy coroner, or coroner's delegate about a deceased person.

(4) The Board must provide certain peer review committees, upon request, with information regarding a prescriber who is subject to the committee's evaluation, supervision, or discipline if the information is to be used for one of those purposes. This provision applies only to a peer review committee of a hospital or a nonprofit health care corporation that is a member of the hospital or of which the hospital is a member. The request for the information must come from a prescriber or pharmacist, or a



delegate of a prescriber or pharmacist, who is a designated representative of the peer review committee. The only information the Board may provide under this provision is information that it determines is appropriate to be provided.

(5) The Board may provide (a) a prescriber with a summary of the prescriber's prescribing record if such a record is created by the Board and (b) a pharmacy with a summary of the pharmacy's dispensing record if such a record is created by the Board. The summary information is subject to the confidentiality requirements of continuing law.

(6) Without being requested to do so, the Board may provide information to a prescriber or pharmacist authorized to use OARRS.

### **Records of requests for information**

The act authorizes the Board to provide to a designated representative of the Department of Medicaid records of requests for OARRS information made by a prescriber who is treating or has treated a Medicaid recipient.

### **Submission of information by terminal distributors**

(R.C. 4729.77)

In addition to the information a licensed terminal distributor must submit to the Board under law unchanged by the act, the act requires submission of any other data fields recognized by the American Society for Automation in Pharmacy, if specified in rules adopted by the Board.

### **Submission of information by other sources**

(R.C. 4729.772 and 4729.80)

The act permits the Board to accept for inclusion in OARRS information from other sources, including other state agencies, so long as the information is related to monitoring the misuse and diversion of drugs. The information must be transmitted as specified in rules adopted by the Board.

To the extent information submitted by other sources is personal health information, it may be provided by the Board only as authorized by the submitter and in accordance with rules adopted by the Board.



## **Information retention**

(R.C. 4729.82)

The act requires the Board to retain OARRS information and make it accessible to identified persons for at least five years, instead of three years. It also extends to five years the time after which information identifying a patient must be destroyed. The act specifies that the Board may retain information for longer than five years if it considers retention necessary to serve an investigatory or public health purpose.

## **Medical Marijuana Control Program**

### **Criminal records checks for employees**

(R.C. 109.572, 4776.01, 4776.02, and 4776.04)

The act makes changes to the law governing criminal records check requirements for prospective employees of license holders under the Medical Marijuana Control Program. Under former law, an individual seeking employment with a medical marijuana license holder was required to submit to the Bureau of Criminal Identification and Investigation (BCII) a request for a criminal records check. As part of the request, the prospective employee had to provide BCII with the name and address of the license holder. After completing the check, BCII was required to report the results to the license holder. Continuing law specifically prohibits a medical marijuana license holder from employing an individual if the report demonstrates that the individual has been convicted of or pleaded guilty to a disqualifying offense.<sup>138</sup>

The act eliminates the requirement that the employee submit to BCII the license holder's name and address. It also eliminates the requirement that BCII report the results to the license holder.

The act instead requires the results to be reported to the Board and Department of Commerce. This is required as a result of the act's inclusion of the Board and Department as "licensing agencies," prospective employees as "applicants for initial licenses" and eligible employees as "licensees" in the general law governing criminal records checks of applicants for licensure in various professions. It specifies, however, that the Board and Department are to be considered licensing agencies only with respect to persons seeking employment with the Program's licensed entities, thereby

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<sup>138</sup> R.C. 3796.13, not in the act.



preserving continuing law that creates a separate criminal records check procedure for applicants seeking licenses to cultivate, process, test, or dispense marijuana.<sup>139</sup>

### **Registration as patient or caregiver**

(R.C. 3796.08)

With respect to an application to register with the Board as a medical marijuana patient or caregiver, the act eliminates the requirement that a physician certify that he or she has informed the patient that, in the physician's opinion, the benefits of medical marijuana outweigh its risks.

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<sup>139</sup> R.C. 3796.12, not in the act.



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## OHIO PUBLIC DEFENDER

- Modifies the percentages of funds in the Indigent Defense Support Fund the State Public Defender may use for reimbursing county governments and for operating the State Public Defender Office.
- Removes the requirement that a sworn and notarized affidavit of indigency accompany the financial disclosure form for indigent defense.

### **Indigent Defense Support Fund**

(R.C. 120.08)

The act modifies the allocation of money in the Indigent Defense Support Fund as follows:

(1) At least 83% (decreased from 88%) for reimbursing counties for expenses incurred for indigent defense; and

(2) No more than 17% (increased from 12%) for appointing assistant state public defenders, providing personnel, equipment, and facilities for the State Public Defender office, and providing training, developing and implementing electronic forms, or establishing and maintaining an information technology system.

### **Affidavit of indigency**

(R.C. 120.33, 120.36, and 2941.51)

The act removes the requirement that a sworn and notarized affidavit of indigency accompany the financial disclosure form completed by an indigent person when seeking counsel for public defense.



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## DEPARTMENT OF PUBLIC SAFETY

### Public safety funds related to seizures of money

- Creates the Public Safety Highway Patrol Custodial Fund, the Ohio Investigative Unit Contingency Fund, and the Ohio Investigative Unit Custodial Fund, consisting of money seized during investigations or other enforcement activities of the Patrol or Unit.

### Security at Riffe Center and Rhodes Tower

- Requires the Department of Public Safety (DPS) to coordinate security measures and operations at the Vern Riffe Center and Rhodes Tower, and requires the Department of Administrative Services to implement security measures and operations DPS requires.
- Allows the Director of Public Safety to recover the costs of directing security for the Riffe Center and Rhodes Tower by issuing intrastate transfer voucher billings to DAS or by cash transfer made by the Director of Budget and Management on request of DAS.

### Driver's education course content

- Requires driver's education courses to include instruction on the dangers of driving while under the influence of a controlled substance, prescription medicine, or alcohol.

### State Board of Emergency Medical, Fire, and Transportation Services

- Requires the Governor to appoint an additional member to the State Board of Emergency Medical, Fire, and Transportation Services who is a member of a third-service emergency medical service agency or organization.

### Grants from the Drug Law Enforcement Fund

- Requires any drug task force awarded a grant from the Drug Law Enforcement Fund to comply with all grant requirements, including reporting its activities through the El Paso Intelligence Center (EPIC) information technology systems.

### Registration fees for vehicles subject to International Registration Plan

- Eliminates a \$30 registration fee that was charged for in-state registration of commercial cars that are subject to the International Registration Plan (IRP) and an



\$11 registration fee that was charged for in-state registration of commercial buses that are subject to the IRP.

- Exempts commercial cars and buses that are subject to the IRP from the local motor vehicle registration taxes (which are up to \$25 per taxing district).
- Increases the base rates charged for the registration of a commercial car or bus that is subject to the IRP and equalizes those rates so that the base rates charged to vehicles registered in Ohio and vehicles that are registered outside of Ohio, but that are subject to taxation in Ohio under the IRP, are the same.
- Eliminates a provision of the transportation budget act (H.B. 26) that established a pilot program in six counties that reduced the \$30 registration fee for certain commercial motor vehicles registered in Ohio.

### **Personal delivery devices**

- Authorizes the use of an electrically powered personal delivery device (PDD) on sidewalks and crosswalks by certain eligible entities, provided that certain requirements are met.
- Requires PDD operators to comply with established safety provisions, including prohibiting operation of a PDD on a street or highway except when crossing within a crosswalk.
- Requires a PDD to yield the right-of-way to pedestrians on sidewalks and crosswalks, but grants a PDD all other rights and obligations that apply to pedestrians.
- Specifies that an eligible entity is responsible for both:
  - Any violation under the act that is committed by a PDD operator; and
  - Any other circumstance, including a technological malfunction, in which a PDD operates in a manner prohibited by the act's safety provisions.
- Excludes a PDD from the definition of "vehicle" under the Motor Vehicle Law, thus exempting a PDD from general requirements and prohibitions that apply to vehicles.



## Public safety funds related to seizures of money

(R.C. 4501.07 and 5502.1321)

The act establishes three new funds, consisting of money seized by the Highway Patrol or the Department of Public Safety (DPS) Investigative Unit during investigations or other enforcement activities. The money must be held by the Treasurer of State but is not part of the state treasury. It must be transferred in accordance with the criminal forfeiture law after the resolution of legal proceedings. The new Funds created by the act are as follows:

New public safety funds	
Name	Source
Public Safety Highway Patrol Custodial Fund	All money seized during investigations or other enforcement activities of the Highway Patrol
Ohio Investigative Unit Contingency Fund	All money seized during investigations or other enforcement activities of the DPS Investigative Unit prior to January 1, 2017
Ohio Investigative Unit Custodial Fund	All money seized during investigations or other enforcement activities of the DPS Investigative Unit on and after January 1, 2017

## Security at Riffe Center and Rhodes Tower

(R.C. 123.01, 5502.01, and 5503.02)

The act requires DPS to coordinate security measures and operations at the Vern Riffe Center and the Rhodes Tower, and allows DPS to direct DAS to implement security measures and operations as DPS requires. Under prior law, DAS was generally responsible for the provision of security to Vern Riffe Center and Rhodes Tower. The Director of Public Safety may recover the costs of directing security for the Riffe Center and Rhodes Tower by issuing intrastate transfer voucher billings to DAS or by cash transfer made by the Director of Budget and Management at the request of DAS. These payments or cash transfers must be deposited into the state treasury to the credit of the Security, Investigations, and Policing Fund.



## **Driver's education course content**

(R.C. 4508.02)

The act requires driver's education courses to include instruction on the dangers of driving a motor vehicle while under the influence of a controlled substance, prescription medication, or alcohol.

## **State Board of Emergency Medical, Fire, and Transportation Services**

(R.C. 4765.02)

The act requires the Governor to appoint an additional member to the State Board of Emergency Medical, Fire, and Transportation Services who is a member of a third-service emergency medical service agency or organization. The member must be from among three persons nominated by the Ohio EMS Chiefs Association. A third-service emergency medical service agency or organization provides only emergency medical services and is separate from police and fire departments.

## **Grants from the Drug Law Enforcement Fund**

(R.C. 5502.68)

The act requires any drug task force awarded a grant from the Drug Law Enforcement Fund to comply with all grant requirements established by the DPS, Division of Criminal Justice Services. This specifically includes a requirement that the drug task force report its activities through the El Paso Intelligence Center (EPIC). Grants from the Drug Law Enforcement Fund are provided to defray the expenses that a drug task force incurs in performing its functions related to enforcement of Ohio's drug laws and laws related to illegal drug activity.

## **Registration fees for vehicles subject to the International Registration Plan**

(R.C. 4503.65, 4503.042, 4503.10, and 4504.201, with conforming changes in other R.C. sections; Section 620.20 (repealing Section 745.20 of H.B. 26 of the 132nd G.A.))

### **Background**

Under the International Registration Plan (IRP), a commercial car<sup>140</sup> or bus that travels within two or more states pays an apportioned registration tax to each jurisdiction that the vehicle travels within. The tax is based on the percent of the

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<sup>140</sup> A commercial car generally is a motor vehicle that is used for carrying merchandise or freight (R.C. 4501.01, not in the act).



vehicle's mileage within each state. For example, if a vehicle travels 50% of its miles in Ohio, the operator would pay 50% of the Ohio registration taxes. Under prior law, the base rates charged for IRP vehicles registered outside of Ohio were higher than the base rates charged for IRP vehicles registered in Ohio (ranging from \$1 more to \$33.50 more, depending on the vehicle's weight). However, in-state IRP vehicles paid an additional \$30 registration fee (commercial cars) or an \$11 registration fee (commercial buses) and local registration taxes (up to a maximum total of \$25 depending on the district of registration). Those fees did not apply to out-of-state IRP vehicles. The additional registration fees and taxes that were charged to in-state IRP vehicles also were not apportioned, meaning a registrant paid the full fee amount. Accordingly, in-state vehicles paid a higher overall rate for registration under prior law, because the additional unapportionable fees applied only to in-state vehicles.

### Changes to registration fees

The act eliminates the additional \$30 and \$11 registration fees for in-state IRP vehicles and excludes in-state IRP vehicles from all local registration taxes (up to \$25 depending on the district of registration). In lieu of those fees and taxes, the act increases the base rates charged for the registration of an IRP vehicle and equalizes the rates so that the base rates charged to IRP vehicles registered in Ohio and out-of-state IRP vehicles are equivalent. The following table reflects the rates of taxation for an IRP vehicle as modified by the act:

Rates of taxation for commercial vehicle registration*		
Type of registration	Base rate under prior law	Base rate under the act
In-state IRP commercial car	\$45 - \$1,340 (plus a \$30 public safety fee and up to \$25 in local registration taxes)	\$100 - \$1,395
Out-of-state IRP commercial car	\$47 - \$1,373.50	\$100 - \$1,395
In-state IRP commercial bus	\$10 - \$1,630 (plus an \$11 public safety fee and up to \$25 in local registration taxes)	\$46 - \$1,666
Out-of-state IRP commercial bus	\$11 - \$1,644.50	\$46 - \$1,666

\* All rates of taxation are based on vehicle weight. This table does not include service fees, late registration fees, or taxes that may be levied within a transportation improvement district or regional transportation improvement project, all of which apply to vehicles registered in Ohio only.

Please note that although the increase to the base rate is equal to the total maximum eliminated fees and taxes for in-state IRP vehicles (\$55 for commercial cars and \$36 for commercial buses), the effective tax rate for such vehicles may be lower than



under prior law. This is because the prior fees were not apportioned, whereas the base rate is apportioned. The tax rate will be higher than under prior law for out-of-state IRP vehicles, which did not pay any unapportioned fees or taxes.

### **Elimination of commercial motor vehicle registration pilot**

The act also repeals a provision of the transportation budget act (H.B. 26) that established a multi-county commercial motor vehicle registration pilot program. Under the pilot program, the \$30 additional registration fee (referenced above) that applied to a commercial car was reduced to \$15 if the commercial car was registered under the IRP within Clinton, Franklin, Lucas, Mahoning, Montgomery, or Stark counties. The pilot program would have begun January 1, 2018, and would have ended December 31, 2019.

### **Personal delivery devices**

(R.C. 4511.01 and 4511.513)

The act authorizes the use of an electrically powered personal delivery device (PDD) on sidewalks and crosswalks for the primary purpose of transporting property. A PDD weighs less than 90 pounds, excluding the property being carried, and travels at less than ten miles per hour. A PDD may require a remote human operator to actively control and monitor the device, may operate without a remote human operator, or may operate both with and without a remote human operator. A PDD is not considered a vehicle and is exempt from the general requirements and prohibitions that apply to vehicles. Instead, a PDD is treated the same as a pedestrian, and thus, has the rights and obligations that apply to pedestrians (for example, the right-of-way at a crosswalk when properly signaled). A PDD, however, must yield the right-of-way to other pedestrians on sidewalks and crosswalks.

An eligible entity, specifically, a corporation, partnership, association, firm, sole proprietorship, or other entity engaged in business, is permitted to use a PDD, provided the following requirements are met:

- (1) The PDD is operated in accordance with local regulations, if any;
- (2) An operator is actively controlling or monitoring the navigation and operation of the PDD;
- (3) The eligible entity maintains a minimum \$100,000 insurance policy for the operation of the PDD; and
- (4) The PDD is equipped with (a) a marker that clearly identifies the name and contact information of the entity operating it and a unique identification number, (b) a



braking system that enables it to come to a controlled stop, and (c) if the PDD is being operated between sunset and sunrise, a light on both the front and rear that is visible in clear weather from a distance of at least 500 feet to the front and rear of the PDD when directly in front of a motor vehicle's low-beam headlights.

An operator of a PDD, meaning the person exercising direct physical control or monitoring of its operation and navigation, must ensure that the device complies with all traffic and pedestrian control devices and signals. The operator also must ensure that the device does not unreasonably interfere with pedestrians or traffic, transport hazardous material that would require a permit, or operate on a street or highway except through a crosswalk. The operator must be an agent of an eligible entity. However, the person who requests a delivery by a PDD or a person who arranges for or dispatches the PDD for a delivery or other service is not considered a PDD operator.

A person is prohibited from operating a PDD unless that person is authorized to do so by the act and that person meets the act's specific requirements. Additionally, an eligible entity that uses a PDD is responsible for both:

- (1) Any violation under the act committed by a PDD operator; and
- (2) Any other circumstance, including a technological malfunction, in which a PDD operates in a manner prohibited by the act's safety provisions.

The act does not establish a penalty for a violation of the requirements pertaining to PDDs.

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## **PUBLIC UTILITIES COMMISSION**

### **Power Siting Board law**

- Includes as a "major utility facility" an electric transmission line and associated facilities with a design capacity of 100 kilovolts or more (125 kilovolts or more was the former requirement).
- Eliminates the two-year initial operation period during which the Ohio Environmental Protection Agency (OEPA) monitors and enforces compliance by newly certificated electric generating major utility facilities with OEPA law.
- Eliminates from the Power Siting Board law those provisions stating that a major utility facility (1) is under OEPA continuing jurisdiction and (2) must comply with all laws, rules, and standards regarding air and water pollution and solid and hazardous waste disposal laws.
- Limits a public agency or political subdivision from requiring approval, consent, a permit, a certificate, or any other condition for the operation of a major utility facility or an economically significant wind farm (under former law the limit was imposed only on initial operation).

### **Transportation of hazardous materials**

- Requires a person to file an annual registration statement with, and pay an annual registration fee to, the U.S. Department of Transportation in order to transport hazardous waste in Ohio, rather than requiring a uniform permit from the Public Utilities Commission (PUCO).
- Eliminates the uniform registration and permitting of the transportation of hazardous materials by PUCO.
- Eliminates the requirement that PUCO use a system for determining forfeitures that may be imposed on transporters of hazardous material or hazardous waste that is comparable to the recommendations of the Commercial Vehicle Safety Alliance.

### **Transportation of household goods**

- Eliminates several requirements with which PUCO must comply when setting the application fees for a certificate for the transportation of household goods.



## **Lifeline telephone service (PARTIALLY VETOED)**

- Eliminates the requirements that lifeline service be touch-tone, flat-rate, and for a primary line.
- Reconciles the eligibility for lifeline service provision that is based on household income to federal rules, effectively lowering the income threshold from 150% of the federal poverty level to 135%.
- Reduces from 60 days to 30 the time a customer has, after receiving a lifeline service termination notice, to submit documentation of continued eligibility or to dispute the termination.
- Would have required an incumbent local exchange carrier to implement lifeline service consistent with the requirements of federal law. (VETOED).

## **Small hydroelectric facility**

- Classifies the power from a small hydroelectric facility, which is a facility that operates, or is rated to operate, at an aggregate capacity of less than six megawatts, as a renewable energy resource under the competitive retail electric service law.
- Specifies that a small hydroelectric facility is a qualified energy resource for purposes of the renewable energy resource mandates and thus is eligible for renewable energy credits.

## **Power Siting Board law**

The act makes changes to the Power Siting Board (PSB) law governing the certification and operation of major utility facilities and the regulation of such facilities and economically significant wind farms.

### **Major utility facility expansion**

(R.C. 4906.01)

The act expands what type of "major utility facility" is subject to PSB certification. Under the act, an electric transmission line and associated facilities with a design capacity of 100 kilovolts or more is included as a major utility facility. Under prior law, the threshold was 125 kilovolts or more.



## **PSB law changes and OEPA oversight**

(R.C. 4906.10)

The act also eliminates from PSB law certain provisions regarding the initial operation period and Ohio Environmental Protection Agency (OEPA) oversight of major utility facilities.

### **Initial operation period**

The act eliminates the initial two-year operation period during which the OEPA enforces and monitors compliance by newly certificated facilities with Ohio's air and water pollution laws and laws governing solid and hazardous waste disposal. Despite this change, the act does not amend OEPA law to remove OEPA monitoring and enforcement duties regarding those laws.

With respect to the initial operation period elimination, the act also repeals provisions permitting a facility to apply to OEPA for a conditional operating permit if it fails to meet all applicable air pollution requirements. The eliminated language provided that the application had to be made under continuing OEPA law. The act, however, does not amend that continuing OEPA law to exclude newly certificated facilities from applying, with the result that such application may still be made, despite the bill's changes.<sup>141</sup> In fact, the act does not change the continuing law requirement that certificates are conditioned on compliance with Ohio's air and water pollution laws and laws governing solid and hazardous waste disposal.

The act also repeals the provision stating that "a major utility facility in compliance with a conditional operating permit is not in violation of its certificate."

### **OEPA continuing jurisdiction**

The act also eliminates from the PSB law the provision that after the initial operation period, a major utility facility is (1) under the OEPA's jurisdiction and (2) must comply with all laws, rules, and standards regarding air and water pollution and solid and hazardous waste disposal. The act does not, however, repeal those laws, rules, and standards, which, presumably, would still apply to such a facility.

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<sup>141</sup> R.C. 3704.03(G), not in the act.



## **Major utility facility/economically significant wind farm operation**

(R.C. 4906.13)

The act provides that no public agency or political subdivision may require approval, consent, permit, certificate, or other condition for the operation of a major utility facility or an economically significant wind farm (a wind farm that has an aggregate capacity of more than 5, but less than 50, megawatts). Prior law placed this limitation only on the *initial* operation of such a facility or wind farm.

## **Transportation of hazardous materials**

(R.C. 3734.15, 4905.02, 4921.01, 4921.19, 4921.21, 4923.02, and 4923.99; repealed R.C. 4921.15 and 4921.16)

The act eliminates the authority of the Public Utilities Commission (PUCO) to adopt rules for registering and issuing permits for the transportation of hazardous materials and its authority to enter into agreements with other states and a national repository to ensure that permits and fees are handled uniformly in each state.

In place of the PUCO registration and permitting, the act prohibits the transportation of hazardous waste in Ohio unless the transporter has filed an annual registration statement with, and paid an annual registration fee to, the U.S. Department of Transportation in accordance with federal rules.

According to PUCO, a uniform hazardous materials transportation system has not been adopted by every state. Thus, under prior law, hazardous waste carriers were required to comply with both Ohio requirements and federal requirements established by the federal Pipeline and Hazardous Materials Safety Administration.

Lastly, the act eliminates the requirement that, when determining a forfeiture amount for a violation committed by a transporter of hazardous material or hazardous waste that was discovered during a motor vehicle inspection or compliance review, PUCO use a system that was comparable to the recommendations of the Commercial Vehicle Safety Alliance. PUCO still must comply with requirements of the U.S. Department of Transportation, use the standard of culpability established under the federal Hazardous Materials Transportation Uniform Safety Act of 1990, and use the assessment considerations for civil penalties established under the federal Hazardous Materials Transportation Act.



## Transportation of household goods

(R.C. 4921.19)

The act eliminates several requirements with which PUCO had to comply when establishing the application fees for a certificate for the transportation of household goods. Under continuing law, the application fee must be based on the certificate holder's gross revenue in the prior year for the intrastate transportation of household goods. However, the act eliminates the requirements that PUCO:

- (1) Establish ranges of gross revenue and the fee for each range;
- (2) Set the fees sufficient to carry out its duties in regulating transportation of household goods and enforcing requirements;
- (3) Make changes to the fee structure as necessary to ensure that neither over- nor under-collection occurs; and
- (4) Take into consideration the revenue generated from the assessment of forfeitures.

## Lifeline telephone service (PARTIALLY VETOED)

(R.C. 4927.13)

The act makes several changes to the lifeline telephone service program. It eliminates the requirements that the service be touch-tone, flat-rate, and for a primary line. Lifeline continues to require monthly access service at a recurring discount to the monthly basic local exchange service rate.

The act also changes one of the paths for determining eligibility by removing the maximum income threshold established in Ohio law, which was 150% of federal poverty level, and replacing it with the threshold established by federal rules. Presently the rules establish the threshold at 135%. In practical terms, this restricts eligibility. For example, it lowers the maximum income for a family of four in 2017 from \$36,900 to \$33,210.<sup>142</sup> However, continuing law also permits eligibility if the customer participates in any federal or state low-income assistance program. The PUCO has specified in rules that Medicaid, SNAP/food stamps, SSI, SSDI, section 8 housing, home energy assistance

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<sup>142</sup> The calculations are based on 2017 U.S. Department of Health & Human Services guideline figures, available at <https://aspe.hhs.gov/poverty-guidelines>.



programs, the free school lunch program, TANF, and general or disability assistance all qualify for lifeline eligibility.<sup>143</sup>

Further, the act reduces the number of days, from 60 to 30, a customer has to respond to a lifeline service termination notice. During that time, a customer may submit acceptable documentation proving continued eligibility or dispute the carrier's findings regarding the termination.

The Governor vetoed a provision that would have obligated incumbent local exchange carriers required to provide lifeline service to do so "consistent with federal law" rather than throughout their traditional service areas for eligible residential customers.

### **Small hydroelectric facility**

(R.C. 4928.01 and 4928.64)

The act modifies the definition of renewable energy resources under the competitive retail electric service law to include power produced by a small hydroelectric facility, which is a facility that operates, or is rated to operate, at an aggregate capacity of less than six megawatts. Further, it adds small hydroelectric facilities to the definition of qualifying renewable energy resources for purposes of the renewable energy resource mandates of that law. Their addition makes the facilities eligible for renewable energy credits.

The act excludes small hydroelectric facilities from meeting the standards used to define a "hydroelectric facility."

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<sup>143</sup> O.A.C. 4901:1-6-19(H)(1).



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## OHIO STATE RACING COMMISSION

- Modifies the distribution of certain moneys paid to the Tax Commissioner by horse racing permit holders in order to correct an error in statute.

### Quarterhorse wagering tax distribution

(R.C. 3769.087)

The act modifies the distribution of certain moneys paid to the Tax Commissioner by horse racing permit holders in order to correct an error made in H.B. 64 of the 131st General Assembly. Specifically, the act reduces by one-twelfth the amount of additional moneys paid to the Tax Commissioner by *thoroughbred* racing permit holders that must be paid into the Ohio Thoroughbred Race Fund, and requires that one-twelfth of the moneys paid to the Tax Commissioner by *quarterhorse* racing permit holders be paid into the Fund. Prior law allocated thirteen-twelfths of certain thoroughbred racing permit holder's moneys paid to the state and only eleven-twelfths of quarterhorse racing permit holder's funds.



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## DEPARTMENT OF REHABILITATION AND CORRECTION

### Community-based correctional facility reporting

- Requires specified community-based correctional facilities to file an annual financial report, rather than the Department of Rehabilitation and Correction (DRC) filing quarterly financial reports, with the State Auditor.

### Local confinement for fifth degree felony prison terms

- Provides, subject to exclusions for certain offenses and categories of offenders, that a person sentenced in a target county or voluntary county to a prison term of 12 months or less for a fifth degree felony (a short-term fifth degree felony prison term) may not serve the term in an institution under the control of DRC.
- Specifies the types of local correctional facilities where the person will serve that prison term.
- Lists the state's ten most populous counties as "target counties," and specifies that any counties in which specified county officials agree to have the county participate in the local confinement provisions are "voluntary counties."
- Allows county officials who have agreed to make their county a voluntary county to terminate the agreement, but the termination takes effect at the end of the state fiscal biennium in which the termination decision is made.

### Memorandum of understanding – local confinement

- Requires counties, either separately or jointly, and municipal corporations in the counties in specified circumstances, to submit to DRC a memorandum of understanding that specifies plans for using T-CAP program grant money and reimbursing local correctional facilities for certain offenders.
- Specifies the procedure for determining the *per diem* cost of housing offenders sentenced to a short-term fifth degree felony prison term in local correctional facilities.
- Requires DRC to adopt standards for reviewing and approving submitted memorandums of understanding.

### Community-based treatment eligibility

- Changes the "prior convictions" that disqualify a prisoner from eligibility for the community-based substance use disorder treatment program from "any offense of



violence" to "any felony offense of violence" or "any misdemeanor offense of violence within the preceding five years."

### **Judicial release application**

- Reduces the time that an eligible offender confined under a prison term of less than two years must serve before applying for judicial release.

### **Community corrections subsidies**

- Revises the priorities for use of community corrections subsidies provided by DRC to eligible political subdivisions.

### **Probation improvement, incentive grants**

- Specifies what must be included in DRC rules regarding the distribution of the Probation Improvement Grant.
- Makes community-based correctional facilities eligible for probation improvement grants and probation incentive grants.
- Imposes the same requirements for community-based correctional facilities to receive the grants that apply to common pleas, municipal, and county court probation departments.
- Requires that the costs savings estimate calculated by DRC be based on the difference from the average of certain commitments from the preceding five calendar years and the fiscal year under examination.

### **Certificates of qualification for employment**

- Permits an out-of-state resident with an Ohio conviction record to apply for a certificate of qualification for employment (CQE) through the court of common pleas in any county where a conviction was entered against the person.
- Permits DRC to develop criteria that would allow an individual to apply for a CQE earlier than otherwise.
- Removes the requirement that a CQE applicant list the specific collateral sanctions from which the individual is seeking relief, and instead requires the applicant to provide a general statement as to why the individual has applied and how the CQE would assist the individual.



- Provides that a CQE creates a rebuttable presumption that the person's criminal convictions are insufficient evidence that the person is unfit for employment or a professional license.
- Directs DRC to maintain a database that identifies granted and revoked CQEs and the jobs and types of employers to which the CQEs have most applied, and requires DRC to annually create a publicly available report summarizing the information in the database.
- Requires DRC to review its database of certificates issued to identify those that are subject to revocation, and to note in the database that the CQE has been revoked, the reason for revocation, and the effective date of the revocation.

### **Earned credit**

- Provides an incarcerated person with 90 days of earned credit toward satisfaction of the person's prison term or a 10% reduction of the person's prison term, whichever is less, upon successful completion of an Ohio high school diploma, the criteria for a certificate of achievement and employability, or any of a list of specified treatment or education programs.
- Specifies that the earned credit is available for any imprisoned person, unless the person is serving a mandatory prison term or a term for an offense of violence or a sexually oriented offense.

### **Prison term as community control violation sanction**

- Limits to 90 or 180 days a prison sanction for a technical violation of the conditions of, or for a new misdemeanor criminal offense committed while under, a community control sanction imposed for a fifth degree felony, or for a fourth degree felony that is not an offense of violence or sexually oriented offense.

### **Warden's report to parole board**

- Requires the warden of an institution in which a person eligible for parole is incarcerated to submit a report on the prisoner to the parole board prior to any hearing to determine whether or not that prisoner should be paroled.

### **Notice to sheriff of felony offender release**

- Requires the Adult Parole Authority (APA) to notify the sheriff of the county in which the offender was convicted and the sheriff of the county in which the offender will reside of the offender's release or transfer under a specified time frame.



- Requires the APA to provide notice to the sheriff at least 60 days before recommending a pardon or commutation for an offender or at least 60 days before an APA hearing regarding parole.

### **Use of former Ohio River Valley Juvenile Correctional Facility (ORVF)**

- Provides that if the Lawrence County sheriff is using a portion of the ORVF as a jail pursuant to a contract under existing law, and if either party has failed to comply with the contractual terms, on September 29, 2017, control of that portion of the ORVF reverts to the state and the sheriff cannot use it as a jail.
- Authorizes the use of the ORVF or a portion of it as a multicounty, municipal-county, or multicounty-municipal correctional center under specified circumstances.

### **Division of Business Administration**

- Allows the Division of Business Administration within DRC to use excess funds in the Property Receipts Fund for specified purposes if, after meeting the required expenditure obligations, the Division determines that the Fund has excess funds.

### **Community-based correctional facility reporting**

(R.C. 2301.56)

The act requires community-based correctional facilities and programs to provide to the State Auditor an annual financial report. The requirement applies to each community-based correctional facility and program, district community-based correctional facility and program, and, to the extent that information is available, private or nonprofit entity that performs the day-to-day operation of any community-based correctional facility and program or district community-based correctional facility and program. This replaces the law that required the Department of Rehabilitation and Correction (DRC) to prepare and provide quarterly financial reports to the State Auditor for each of the above-described facilities and programs.

### **Local confinement for fifth degree felony prison terms**

(R.C. 2929.34)

#### **Local confinement requirement, in general**

The act provides an exception, for certain prison terms imposed for a fifth degree felony, to the requirement that a person sentenced to a prison term for a felony must



serve that term in an institution under DRC's control. Under the act's exception, subject to the exclusions described below, on and after July 1, 2018, no person sentenced by a common pleas court of a "target county" or of a "voluntary county" (see below) to a prison term that is 12 months or less for a fifth degree felony may serve that term in a DRC institution. The person must instead serve a term of confinement in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, in a community alternative sentencing center or district community alternative sentencing center, or in a community-based correctional facility (a CBCF). The act specifies that nothing in this provision relieves the state of its obligation to pay for the cost of confinement of the person in a CBCF.

The "target counties" are: Franklin, Cuyahoga, Hamilton, Summit, Montgomery, Lucas, Butler, Stark, Lorain, and Mahoning.

In any other county, the board of county commissioners and the administrative judge of the general division of the common pleas court may agree to have the county participate in the act's local confinement provisions. These counties are "voluntary counties." A board of county commissioners and an administrative judge that enter into such an agreement may terminate the agreement, but a termination takes effect only at the end of the state fiscal biennium in which the termination decision is made.

### **Exclusions from local confinement**

The act's local confinement provisions do not apply to any person to whom any of the following apply:

(1) The fifth degree felony was an offense of violence, a sex offense or drug trafficking offense under state law, or any offense for which a mandatory prison term is required.

(2) The person previously has been convicted of or pleaded guilty to any felony offense of violence.

(3) The person previously has been convicted of or pleaded guilty to any felony sex offense under state law.

(4) The sentence is required to be served concurrently to any other sentence imposed on the person for a felony that is required to be served in a DRC institution.



## Memorandum of understanding – local confinement

(R.C. 5149.38)

### Development, approval, and amendment

The act requires each target county and each voluntary county (described above) to submit to DRC for its approval a memorandum of understanding (MOU) that addresses funding issues. The MOU must be agreed to and signed by (1) a county commissioner representing the board of county commissioners, (2) the administrative judge of the general division of the common pleas court, (3) the sheriff, and (4) an official from any municipality operating a local correctional facility in the county to which courts sentence offenders. It must be submitted to DRC by October 29, 2017. Two or more target counties or voluntary counties may jointly establish an MOU.

The MOU must do two things. First, it must set forth the plans by which the county will use grant money provided to it in FY 2018 and succeeding fiscal years under the Targeting Community Alternatives to Prison (T-CAP) program. Second, it must specify the manner in which the county will address per diem reimbursement of local correctional facilities for prisoners who serve a prison term in local confinement in the facility under the act's provisions described above. The per diem reimbursement rate must be determined as described below.

DRC must adopt rules establishing standards for approval of MOUs. It must review the MOUs and may require the county or counties that submit an MOU to modify the MOU. DRC's Director must approve MOUs that the Director determines satisfy the adopted standards within 30 days after receiving each MOU submitted.

Any person responsible for agreeing to, signing, and submitting an MOU may delegate the person's authority to do so to an employee of the agency, entity, or officer served by the person. The persons signing an MOU, or their successors in office, may revise the MOU as they determine necessary. Any revision of the MOU must be signed by the required parties and submitted to DRC for its approval within 30 days after the beginning of the state fiscal year.

### Per diem reimbursement rate determination

In each county, the sheriff must determine the per diem costs for local correctional facilities in the county for housing prisoners under the act's provisions described above in "**Local confinement for fifth degree felony prison terms.**"

To determine the rate in calendar year 2017, the sheriff must determine, not later than the date on which the county's representatives enter into a contract with DRC



under the T-CAP program, the per diem costs for each of the facilities for housing prisoners serving a prison term for a felony in calendar year 2016. The per diem cost so determined will apply in calendar year 2017. To determine the rate in calendar year 2018 and going forward, on or before February 1, the sheriff must determine the per diem costs for the preceding calendar year for each of the facilities for housing prisoners who serve a term under the act's provisions described above in "**Local confinement for fifth degree felony prison terms.**" The per diem cost so determined will apply in the calendar year in which the determination is made.

The per diem costs of housing determined under these provisions for a facility must be the actual costs of housing the specified prisoners in the facility, on a per diem basis. Under these provisions, a "local correctional facility" is a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, a community alternative sentencing center or district community alternative sentencing center, or a CBCF.

For each county, the per diem cost determined as described above that applies with respect to a facility in a specified calendar year will be the per diem rate of reimbursement in that calendar year, under the T-CAP program, for prisoners who serve a term in the facility under the act's provisions described above in "**Local confinement for fifth degree felony prison terms.**"

### **Community-based treatment eligibility**

(R.C. 5120.035)

The act changes the prior convictions that disqualify a prisoner from DRC's community-based substance use disorder treatment program. Formerly, a prisoner in a DRC institution who previously was convicted of an offense of violence was not eligible for the program. Under the act, a prior offense of violence conviction disqualifies a prisoner from the program only if it was a felony offense of violence or it occurred within the preceding five years and was a misdemeanor offense of violence. The act does not change the other preexisting events that disqualify a prisoner and does not change the program's details.

### **Judicial release application**

(R.C. 2929.20)

The act reduces the time that an eligible offender confined under a prison term of less than two years must serve before applying for judicial release. Under the act, an eligible offender serving an aggregated nonmandatory prison term or terms of less than two years may file the motion at any time after the offender is delivered to a state



correctional institution or, if the prison term includes a mandatory prison term or terms, at any time after the expiration of all of the mandatory terms. Under continuing law, unchanged by the act, an eligible offender serving a longer aggregated nonmandatory prison term or terms must serve a longer period of time before the offender may file a judicial release application.

## **Community corrections subsidies**

(R.C. 5149.36)

Preexisting law authorizes DRC to establish and administer a program of subsidies for eligible counties and groups of counties for felony offenders, and one for eligible municipal corporations, counties, and groups of counties for misdemeanor offenders, for the development, implementation, and operation of community corrections programs.<sup>144</sup> Subject to appropriations by the General Assembly, DRC may award subsidies to eligible municipal corporations, counties, and groups of counties under the subsidy programs only in accordance with criteria that DRC specifies by rule. The criteria must be designed to provide for subsidy awards only on the basis of demonstrated need and the satisfaction of specified priorities.

Under the act, the criteria must require that priority be given to the community corrections programs that reduce the number of persons committed to prisons or to local jails or workhouses. Previously, the criteria required that first priority be given to the continued funding of existing community corrections programs that satisfy DRC's standards and that are designed to reduce the number of persons committed to prisons, and second priority be given to new community corrections programs designed to reduce the number of persons committed to prisons or to local jails or workhouses.

## **Probation improvement, incentive grants**

(R.C. 5149.311)

The act qualifies community-based correctional facilities for the probation improvement grant and the probation incentive grant, subject to the same requirements as probation departments. The act clarifies that eligible probation departments and community-based correctional facilities supervise offenders sentenced by courts of common pleas, municipal courts, *or county courts*. The act also requires that the rules DRC adopts for distributing the probation improvement grant include the allocation of funds for offsetting costs incurred by political subdivisions in relation to offenders who are prohibited from serving the term of imprisonment in a DRC institution under the

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<sup>144</sup> R.C. 5149.31, not in the act.



act's provisions described above in "**Local confinement for fifth degree felony prison terms.**"

The act modifies the formula by which the DRC calculates annually any cost savings realized by the state from a reduction in the percentage of people who are incarcerated because their terms of supervised probation were revoked. Instead of the cost savings estimate being based on the difference from FY 2010 and the fiscal year under examination, the estimate will be based on the difference from the average of such commitments from the five calendar years preceding the calendar year in which the application for the grant was made and the fiscal year under examination.

## **Certificates of qualification for employment**

(R.C. 2953.25)

The act makes several changes to the procedure for obtaining a certificate of qualification for employment (CQE). A CQE lifts the automatic bar to certain forms of employment resulting from a conviction, so that a decision-maker must consider on a case-by-case basis whether to hire an applicant for employment or issue an occupational license.

### **CQE application process**

The act permits an out-of-state resident to apply for a CQE by filing a petition with the court of common pleas in the county where the conviction or guilty plea from which the individual seeks relief was entered, or with a designee of the deputy director of DRC's Division of Parole and Community Services. To conform with this change, the act provides that an application must state the length of time the applicant has resided in the person's current state of residence, rather than the applicant's time residing in this state.

The act permits DRC to establish criteria by rule that would allow an individual to apply for a CQE before the expiration of six months or one year from final release from incarceration or supervision, whichever applies. Formerly, a person could only apply after six months from the date of release if the conviction was for a misdemeanor, or one year after release if the conviction was for a felony.

The act removes the requirement that an applicant for a CQE list the specific collateral sanctions from which the individual seeks relief, and instead requires the applicant to provide a general statement as to why the individual has applied and how the CQE would assist the individual. Additionally, the act removes a provision that prohibited a court from issuing a CQE that grants relief from certain collateral sanctions, and instead specifies that a CQE does not create relief from those sanctions.



## **Effect of CQE on employment and licensing**

Under the act, a CQE creates a rebuttable presumption that the person's criminal convictions are insufficient evidence that the person is unfit for the license, employment opportunity, or certification in question. However, notwithstanding that presumption, the agency may deny the license or certification if it determines that the person is unfit for issuance of the license. A similar presumption applies if an employer has hired a person with a CQE and applies to a licensing agency for a license or certification that otherwise would be barred due to the person's conviction record. The CQE constitutes a rebuttable presumption that the person's criminal convictions are insufficient evidence that the employer is unfit for the license or certification.

The act uses the terms, "discretionary civil impact," "licensing agency," and "mandatory civil impact," as defined in preexisting law regarding certificates of achievement and employability.

### **DRC database of CQEs**

The act directs DRC to maintain a database that identifies granted and revoked CQEs and the jobs and types of employers to which the CQEs have most applied. It requires DRC to annually create a publicly available report summarizing the information maintained in the database, and to make the report available on DRC's website.

The act requires DRC to revoke a CQE if the individual is convicted of or pleads guilty to a felony offense after receiving the CQE. DRC must periodically review its database to identify certificates that are subject to revocation. Upon identifying a CQE subject to revocation, DRC must note in the database that the CQE has been revoked, the reason for revocation, and the effective date of revocation. The effective date of revocation is considered the date of the conviction or guilty plea that occurred after issuance of the CQE.

### **Earned credit**

(R.C. 2967.193)

The act allows an incarcerated person to receive 90 days of earned credit toward completion of the person's stated prison term, or a 10% reduction of the person's stated prison term, whichever is less, upon successful completion of either (1) an Ohio high school diploma or certificate of high school equivalence certified by the Ohio Central School System, (2) a therapeutic drug community program, (3) all three phases of DRC's intensive outpatient drug treatment program, (4) a career-technical vocational school program, (5) a college certification program, or (6) the criteria for a certificate of



achievement and employability. For this purpose, the act creates an exception to preexisting law, which caps the aggregate days of credit an offender may earn at 8% of the total number of days in the person's stated prison term. An offender may not earn credit under this provision if the offender is serving a mandatory prison term or a prison term for an offense of violence or sexually oriented offense.

### **Prison term as community control violation sanction**

(R.C. 2929.15)

The act imposes new limits that apply, in addition to preexisting limits, to a prison term imposed as a penalty for violating the conditions of, or for a new misdemeanor criminal offense committed while under, a community control sanction. Under the act's additional limits:

(1) If the prison term is imposed for a technical violation of the conditions of a community control sanction imposed for a fifth degree felony, or for a violation of law committed while under a community control sanction imposed for such a felony that is a new misdemeanor criminal offense, the prison term may not exceed 90 days.

(2) If the prison term is imposed for a technical violation of the conditions of a community control sanction imposed for a fourth degree felony that is not an offense of violence and is not a sexually oriented offense, or for a violation of law committed while under a community control sanction imposed for such a felony that is a new misdemeanor criminal offense, the prison term may not exceed 180 days.

Under preexisting law, otherwise unchanged by the act, if a court sentences an offender convicted of a felony to one or more community control sanctions and the offender violates any condition of the sanctions or any condition of release under a sanction, violates any law, or departs Ohio without permission, the person or entity that administers the program or activity under the sanction or the offender's supervising officers must report the violation or departure to the sentencing court. The sentencing court may impose upon the violator a longer time under the same sanction (the total time under the sanctions may not exceed a specified five-year limit), a more restrictive community control sanction, a prison term, or a combination of those penalties.

### **Warden's report to parole board**

(R.C. 5120.68 and 5149.10)

The act requires the warden of a correctional institution to submit a report to the parole board prior to any hearing to determine whether a prisoner incarcerated in that institution should be paroled. The report must address the prisoner's ability to seek and



obtain employment upon release, participation in programs, and compliance or noncompliance with rules while at the institution. The parole board must adopt rules that provide procedures for considering the warden's report in a parole hearing.

### **Notice to sheriff of felony offender release**

(R.C. 2967.122)

At least two weeks before a felon is released from confinement in a state correctional institution, or at least 60 days before a felon is transferred to transitional control, the act requires the Adult Parole Authority (APA) to provide notice of the release or transfer to the sheriff of the county in which the offender was convicted and to the sheriff of the county in which the offender will reside. The APA must also provide notice to these sheriffs at least 60 days before recommending a pardon or commutation of sentence for an offender or at least 60 days before an APA hearing regarding parole.

These notices must contain the offender's name, the date of the offender's release, the offense that resulted in the offender's conviction and incarceration, the conviction date, the sentence imposed for that conviction, the length of any supervision that the offender will be under, the contact information of the offender's supervising officer if the offender will be supervised, and the address at which the offender will reside.

The notice may be contained in a weekly list of all offenders who are scheduled for release and does not apply to an offender who will serve less than 14 days of a sentence in a state correctional institution.

### **Use of former Ohio River Valley Juvenile Correctional Facility (ORVF)**

(R.C. 307.93, 341.12, and 341.121)

#### **Use as Lawrence County jail**

Under preexisting law, the Lawrence County Board of County Commissioners and the Director of DAS may enter into a contract pursuant to which the Lawrence County sheriff may use a specified portion of the ORVF, which is in Scioto County, as a jail for Lawrence County. The contract may not provide for transfer of ownership of any portion of the ORVF to Lawrence County. Other counties may contract with the Lawrence County sheriff to allow them to also have persons confined in the portion of the ORVF specified in the contract, if they have a shortage of jail space or staff. If the Lawrence County sheriff uses the ORVF for confinement of persons, and subsequently ceases to so use it, the sheriff must vacate the ORVF, and control of that portion immediately reverts to the state.



The act provides another circumstance for the potential reversion to the state. Under the act, if, prior to September 29, 2017, the Lawrence County Board of County Commissioners and the Director of DAS have contracted for the Lawrence County sheriff's use of a portion of the ORVF as a county jail, and if either party has failed to comply with the contractual terms, on September 29, 2017, control of that portion of the ORVF immediately reverts to the state, the sheriff cannot use it as a jail, and neither Lawrence County nor any other county may have persons confined in the ORVF.

### **Use as a multi-jurisdictional local correctional center**

The act provides that the acquisition by multiple counties, or by counties and municipal corporations, of a multi-jurisdictional local correctional center may include, to the extent appropriate, leasing the ORVF or a portion of it, in specified circumstances. Under the act, subject to the limitation described below, the county commissioners that contract or have contracted for establishment of a multicounty correctional center, or the county commissioners and municipal legislative authorities that contract or have contracted for establishment of a municipal-county or multicounty-municipal correctional center, may enter into a contract with the DAS Director to use the ORVF or a specified portion of it as the correctional center. One or more of the contracting counties must be adjacent to Scioto County.

DAS may enter into such a contract at any time on or after September 29, 2017, or, if DAS had entered into an agreement for use of a portion of ORVF as a jail for Lawrence County, at any time on or after the date that control of that portion of the ORVF reverts to the state as described above.

### **Division of Business Administration**

(R.C. 5120.22)

Ongoing law requires the Division of Business Administration within DRC to deposit all money collected for rent, utilities, leasing, and services performed in accordance with a lease or agreement into the Property Receipts Fund. The act provides that if, after meeting the expenditure obligations required by law, the Division determines that the Property Receipts Fund has excess funds, the Division may use money in the Fund for services performed, construction, maintenance, repair, reconstruction, or demolition of any other facilities or property owned by DRC.



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## RETIREMENT

### **SERS cost-of-living adjustments**

- Makes the mandatory annual cost-of-living adjustment (COLA) of 3% granted to School Employees Retirement System (SERS) retirement allowance, disability benefit, and survivor benefit recipients effective until December 31, 2017.
- Beginning January 1, 2018, permits, rather than requires, the SERS Board to grant an annual COLA and, if the Board grants a COLA, changes the amount to the percentage increase in the Consumer Price Index, if any, but not exceeding 2.5%.
- Authorizes the SERS Board, before granting an increase, to adjust the COLA percentage if the Board's actuary determines, in its annual actuarial valuation or in other evaluations, that an adjustment does not materially impair the retirement system's fiscal integrity or is necessary to preserve its fiscal integrity.

### **SHPRS retirement eligibility**

- Eliminates a requirement that limited eligibility for State Highway Patrol Retirement System (SHPRS) retirement to active State Highway Patrol employees, therefore allowing former SHPRS members who have left their contributions with the system to retire under SHPRS.
- Provides that an SHPRS member forfeits the member's total service credit only on payment to the member of accumulated contributions, rather than when the member ceases to be a State Highway Patrol employee.
- Allows a former SHPRS member who has left contributions with SHPRS to designate an individual or a trust as beneficiary for payment of accumulated contributions should the former member die and no pension become payable.

### **Volunteer Peace Officers' Dependents Fund coverage**

- Specifies that a person receiving a retirement allowance from the Public Employees Retirement System is excluded from coverage by the Volunteer Peace Officers' Dependents Fund.



## **SERS cost-of-living adjustments**

(R.C. 3309.374 and 3309.661)

The act changes the annual cost-of-living adjustment (COLA) granted to School Employees Retirement System (SERS) retirement allowance, disability benefit, and survivor benefit recipients who have received an allowance or benefit for at least one year. It retains, until December 31, 2017, the requirement that the SERS Board provide an annual 3% COLA. Beginning January 1, 2018, the act makes annual COLAs permissive, rather than mandatory. If the Board provides a COLA, the act changes the annual COLA amount to any percentage increase in the Consumer Price Index (CPI), but not exceeding 2.5%. No COLA can be granted in any year in which the CPI did not increase during the period on which it is based.

### **Board discretion regarding COLA amount**

The act authorizes the SERS Board, before granting an increase, to adjust the COLA percentage (increase or decrease it) if the Board's actuary determines, in its annual actuarial valuation or in other evaluations, that an adjustment does not materially impair the retirement system's fiscal integrity or is necessary to preserve its fiscal integrity.

The act also specifies that the SERS vesting provision does not affect the Board's authority to adjust the COLA percentage before the COLA is granted. Under the vesting provision, an SERS retirement allowance, annuity, pension, or other benefit vests on the granting of the benefit. Except in the case of commission of certain criminal offenses, the allowance, annuity, pension, or other benefit cannot be denied or modified once it is granted.

## **SHPRS retirement eligibility**

(R.C. 5505.01, 5505.16, 5505.162, and 5505.17)

The act eliminates a provision of law under which only a person in the active service of the State Highway Patrol could retire under the State Highway Patrol Retirement System (SHPRS). The result is that any former SHPRS member who meets the age and service retirement requirements and has not withdrawn member contributions may retire under SHPRS. Under prior law, a person was eligible to retire under SHPRS only if the person met age and service retirement requirements and was actively employed by the State Highway Patrol.



## **Service credit and accumulated contributions**

(R.C. 5505.19 and 5505.20)

To allow former members to retire from SHPRS, the act changes when an SHPRS member forfeits the member's total service credit. It also eliminates a provision regarding payment of an SHPRS member's accumulated contributions.

Under the act, an SHPRS member forfeits the member's total service credit on payment of accumulated contributions to the member. Prior law specified that a member forfeited the service credit on ceasing to be a State Highway Patrol employee.

The act also eliminates a provision specifying that five years after an SHPRS member ceased to be a State Highway Patrol employee any of the member's accumulated contributions remaining in the SHPRS Employees' Savings Fund were transferred to the SHPRS Income Fund and were paid to the member on application to the SHPRS Board.

## **Beneficiaries**

(R.C. 5505.21)

The act extends to former SHPRS members who have not withdrawn their contributions authority that active members have to designate an individual or a trust as beneficiary for payment of accumulated contributions should the member die and no pension became payable.

## **Volunteer Peace Officers' Dependents Fund coverage**

(R.C. 143.01)

The act excludes a person receiving a retirement allowance from the Public Employees Retirement System (PERS) from coverage by the Volunteer Peace Officers' Dependents Fund. The Fund provides death benefits to the survivors of peace officers employed in a part-time, reserve, or volunteer capacity who are killed in the line of duty and disability benefits to those officers who are totally and permanently disabled as a result of discharging their duties. Under continuing law, a member of PERS, Ohio Police and Fire Pension Fund, State Highway Patrol Retirement System, or Cincinnati Retirement System is excluded from coverage by the Fund.



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## SECRETARY OF STATE

### Voting equipment

- Amends the law governing the certification of voting equipment to include equipment that allows a person to vote using an electronic display and then transfers those votes onto an optical scan ballot or other paper record for tabulation.
- Specifies that voting equipment of that type is not considered a direct recording electronic voting machine for purposes of that law.
- Removes references to punch card ballots from that law.

### Address confidentiality program

- Modifies the address confidentiality program operated by the Secretary of State to serve victims of certain crimes.
- Requires that an applicant for the program live, work, or attend a school or institution of higher education in Ohio.
- Requires the application form to include a statement that the application assistant recommends that the applicant participate in the program.
- Requires the Secretary to issue each program participant a program authorization card with the participant's program mailing address.
- Allows, but does not require, a participant to provide that card to a governmental entity, employer, school, or institution of higher education as proof of the person's status.
- Modifies the types of mail that the Secretary must forward to a program participant and requires the Secretary to notify participants of the qualifying types of mail.
- Clarifies the voter registration deadlines that apply to program participants.

### Electronic notary

- Allows for a commissioned notary public to become an electronic notary public by submitting a registration form to, and being approved by, the Secretary.
- Authorizes the Secretary, with assistance from the Office of Information Technology in the Department of Administrative Services, to establish standards for approving electronic communications devices to be used by an electronic notary.



- Specifies that the requirement that a person acknowledging an instrument appear before a notary public taking the acknowledgement may be done through an electronic communications device approved by the Secretary.
- Specifies that an electronic signature, using an electronic communications device approved by the Secretary, may be used to acknowledge the execution of an instrument.

## **Voting equipment**

(R.C. 3506.01, 3506.06, and 3506.07)

### **New equipment**

The act amends the law governing voting equipment to allow the certification and use of a new type of equipment. Specifically, the act includes in the definition of "automatic tabulating equipment" equipment that allows for a voter's selections to be indicated by marks made on a paper record by an electronic marking device. The act specifies that equipment of that type is not considered a direct recording electronic voting machine (DRE) if it captures votes by means of a ballot display but transfers those votes onto an optical scan ballot or other paper record for tabulation.

For example, the act would allow the certification and use of voting equipment that allows a voter to make selections on an electronic display and then transfers those selections to a paper ballot that is scanned to count the votes.

### **Elimination of punch card references**

The act also removes references to punch card ballots from the law governing voting equipment. Previously, the definition of "marking device" and certain other provisions included references to a device that records a voter's choices by piercing the ballot so that it could be counted by a machine. Punch card ballots are no longer used in Ohio. The federal Help America Vote Act of 2002 provided grants as an incentive for states to replace their punch card voting systems and established requirements for voting equipment that some punch card systems may not meet.<sup>145</sup>

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<sup>145</sup> 52 U.S.C. 20902 and 21081(a). See also *Stewart v. Blackwell*, 444 F.3d 843 (6th Cir. 2006) and *Stewart v. Blackwell*, 473 F.3d 692 (6th Cir. 2007), in which Ohio's use of punch card ballots in some counties was challenged under the federal Voting Rights Act. The court did not reach a final ruling because Ohio stopped using punch card ballots while the case was pending.



## **Continuing types of equipment**

Continuing law allows boards of elections to use the following types of voting equipment:

- Automatic tabulating equipment, which means a device that automatically counts the votes recorded on a paper ballot. Currently, voters in many counties fill out a paper ballot that is then scanned by an optical scan voting machine, which counts the votes on the ballot. An optical scan voting machine is an example of automatic tabulating equipment.
- A DRE, which is a machine that records the votes entered into a display and records the votes using electronic memory. A DRE also must store the votes in a printed backup copy, known as a voter verified paper audit trail. Some counties currently use touchscreen DREs instead of optical scan voting machines for in-person voting.

## **Address confidentiality program**

(R.C. 111.42, 111.43, 111.44, 111.45, and 3503.16)

The act makes several changes to the address confidentiality program operated by the Secretary of State. The program shields the addresses of certain crime victims from public disclosure by allowing a participant to use an address designated by the Secretary, who then forwards mail to the participant's actual residence.

### **Qualifications**

The act requires that an applicant for the address confidentiality program live, work, or attend a school or an institution of higher education in Ohio.

### **Application**

Under the act, an application to participate in the program must include a statement that the assistant recommends that the applicant, or the minor, incompetent, or ward on whose behalf the application is made, participate in the program. Continuing law requires all applicants to use an application assistant, and the assistant must sign the application. An application assistant is an employee or volunteer at an agency or organization that serves victims of domestic violence, menacing by stalking,



human trafficking, rape, or sexual battery who has received training and certification from the Secretary to help individuals apply.<sup>146</sup>

### **Program authorization card**

The act requires the Secretary to issue an address confidentiality program authorization card to every participant. The card must be valid during the period that the participant remains certified to participate, and it must include the address at which the participant receives mail through the Secretary. A participant may provide the card to a governmental entity, employer, school, or institution of higher education as proof of the person's status.

### **Mail forwarding**

The act modifies the types of mail that the Secretary must forward to program participants. Under the act, the Secretary must forward only the following:

- First class letters, flats, packages, or parcels delivered via the U.S. Postal Service, including priority, express, and certified mail;
- Packages or parcels that are clearly identifiable as containing pharmaceutical agents or medical supplies;
- Packages, parcels, periodicals, or catalogs that are clearly identifiable as being sent by a governmental entity;
- Packages, parcels, periodicals, or catalogs that have received prior forwarding authorization from the Secretary.

As a result, the act prevents the Secretary from forwarding certain items that do not fall within the exceptions described above. For example, with certain exceptions, the Secretary must not forward magazines, commercial mailings, or packages delivered by FedEx or UPS. Previously, the law required the Secretary to forward all first class mail to a participant, but did not include provisions for other types of mail.

The act also requires the Secretary to include information about the types of mail that may be forwarded, along with the other information that the Secretary must provide under continuing law, to new participants.

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<sup>146</sup> R.C. 111.41(A), not in the act.



## **Voter registration deadline**

The act states that a participant who is not currently registered to vote in Ohio must submit an application to register by the 30th day before election day to be eligible to vote in that election. This provision is consistent with continuing law that applies to all persons who are eligible to vote.<sup>147</sup>

Additionally, the act provides that a participant who is currently registered to vote in Ohio may submit an application at any time to request that the participant's registration record be kept confidential. This provision replaces a former law that stated that if a participant was registered to vote in Ohio, the participant could submit a confidential registration form to register at the participant's new address after the 30th day before election day and still be eligible to vote in that election.

Continuing law allows a registered elector who has moved and has not updated the elector's registration before the 30-day deadline to vote in the new precinct by casting a provisional ballot. However, the Address Confidentiality Program Law states that a program participant who has a confidential voter registration record may vote only by casting absent voter's ballots. It is not clear whether a participant who misses the deadline to update the participant's registration before an election may vote in that election by provisional ballot in the same manner as an elector who is not a program participant. Any person may cast a provisional ballot,<sup>148</sup> but the Address Confidentiality Program Law would appear to prevent that ballot from being counted.

## **Electronic notary**

(R.C. 147.541, 147.542, and 147.543)

The act allows for a commissioned notary public to become an electronic notary public at the discretion of the Secretary of State. An electronic notary is authorized to use electronic communications devices, approved by the Secretary, to fulfill the acknowledgement and signature requirements of a notary. The Secretary must establish standards for approving electronic communications devices that may be used by an electronic notary. Under the act, a notary may not use an electronic communications device to meet notary requirements for a deposition.

To be approved to become an electronic notary, a commissioned notary must submit a registration form to the Secretary. If approved, an electronic notary's commission expires and may be renewed at the same time the notary's underlying

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<sup>147</sup> See R.C. 3503.01 and 3503.19, not in the act.

<sup>148</sup> R.C. 3505.181(A)(1), not in the act.



commission expires. The Secretary may deny a registration if any required information is missing or incorrect, or if the notary identifies nonapproved technology to be used. The registration form must include:

- The notary public's full legal name and official notary public name;
- A description of the technology the notary public will use to create an electronic signature in performing official acts;
- Certification of compliance with electronic notary public standards developed by the Secretary;
- The notary public's email address;
- The signature of the notary public applying to use the electronic signature described in the form;
- Any decrypting instructions, codes, keys, or software that allow the registration to be read; and
- Any other information the Secretary may require.

Additionally, the act specifies that the requirement that the person acknowledging an instrument appear before a notary public taking the acknowledgement may be done by visually appearing through an electronic communications device approved by the Secretary. Under prior law, a person acknowledging an instrument was required to physically appear before a notary taking the acknowledgement.<sup>149</sup> The act also specifies that an electronic signature, using an electronic communications device approved by the Secretary, may be used to satisfy the requirement that a notary acknowledge the execution of an instrument.

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<sup>149</sup> See *Keck v. Keck*, 54 Ohio App.2d 128 (Ohio Ct. App., Fairfield County 1977), [http://www.cbalaw.org/cba\\_prod/Main/Resources/Public/Notary/FAQ.aspx](http://www.cbalaw.org/cba_prod/Main/Resources/Public/Notary/FAQ.aspx), and <http://ohionotaries.org/ohio-notary-101>.



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## OHIO COMMISSION ON SERVICE AND VOLUNTEERISM

- Reduces the Ohio Commission on Service and Volunteerism from 21 to 19 members by removing the chairpersons of the House and Senate Education committees.

### Membership

(R.C. 121.40)

The act reduces the Ohio Commission on Service and Volunteerism from 21 to 19 members by removing the House and Senate Education committee chairpersons. Under continuing law, the Commission includes the Superintendent of Public Instruction, the Chancellor of Higher Education, the Director of Youth Services, the Director of Aging, and 15 Governor's appointees. Also, the Director of the Governor's Office of Faith-Based and Community Initiative serves as a nonvoting ex officio member. The Commission manages AmeriCorps in Ohio, promotes volunteerism and community service, and assists with coordinating community service programs.



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## DEPARTMENT OF TAXATION

### Income taxes

- Eliminates the bottom two income tax brackets applicable to individual nonbusiness income and repeals the low-income taxpayer credit.
- Requires that the Office of Budget and Management separately state in its reports of actual and estimated revenues the total tax liability, before credits, arising from taxable business income versus nonbusiness income and to state the total amount of claimed income tax credits.
- Eliminates the reimbursement the Department of Taxation received for the cost of administering the six income tax check-offs.
- Reduces the Tax Commissioner's role in distributing revenue derived from the Ohio political party fund income tax check-off.
- Increases the maximum income tax deduction for contributions to a federally tax-advantaged college savings plan or disability expense savings (ABLE) account to \$4,000 (from \$2,000) annually for each beneficiary.
- Prescribes the manner in which school district income tax applies to a school district resulting from the consolidation of territory of two or more districts.

### Municipal income taxes

- Allows businesses, other than sole proprietors, to elect for the Department of Taxation to administer the business' municipal income taxes, beginning in 2018.
- Requires 99.5% of the revenue collected from such businesses to be distributed monthly to municipal corporations, with the other 0.5% earmarked for administrative expenses.
- Repeals the "throw-back rule" used in determining what amount of a business' income is apportioned to a particular municipal corporation, beginning in 2018.
- Extends, by one month, the due date by which municipal income taxpayers that are individuals must make their fourth-quarter estimated tax payment, beginning in 2018.
- Permits the penalty imposed on employers that do not timely remit municipal income tax withholdings to be less than 50% of the unpaid amount.



- Decreases, from three to one, the number of municipal tax administrator representatives that the Governor may appoint to the Ohio Business Gateway Steering Committee.
- Requires the Department to study the feasibility of accepting municipal income tax returns through the existing joint federal/state Modernized e-File (MeF) program.

### **Sales and use taxes**

- Provides two payments, one in 2017 and one in January 2018, to counties and transit authorities to mitigate their short-term revenue loss resulting from the termination of all sales taxes on health care services provided by Medicaid health insuring corporations under contracts with the state.
- Prescribes new criteria for determining whether sellers are presumed to have "substantial nexus" with Ohio by adding sellers with annual Ohio sales in excess of \$500,000 that use in-state software to make Ohio sales or Ohio content distribution networks to accelerate or enhance delivery of web content to Ohio consumers.
- Allows counties and transit authorities to increase their local sales and use tax rates in increments of 0.1%, rather than 0.25%, beginning July 1, 2018.
- Would have exempted the first \$650 in price of prescription optical aids (e.g., eyeglasses and contact lenses) and their components from sales and use tax (VETOED).
- Exempts from sales and use taxation digital music purchased from, and electronically delivered by a jukebox or other single-play commercial music machine.
- Provides a three-day sales tax "holiday" in August 2018 during which sales of clothing, school supplies, and instructional materials within certain price ranges are exempt from sales and use taxes.
- Would have modified the standard for determining when the sales and use tax applies to business-related electronic services that are provided together with other services (VETOED).
- Allows revenue raised by an existing county sales tax for community improvements and granted to a school district to be spent outside the county as long as the improvements are within the school district.



- Prescribes the manner by which county auditors issue sales tax vendor's licenses and expressly requires certain vendor license-related information to be published on the Department's website.
- Allows reinstatement of a vendor's sales tax license that was suspended for the vendor's repeated failure to report or pay sales tax only if the vendor reports and remits not only delinquent sales taxes, but delinquent income tax required to be withheld from its employees' wages.
- Authorizes the Tax Commissioner to suspend a vendor's sales tax license for the vendor's repeated failure to report or pay its employees' income tax withholdings.
- Modifies rules for situsing sales and use tax for direct mail – i.e., for determining the proper taxing jurisdiction for material that is mass mailed to predetermined recipients.
- Would have allowed high-volume motor vehicle dealers to remit the sales tax collected on vehicle sales directly to the state on the dealer's monthly return rather than to the Clerk of the Court of Common Pleas along with each application for a certificate of title (VETOED).

### **Lodging taxes**

- Authorizes a charter county (Summit) to extend an expiring 1% lodging tax for an additional ten years.
- Authorizes a county with a population between 375,000 and 400,000 and that currently levies a 3% lodging tax (currently, Stark) to increase the rate of the tax by up to an additional 3%.
- Authorizes a county with a population between 190,000 and 200,000 and that currently levies a 3% lodging tax (Clermont) to increase the rate of the tax by up to an additional 1% to construct and maintain a professional sports facility, subject to certain conditions.
- Authorizes a city that currently levies a 3% municipal lodging tax and that is located in a county with a population between 300,000 and 350,000 that currently levies a 3% county lodging tax (Lorain County) to increase the municipal lodging tax rate by up to an additional 3%.
- Authorizes a county with a population between 175,000 and 225,000 that levied a lodging tax rate of 3% in 2014 and that has an amusement park with annual attendance of more than two million (Warren) to use the tax revenue to pay the



construction and maintenance costs of a county-owned or port authority-owned sports facility.

### **Severance tax**

- Replaces a severance tax exemption for resources used to improve the severer's homestead with an exemption for natural gas produced by an "exempt domestic well," but continues to subject the owners of most such wells to a \$60 annual fee.
- Transfers severance tax permitting responsibilities from the Department of Taxation to the Department of Natural Resources (DNR).
- Adjusts the due dates of severance tax returns.
- Requires severance tax revenue to be credited to funds on a monthly, rather than quarterly, basis.
- Limits the authority of DNR to disclose severance tax information received by the Tax Commissioner.

### **Excise taxes**

- Requires that cigarette tax returns be filed monthly instead of semiannually.
- Places a ceiling on the amount of excise tax on "premium cigars" of 50¢ per cigar (adjusted annually for inflation).
- Authorizes an exemption from the kilowatt-hour tax for electricity consumed in a chlor-alkali manufacturing process unless the electricity is distributed by a municipal electric company that does not consent to the exemption.
- Requires the continuing publication of certain motor fuel dealer information.
- Clarifies the deadline by which a person newly subject to the petroleum activity tax must apply for a supplier's license and stipulates an annual expiration date for all such licenses.

### **Property taxation**

- Prescribes in statute certain additional factors that must be considered in computing the current agricultural use value (CAUV) of agricultural land for property tax purposes, and deletes reference to one existing factor.



- Prescribes in statute that the method used to compute CAUV values must employ a capitalization rate and prescribes certain factors that must be included or excluded in the calculation of the rate.
- Places a ceiling on the taxable value of CAUV land if the land is also used for conservation purposes by requiring the land to be valued as though it included soil of the least productive type.
- Phases in the effects of the CAUV changes in two stages over the six-year assessment cycle by allowing one-half of the valuation change to take effect in each county in the next tax year in which the county undergoes a reappraisal or triennial update, beginning with counties undergoing a reappraisal or update in tax year 2017, and the second half at the ensuing update or reappraisal.
- Requires the Tax Commissioner to publish an annual report of CAUV values that can be sorted by county and by school district.
- Removes the authority to bypass a Court of Appeals by appealing a decision of the Board of Tax Appeals directly to the Ohio Supreme Court unless the Supreme Court authorizes the direct appeal; all other appeals from BTA decisions would have to be made to a Court of Appeals (except for decisions on the BTA's small claims docket, which are conclusive and not appealable).
- Authorizes a property tax exemption for retail stores operated by a charitable nonprofit housing organization that sells primarily donated household items.
- Authorizes a property tax exemption for property that is owned by a municipal corporation, that must be transferred to a community improvement corporation (CIC) before it is developed, and that meets other criteria.
- Revises the procedure for appealing a county board of revision's determination on an application for remission of property tax or manufactured home tax penalties.
- Requires that exemption applications for state university property be approved or disapproved by the Tax Commissioner rather than the county auditor.
- Extends, by 18 months, the deadline by which manufactured and mobile homeowners may apply for the homestead exemption, from June of the year before the tax year for which the exemption is sought, to December 31 of the tax year.
- Removes a requirement that a taxing authority receive approval from a court of common pleas before transferring revenue between certain funds of the subdivision.



- Requires a township to obtain the approval of affected school districts before extending the term of a tax increment financing (TIF) property tax exemption originally granted before 1995.
- Authorizes, under certain circumstances, extension of a community reinvestment area (CRA) property tax exemption without requiring the CRA to conform to various requirements and limitations enacted in 1994.
- Extends the deadline by which a county or municipality must petition for the Director of Development Services to approve its designation of a community reinvestment area.
- Revises the schedule for the fees exacted from taxes collected by county treasurers.
- Requires a resolution proposing to levy a property tax to include additional details on the scope and nature of the levy.
- Eliminates several superfluous provisions of law pertaining to the property tax exemption for burial grounds.

### **Tax credits and exemptions**

- Requires that every main biennial budget bill include detailed estimates of the state revenue that will be foregone due to certain "business incentive" tax credits in the current biennium and future biennia.
- Allows employers that apply for a job creation tax credit (JCTC) to count compensation paid to certain "work-from-home" employees for the purposes of qualifying and complying with the terms of the JCTC agreement.
- Changes Ohio's motion picture tax credit to carry over unused credits within the annual cap, prioritize television productions, and require minimum financing thresholds.
- Modifies the \$10 million annual cap on the New Markets Tax Credit to be a limit on the amount of credits that may be approved per year, rather than a limit on the amount of credits that taxpayers may claim each year.
- Authorizes local governments to enter into an enterprise zone agreement with a business after October 15, 2017.
- Increases from five to six the number of years that some operators of computer data centers have to meet the capital investment requirement associated with an existing sales and use tax exemption.



- Extends by two years a provision temporarily authorizing owners of a historic rehabilitation tax credit certificate to claim the credit against the CAT if the owner cannot claim the credit against another tax.
- Provides that, when a taxpayer holds a tax credit certificate demonstrating the taxpayer's eligibility for a tax credit, the taxpayer must automatically submit the certificate to the Tax Commissioner when claiming the credit, rather than providing the certificate only on the Commissioner's request.
- Modifies the crediting and use of fees charged by the Development Services Agency (DSA) to administer certain tax incentive programs.
- Would have authorized \$60 million in nonrefundable tax credits for insurance companies and financial institutions that invested in special purpose "rural and high-growth industry funds" that were to be certified by DSA and that made loans to or investments in certain classes of Ohio businesses (VETOED).

### **Tax administration**

- Authorizes a temporary "amnesty" for taxpayers owing certain delinquent taxes whereby penalties and one-half the interest charges otherwise due are waived, along with criminal or civil action, if the taxpayer pays the outstanding liability and one-half the interest due.
- Distributes amnesty collections in the same way as the underlying tax, except distributes collections in excess of \$20 million that otherwise would be credited to the GRF to the Budget Stabilization Fund.
- Generally authorizes the Department of Taxation, the Treasurer of State, and certain county officials to deny or revoke a license if certain prohibited acts are performed in relation to an application to approve or renew the license.
- Specifies that, before approving a retail tire dealer or wholesale tire distributor registration, motor fuel dealer license, or tobacco product distributor license, the Tax Commissioner must confirm that the applicant is not delinquent in paying any tax administered by the Commissioner.
- Requires that, in addition to delinquent sales and income withholding taxes, the Commissioner must notify the Division of Liquor Control when a liquor permit holder is delinquent in paying most other types of state taxes.
- Specifically authorizes the Department to disclose such information to the Division of Liquor Control.



- Transfers from the Treasurer of State to the Tax Commissioner the collection and refund responsibilities for the public utility excise tax.
- Reduces the percentage of commercial activity tax (CAT) revenue devoted to offset the Department of Taxation's administrative expenses from 0.85% to 0.75% beginning July 1, 2017.
- Allocates all revenue from fees paid to have various pollution control or energy conversion facilities certified for property tax and sales and use tax exemptions to the appropriate state oversight agency – either EPA or DSA.
- Applies a \$1 minimum payment and refund floor for fees administered by the Tax Commissioner.
- Reduces from two to one the number of times each year that county auditors and treasurers are required to distribute estate tax revenue.

### **Local Government Fund and other revenue distributions**

- Makes permanent a monthly \$1 million set-aside of Local Government Fund (LGF) funds for villages with a population of less than 1,000 and for townships, which is subtracted from LGF distributions that otherwise would be paid directly to municipalities that levied an income tax in 2006.
- Diverts all remaining LGF money that otherwise would be paid directly to those municipalities to various substance abuse-related expenditures during the biennium.
- Sets the Public Library Fund's share of GRF revenue at 1.68% for the FY 2018-2019 biennium after the temporarily higher percentage of 1.70% in the FY 2016-2017 biennium.
- Increases the share of commercial activity tax revenue credited to the General Revenue Fund and decreases the share allocated to reimburse school districts and other local taxing units for the loss of tangible personal property taxes.
- Would have withheld all LGF payments to the city of Columbus if it were to impose certain conditions or require certain payments before extending water and sewer service extraterritorially or if it were to withdraw or threaten to withdraw such service for the failure to meet such conditions or make such payments (VETOED).
- Would have reduced Local Government Fund (LGF) payments to the city of Columbus if it did not timely publish a plan to cease charging, or if it actually charged, different sewer and water rates to residents and nonresidents (VETOED).



- Would have modified the phase-out of payments that many school districts receive as reimbursement for their loss of tangible personal property (TPP) tax revenue, including by slowing the rate of reduction after FY 2019 from  $\frac{5}{8}$ -mill to  $\frac{1}{4}$ -mill worth of property taxes per year (VETOED).

### **Special taxing districts**

- Modifies the requirements to create a tourism development district (TDD).
- Requires subdivisions to use lodging tax revenues collected from a hotel located in a TDD to foster and develop tourism in the TDD.
- Changes a reporting date relative to businesses subject to a gross receipts tax levied in a TDD.
- Authorizes a county and other political subdivisions and private parties to enter into cooperative agreements to fund the construction and maintenance of certain permanent improvements located in a TDD designated by a municipal corporation.
- Specifically authorizes an LED sign to be located within a TDD next to an interstate highway, provided the sign meets all state and federal standards.
- Allows municipal corporations to pledge their income tax revenue and counties and transit authorities to pledge their sales tax revenue for Regional Transportation Improvement Projects (RTIPs).
- Limits the duration of an RTIP to 15 years or, if the governing board is authorized to issue securities, 20 years after the first such issuance.
- Creates a default requirement that unencumbered funds held by the governing board on the date an RTIP is dissolved are distributed proportionally to the state and to each political subdivision that contributed revenue to the RTIP.
- Authorizes counties participating in an RTIP to create a Transportation Financing District (TFD) that generates revenue by exempting improvements to nonresidential parcels from property taxation and collecting in-lieu service payments.



## Income taxes

### Elimination of income tax brackets and low-income taxpayer credit

(R.C. 5747.02, 5747.056, 5747.06, 5747.08, and 5747.98)

The act eliminates the bottom two tax brackets applicable to individuals' nonbusiness income, and, correspondingly, repeals the low-income taxpayer credit. Under continuing law, the state income tax on nonbusiness income is imposed via tiered tax rate brackets, with increasingly greater rates assigned to higher income brackets. Previously there were nine brackets; the act reduces this number to seven for individuals. Estates and trusts will continue to be subject to the same tax rates as under prior law, except that the prior two brackets for income up to \$10,500 will be combined into a single bracket with a rate of 0.7425% (which is the average of the rates of those two brackets).

The change has no practical effect for most taxpayers. Previously, the bottom two brackets applied to nonbusiness income of \$0 to \$5,250 and \$5,250 to \$10,500, respectively.<sup>150</sup> However, prior law also provided a low-income taxpayer credit that erased the liability of individual taxpayers with Ohio adjusted gross income of \$10,000 or less. Under the act, the bottom two brackets are repealed for individuals, so that the new lowest tax bracket begins at \$10,500, rather than \$0, and individuals may no longer claim the low-income taxpayer credit. Similar to prior law, most taxpayers with an OAGI of \$10,500 or less would not owe any tax.

However, the act may increase the tax due from a presumably small class of taxpayers with business income. Under continuing law, in computing OAGI, taxpayers may deduct up to \$250,000 of their business income. Because the low-income tax credit was allowed for taxpayers with an OAGI of less than \$10,000, a taxpayer with business income of between \$250,000 and \$260,000 and no other taxable income previously could claim the \$88 low-income credit against the 3% tax on their \$10,000 of OAGI, reducing the \$300 liability to \$212. The act's repeal of the low-income credit would disallow the credit for this group of taxpayers.

The act may also lower the tax due from certain taxpayers with both business and nonbusiness income. For example, a taxpayer with \$7,000 of nonbusiness income and \$30,000 of taxable business income (i.e., \$280,000 total business income) would owe taxes on the \$7,000 of nonbusiness income under prior law, but not under the act because the act eliminates the brackets that previously applied to nonbusiness income under \$10,500.

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<sup>150</sup> The dollar amounts reflect the inflation-indexed amounts.



## **Separate reporting of business and nonbusiness income tax revenues**

(R.C. 5747.031)

The act requires that the Department of Taxation compute and report to the Office of Budget and Management (OBM), and that OBM separately state in its reports of actual and estimated revenues, the tax liability, before credits, arising from the taxation of business income (which is taxed at a flat rate of 3%); the tax liability, before credits, arising from the taxation of nonbusiness income (taxed under the graduated rate schedule); and the total amount of income tax credits claimed.

Under continuing law, OBM is required to compile estimates of revenues and expenditures on or before the first day of January preceding the convening of each General Assembly. Under prior law, income tax figures were not required to be subdivided based on type of income.

## **Administrative fees for refund check-offs**

(R.C. 5747.113)

The act eliminates a provision of law that reimbursed the Department for the cost of administering the six income tax refund contribution "check-offs." The administration fee, which could not exceed 2.5% of the total fund contributions, was deducted in equal one-sixth shares from each fund twice a year.

Under continuing law, check-offs allow taxpayers to contribute all or part of their income tax refund to the Natural Areas and Preserves Fund, the Nongame and Endangered Wildlife Fund, the Military Injury Relief Fund, the Ohio History Connection, the Breast and Cervical Cancer Project, or the Wishes for Sick Children Income Tax Contribution Fund.

## **Ohio Political Party Fund distributions**

(R.C. 3517.17; Section 803.50)

The act reduces the Tax Commissioner's role in distributing revenue derived from the Ohio Political Party Fund income tax check-off. Previously, the Commissioner directly distributed 50% of the revenue to the statewide political party and 50% to the various county party committees based on the relative number of check-offs in each county. The act eliminates direct distributions by the Commissioner to the county party committees. Instead, the statewide political party would receive all of the check-off revenue, and then allocate 50% to the county party committees. The changes begin to apply to distributions of check-offs made for taxable years beginning in 2017.



The Ohio Political Party Fund income tax check-off is an option on the state income tax return that allows each taxpayer to designate \$1 to help fund the state's "major" political parties. The fund is divided equally among the two major parties. Fund distributions may be used to maintain a party headquarters, organize voter registration programs, administer fundraising drives, and communicate with registered voters regarding issues unrelated to any particular candidate or election. The parties may not use fund distributions to further the election or defeat of a particular candidate or issue or to pay debts incurred as the result of any election.

### **College savings and disability account deduction**

(R.C. 5747.70; Section 803.360)

The act increases the maximum annual personal income tax deduction allowed for contributions to a federally tax-advantaged college savings plan or disability savings account from \$2,000 to \$4,000. The increase applies to taxable years beginning in 2018 or thereafter.

Under continuing law, two tax-preferred college savings programs are authorized allowing individuals to purchase tuition units or make contributions to an investment account to pay for future college expenses.<sup>151</sup> Ohio's plans are administered by the Ohio Tuition Trust Authority. Both plans are designed to receive favorable tax treatment under section 529 of Internal Revenue Code and so are referred to as "529 plans." Earnings in 529 plans are not subject to federal and state income tax, and distributions from 529 plans are exempt to the extent used to pay qualified higher education expenses of the plan beneficiary.

Similarly, continuing law authorizes a program under which a disabled individual or the individual's guardian or trustee may open an account with the Treasurer of State that is endowed with certain federal income tax and means-tested public assistance advantages. These accounts are referred to as "Achieve a Better Living Experience" (ABLE) savings accounts.<sup>152</sup> Similar to 529 plans, earnings in ABLE accounts are not subject to federal and state income tax, and distributions from the accounts to the beneficiary are exempt to the extent the money is used to pay the beneficiary's qualified disability expenses.<sup>153</sup>

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<sup>151</sup> Ohio's program authorizing the purchase of tuition credits or units has been closed to new enrollments since 2003. Ohio Administrative Code (O.A.C.) 3334-1-01.

<sup>152</sup> R.C. 113.50 to 113.56, not in the act.

<sup>153</sup> 26 United States Code (U.S.C.) 529A.



Continuing law allows a \$2,000 per-year, per-beneficiary state income tax deduction for contributions to a 529 plan or ABLE account opened under Ohio's program to the extent such contributions are included in the contributor's federal adjusted gross income.

A taxpayer may carry forward any excess deduction amount to future years until the amount of the contributions has been fully deducted.

### **School district income tax in consolidated districts**

(R.C. 3311.27 and 5748.10)

Continuing law prescribes various procedures by which some or all of the territory of a school district may be merged or joined with or transferred to another school district ("school district consolidation"). The act specifies that, following a school district consolidation, school district income tax is levied throughout the combined district's territory at the rate and according to the other terms in effect for the "surviving" school district gaining the territory. Prior law did not explicitly prescribe the manner in which existing school district income taxes applied after a school district consolidation.

The act also requires the school board of the surviving school district to report certain tax-related information to the Tax Commissioner within 90 days before a school district consolidation takes effect. Specifically, the school board is required to identify that effective date and each school district that is a party to the consolidation, including the rate of income tax levied by each district after that effective date, if any.

### **Municipal income taxes**

#### **State administration of municipal income taxes on business income**

(R.C. 718.80 to 718.95, 113.061, 718.01, 718.06, 718.60, 5703.052, 5703.053, 5703.054, 5703.056, 5703.19, 5703.21, 5703.371, 5703.50, and 5703.70; Section 803.100)

The act allows businesses to elect to have the Department of Taxation administer the business' municipal income taxes. Under prior law, a business that operated in multiple municipal corporations was required to file separate tax returns for each municipality; the filings could be made through the state's Ohio Business Gateway system, but separate filings had to be made for each municipality. Under the act, a business may choose to continue filing separate returns or to file a single return with the Department that covers the business' total tax liability to all municipalities. The Department would assume all aspects of administering the taxes of those filing with the



Department; almost all of the revenue would be distributed to the appropriate municipalities.

Under the act, a municipality will continue to administer its tax on the income of individuals, as well as businesses that do not make the election. Each municipality will still control the rate of its tax on business income, and whether any business credits are allowed against that municipality. Under continuing law, municipalities retain their authority to tax residents' distributive shares of pass-through entity (PTE) income.

### **Election**

The election is available to businesses other than sole proprietors, beginning in 2018. The election applies to the taxable year for which it is made, but automatically renews for each ensuing taxable year until terminated. Businesses must make the election, or request to terminate an election, on or before the first day of the third month of their taxable year.

### **Comparison with prior law**

The act preserves most of pre-existing law's provisions governing the calculation of a business' taxable income, filing and payment requirements, and the issuance of refunds, with the following key differences:

--For businesses that make the election, the Tax Commissioner, rather than a municipality's tax administrator, will perform all of the duties related to the administration of the tax.

--The act requires that businesses that make the election must file returns electronically, and allows the Commissioner to excuse taxpayers from the requirement for good cause shown. Under continuing law, a municipality may require electronic filing, but may permit nonelectronic filing as well.

--With respect to tax assessments, the procedures that the Commissioner will administer more closely mimic those for the state income tax, with appeals taken to the Board of Tax Appeals, rather than a municipality's local board of tax review, and with unpaid amounts certified to the state Attorney General for collection in the same manner as for unpaid state taxes.

### **Distribution of revenue**

The act requires the Commissioner to distribute municipal income tax revenue to municipalities on a monthly basis, after deducting 0.5% of such revenue to cover the Department's administrative expenses.



Each year, every municipality that levies an income tax must certify its tax rate for that year to the Commissioner. In addition, each time a taxpayer makes the election allowed by the act, the municipality must provide certain information about that taxpayer to the Commissioner, including whether the taxpayer is entitled to any tax credits or net operating loss carryforward in the future. If a municipality fails to provide any of this information, the Commissioner may withhold 50% of all subsequent tax revenue distributions to the municipality until the information is provided.

### **Information required from the Commissioner**

In May and November of each year, the Tax Commissioner must provide municipalities with information about businesses that have made the election, including the ratio of the business' income that is apportioned to that municipality and other data impacting the business' taxable income. Each month, the Commissioner must also report to each municipality the amount of estimated payments received that are attributable to that municipality.

If, after receiving the above information, a municipality finds that it has additional information that could result in a change to a business' tax liability, the municipality may refer the taxpayer to the Commissioner for audit. The Commissioner must review the referral, but is not required to conduct an audit. However, the act explicitly authorizes a municipality to file a writ of mandamus if it believes the Commissioner "has violated the Commissioner's fiduciary duty as administrator of" the municipality's income tax.

### **Throw-back rule**

(R.C. 718.02)

The act removes prior law's "throw-back rule," beginning with the 2018 taxable year. Under continuing law, when determining the portion of a business' net profits attributable to a municipality, the business uses a three-factor formula based on the business' payroll, sales, and property. The act modifies the formula's "sales factor."

Under prior law, sales of goods were considered to be made in a municipality when the goods were any of the following:

- (1) Both shipped from and delivered within the municipal corporation;
- (2) Delivered within the municipal corporation, but shipped from elsewhere, if employees of the business regularly solicited sales within the municipal corporation and the sale of the goods resulted from that solicitation;



(3) Shipped from the municipal corporation, but delivered elsewhere, if the business, through its own employees, did not regularly solicit sales at the location where the goods were delivered.

The third criterion is known as the "throw-back rule." The act removes this third criterion, so that sales of goods will be apportioned to a municipality only if either the first or second criterion is met. As a consequence, if goods are shipped from one municipality to another, and the seller does not regularly solicit sales in that other municipality, the sale will not be included in the seller's "sales factor" for the first municipality.

### **Estimated payment due date**

(R.C. 718.08; Section 803.100)

The act provides municipal income taxpayers who are individuals with one additional month to pay their fourth-quarter estimated municipal income taxes. Under prior law, taxpayers who make estimated payments were required to submit their fourth, and final, estimated payment on or before the fifteenth day of last month of the taxable year (December 15 for calendar year taxpayers). Under the act, this deadline remains unchanged for taxpayers who are not individuals (such as businesses), but is extended by one month for individuals, to the fifteenth day of the first month of the next taxable year (January 15 for calendar year taxpayers). The change applies to estimated payments for taxable years beginning on or after January 1, 2018.

Continuing law requires every taxpayer whose estimated annual municipal income tax liability, after subtracting withheld amounts, will be at least \$200 to report and pay estimated taxes on a quarterly basis – 22.5% of annual liability is due by the end of each quarter.

### **Withholding tax penalty**

(R.C. 718.27(C); Section 803.100)

The act modifies the computation of the penalty imposed on employers that do not timely remit municipal income tax withholdings. Prior state law mandated that the penalty equal 50% of the unpaid amount. The act authorizes municipal corporations to impose a penalty not exceeding 50% of the unpaid amount.

Under continuing law, employers must withhold municipal income taxes from employees according to a fixed schedule whereby the frequency of the withholding depends on the withholding amount for the municipal corporation in the preceding year. If the employer's withholdings do not exceed \$2,399 in the preceding calendar



year or do not exceed \$200 in any month of the preceding calendar quarter, the employer is required to remit the withholdings on a quarterly basis. For larger withholding amounts, monthly remission of withholdings is required.

### **Technical change to calculation of businesses' municipal income**

(R.C. 718.01; Section 803.100)

The act makes a technical change to the formula for calculating a business' municipal income. Under prior law, the formula included circular definitions for calculating a business' net operating losses and net profit. The act corrects this circularity.

### **Ohio Business Gateway Steering Committee membership**

(R.C. 5703.57)

The act reduces, from three to one, the number of municipal tax administrator representatives that the Governor may appoint to the Ohio Business Gateway Steering Committee. The Committee is responsible for overseeing the operations of the Ohio Business Gateway, which is the state-administered online system that allows businesses to electronically file business and tax forms with state agencies. Under continuing law, the Committee also consists of up to four representatives of the business community and two tax practitioners, plus ex officio members representing various state agencies.

Before 2016, as under the act, the Governor was permitted to appoint only one municipal tax administrator representative to the Committee. The maximum number of such representatives was increased to three by H.B. 5 of the 130th General Assembly, which also required that the representatives be selected from a list provided by the Ohio Municipal League. The act returns the maximum number of such representatives back to one, but retains the requirement that the municipal tax administrator representative be selected from a list compiled by the Ohio Municipal League.

### **Study on electronic filing through MeF program**

(Section 757.60)

The act also requires the Department of Taxation to study the feasibility of allowing taxpayers to file municipal income tax returns through the joint federal and state Modernized e-File (MeF) program. The MeF is a web-based electronic tax filing system developed and maintained by the Internal Revenue Service and made available to taxpayers through approved private sector tax filing software providers.



Under the act, the Department must estimate the costs of accepting municipal income tax returns through the MeF program and establish a timeline for the incorporation of municipal returns. The Department must submit a report on its findings to the General Assembly by December 31, 2017.

## **Sales and use taxes**

### **Medicaid provider sales tax cessation and transition payments**

(Section 387.20)

The act provides a series of two payments to counties and transit authorities, one by November 2017 and one in January 2018, to mitigate their sales tax revenue loss from the cessation of all sales tax on Medicaid managed care services provided by health insuring corporations (MHICs or Medicaid MCOs) under contracts with the state. The payments cover the entire local tax loss for the fourth quarter of calendar year 2017 and some of the loss thereafter. The amount each county and transit authority receives for the post-2017 loss is computed on the basis of its historical MHIC sales tax revenue, per-capita non-MHIC sales tax revenue, and a factor devised by OBM to adjust for local fiscal capacity to absorb the loss.

The state and local sales taxes had applied to Medicaid managed care services. By applying the taxes to such services, the state had been able to draw additional federal Medicaid funds because federal funding is calculated in part on the basis of MCOs' costs of providing care: the tax paid by MCOs increased their costs, thereby increasing their state/federal reimbursement to the extent of the tax, enabling the state to receive additional federal funding simply by extending the sales tax to MCOs. But federal law regulates how taxes on MCOs are designed and operate, and Ohio's sales tax on MCOs was in jeopardy of being found to violate that law.

Separately, the act enacts a new franchise fee on all health insuring corporations to replace the sales tax on MCOs. None of the revenue from the new franchise fee will be distributed to counties and transit authorities unless the state obtains federal approval for an increase in the fee to cover their MCO sales tax losses. In a provision vetoed by the Governor, the act requires ODM to seek federal approval for such an increase.<sup>154</sup> (For discussion of the franchise fee, see the "**Health insuring corporation franchise fee**" heading under the **DEPARTMENT OF MEDICAID** chapter.)

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<sup>154</sup> R.C. 5168.761. On July 6, 2017, the House voted to override the Governor's veto of this item. The Senate had not acted on the override when this analysis was published.



## Software and network use tax nexus

(R.C. 5741.01; Section 803.410)

Continuing law imposes use tax on tangible personal property and certain taxable services purchased outside of, but used, consumed, or stored in Ohio. Use taxes are levied at the same rate as state and local sales taxes, and all revenue from the tax is credited to the General Revenue Fund. Under a 1992 U.S. Supreme Court case, *Quill Corp. v. North Dakota*, 504 U.S. 298, a state may not compel a seller to collect and remit a state's use tax unless that seller has a physical presence in, or substantial nexus with, the state. Thus, continuing law requires an out-of-state seller to register with the Tax Commissioner and collect and remit use tax on sales into Ohio only if that seller has some specified connection with Ohio sufficient to give the seller substantial nexus with the state. Continuing law prescribes several examples of activities that, if conducted by an out-of-state seller, creates a presumption that the seller has substantial nexus with Ohio. For example, an out-of-state seller is presumed to have substantial nexus with Ohio if the seller uses an Ohio warehouse or regularly uses agents in Ohio to conduct business. In general, these presumptions may be overcome if the seller demonstrates that those activities are not significantly associated with the seller's ability to establish or maintain the seller's Ohio market. An Ohio-based consumer is required to report and remit directly to the state any use tax not collected and remitted by a seller.

Beginning January 1, 2018, the act expands the set of activities sufficient to create a presumption that an out-of-state seller has substantial nexus with Ohio, thus requiring the seller to collect and remit use tax. Specifically, the act extends the nexus presumption to an out-of-state seller with annual Ohio sales in excess of \$500,000 that either (1) uses computer software stored or distributed in Ohio to make Ohio sales or (2) provides, or enters into an agreement with a third party to provide, "content distribution networks" in Ohio to accelerate or enhance the delivery of the seller's website to Ohio consumers. A content distribution network is defined to be a system of distributed servers that deliver web content to users based on the geographic location of the user, the origin of the web content, and a content delivery server. (The operational language of the provision uses the term "content distribution network," whereas the definition uses the term "content delivery network.")

As under continuing law, a seller may rebut the presumption created by these activities by demonstrating that they are not significantly associated with the seller's ability to establish or maintain an Ohio market for the seller.



## **Local sales and use tax rate increments**

(R.C. 5739.021, 5739.023, and 5739.026; Section 757.100)

The act allows counties and transit authorities to increase their local sales and use tax rates in increments of 0.1%, rather than the 0.25% minimum increment of prior law, beginning July 1, 2018.

Continuing law authorizes counties and transit authorities to levy local sales and use taxes that "piggyback" on the state sales and use tax. All of Ohio's counties, plus eight transit authorities, levy a sales and use tax, at rates ranging from 0.25% to 1.5%. Under prior law, a county or transit authority could increase its tax rate in increments of 0.25%. The act allows for smaller increases, at increments of 0.01%.

## **Taxation of prescription optical aids (VETOED)**

(R.C. 5739.01; Section 803.140)

The Governor vetoed a provision that would have exempted from sales and use tax the first \$650 of the price of optical aids prescribed by a licensed physician or optometrist and components of such optical aids. "Optical aid" would have been defined to include eyeglass frames and lenses, contact lenses, and other devices that assist or correct human vision. The partial exemption would have applied only to optical aids and components purchased from an optometrist or physician who is authorized to dispense optical aids under Ohio law or the law of another state, country, or province.

The vetoed provision may have conflicted with Section 323 of the Streamlined Sales and Use Tax Agreement (SSUTA), which generally prohibits caps and thresholds on the application of state sales or use tax rates. The SSUTA is a multi-state agreement designed to simplify sales and use tax administration and make collection and remission easier for businesses that make sales in multiple states. Ohio has been a full member of SSUTA since 2014.

## **Digital jukebox exemption**

(R.C. 5739.02(B)(55); Section 803.140)

Under continuing law, state and local sales tax extends to "specified digital products," i.e., music, multimedia, and digital books, that are transferred to the purchaser electronically. Beginning October 1, 2017, the act exempts from sales tax digital music purchased and delivered electronically via a machine that exclusively plays digital music in a commercial setting and accepts direct payments to play a single song – i.e., a digital jukebox.



The act does not exempt purchases from a jukebox that operates by playing "tangible storage media" – e.g., vinyl records or compact discs. Such purchases would not be delivered electronically and are not subject to sales tax under continuing law.

### **Sales tax holiday, August 2018**

(Section 757.120)

The act establishes a three-day period in August 2018 during which clothing and school supplies and instructional materials are exempt from state and county sales and use taxes. The tax-exempt period is Friday, August 3, through Sunday, August 5, 2018. Similar sales tax holidays were held in August of 2015, 2016, and 2017.<sup>155</sup> As with these tax holidays, the act's tax exemption applies to each of the following:

(1) Items of clothing up to \$75 each. "Clothing" means all human wearing apparel suitable for general use, but does not include items such as those used in a trade or business, accessories, or sports or protective equipment.

(2) Items of school supplies and instructional materials up to \$20 each. "School supplies" means items commonly used by a student in a course of study and are explicitly listed in the act, including items such as book bags, crayons, erasers, notebooks, pencils, and pens. "School instructional materials" means reference books, reference maps and globes, textbooks, and workbooks only.

The exemption applies regardless of whether the sale occurs in Ohio or outside Ohio: if the sale occurs in Ohio, the sale is exempt from the sales taxes; if the sale occurs outside Ohio (for example, by mail-order or over the Internet) but the item is used in Ohio, the sale is exempt from the use taxes that would otherwise apply.

### **Sales tax on electronic services (VETOED)**

(R.C. 5739.01(B)(3); Section 803.260)

The Governor vetoed a provision that would have modified the sales and use taxation of business-related automatic data processing, computer services, electronic information services, and electronic publishing services (hereinafter referred to collectively as "electronic services"). Specifically, the provision addressed "mixed" transactions, in which an electronic service is provided together with some other kind of service.

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<sup>155</sup> Am. Sub. S.B. 243 of the 130th General Assembly, Sub. S.B. 264 of the 131st General Assembly, and S.B. 9 of the 132nd General Assembly.



Under continuing law, an electronic service is not taxable if it is part of a mixed transaction and the receipt of the electronic service is only "incidental or supplemental" to the receipt of the other service. The act proposed to remove this standard, and instead provide that receipt of an electronic service would not be taxable if the service were provided "primarily for the delivery, receipt, or use" of the other service.

The vetoed provision would have applied this change retrospectively, to sales of electronic services made on or after December 21, 2007 (the effective date of H.B. 157 of the 127th General Assembly, which modified the taxation of electronic publishing services).

### **County sales and use tax for community improvements**

(R.C. 307.283 and 5739.026; Section 803.280)

The act creates an exception to the general rule requiring revenue derived from a county sales and use tax that funds grants for permanent improvements to be spent only on projects located within the county. Under the act, grants for school districts may be spent for projects outside the county so long as the improvements are within the school district and a part of the school district is within the county. The exception applies only to grant revenue derived from existing sales and use taxes levied on September 29, 2017.

Under continuing law, a county may levy a local sales tax (and a corresponding use tax) at a rate of up to 0.5% for certain purposes specified by state law. (This 0.5% levy authority is in addition to distinct authority to levy up to 1% for general purposes or justice-related spending.) One of those purposes is to fund grants for local governments or the state for their permanent improvement projects, which, generally, include buildings and other real property improvements and tangible personal property having at least a five-year lifetime. Such a tax may be levied for a specified number of years or for a continuing period of time. The tax is subject to voter approval.

The grants are administered by a community improvements board which must be created by the board of county commissioners that imposes the tax. It has nine members – six appointed by the board and three appointed by the mayor of the most populous municipal corporation in the county – and must include at least one mayor and one township trustee.

Prior law, retained in part by the act, required all permanent improvements funded by community improvements board grants to be located in the county.



## **Vendor licenses**

(R.C. 5739.18)

The act prescribes the manner by which county auditors issue sales tax vendor licenses and requires certain sales and use tax license information be published on the Department's website. Continuing law requires a person who will make retail sales ("vendor") to obtain a vendor's license from the county auditor of each county where the person desires to engage in business, thereby enabling the person to collect and remit sales tax. Prior law did not regulate the manner by which auditors issued those licenses. The act requires auditors to use a system provided and maintained by the Tax Commissioner to issue those licenses.

Under prior law, each county auditor was required to certify weekly to the Tax Commissioner and county treasurer the names of all vendors licensed with the auditor during the preceding week, and the Commissioner was required to keep a list of all certified vendors except those whose license had been cancelled. The act removes the auditors' weekly reporting duties and requires the Commissioner to publish on the Department of Taxation's website more extensive identifying information. In particular, the Commissioner must list the name, business address, and sales and use tax account number of each licensed vendor, each holder of a "direct payment" permit issued by the Commissioner that enables the holder to remit sales tax directly to the state, and each out-of-state seller that registers with the Commissioner to collect and remit use tax on sales to Ohio customers. The act additionally requires the Commissioner to identify whether such a license, permit, or registration is active or inactive.

## **Vendor's license suspension**

(R.C. 5739.30; Section 803.150)

Under continuing law, the Tax Commissioner may suspend the sales tax vendor's license of a vendor that fails to report or remit sales tax within a consecutive two-month period or for three months within a 12-month period or, for semiannual reporters, for two or more occasions within a 24-month period. A vendor's license is required for any business that makes sales that are taxable under the sales tax. To have a suspended license reinstated under prior law, the only requirement was that the vendor had to correctly report and pay delinquent sales taxes, including penalties and interest.

The act adds the requirement that a vendor who has also failed to properly report or remit its employees' income tax withholdings during or before that suspension period must correctly report and pay all such unreported or unpaid withholdings as a condition of reinstating the vendor's license.



The act also authorizes the Tax Commissioner to suspend the license of a vendor that fails to report or remit its employees' income tax withholdings for two consecutive occasions or on three or more occasions within a twelve-month period. Similar to the suspension for unreported or unpaid sales taxes, this suspension may be lifted only if the vendor properly reports and pays all delinquent employee income tax withholdings and sales taxes.

The act's changes to vendor's license suspension procedures apply beginning January 1, 2018.

### **Direct mail sourcing**

(R.C. 5739.033)

The act modifies the statutory rules for situsing sales and use tax for direct mail to conform with the Streamlined Sales and Use Tax Agreement (SSUTA) and prior practice by distinguishing between direct mail used for advertising purposes and all other forms of direct mail, and expressly applying a new situsing rule to the nonadvertising kind. In general, direct mail is printed material mass mailed by one party – the "vendor" – to predetermined recipients on behalf of another party – the "consumer."

The purpose of "situsing" a sale is to determine which taxing jurisdiction (state, county, and transit authority) properly taxes the sale and receives the revenue. Under prior law, all direct mail was sitused to the location from where the direct mail was shipped, unless the direct mail's consumer provided the vendor with an exemption certificate or direct payment permit or information showing where the mail was to be delivered ("delivery information"). If an exemption certificate or direct payment permit was furnished, the consumer was required to pay sales and use tax directly, and the vendor was relieved of all obligations to collect and remit tax on that transaction. If a consumer instead furnished delivery information, the vendor or seller was required to situs the tax to those locations.

The act distinguishes two classes of direct mail for the purpose of situsing sales. One class is advertising direct mail, which is defined to be direct mail designed to attract attention to or to attempt to sell, popularize, or secure financial support for a product, business, or other person. Advertising direct mail continues to be sitused as all direct mail had been previously. The second class includes all other direct mail, which is sitused, by default, to the location of the direct mail's consumer rather than the location from which the mail is shipped. The consumer may still submit a direct payment permit or exemption certificate excusing the vendor from collecting tax but is no longer



permitted to furnish delivery information that would require situsing to delivery locations.

The act's direct mail situsing modifications conform with SSUTA requirements and prior Department of Taxation practices.<sup>156</sup> Ohio is a member of the SSUTA, which generally requires member states to conform their sales and use tax law to its uniform guidelines.

### **Remission of tax on vehicle sales and leases (VETOED)**

(R.C. 4505.06, 5703.21, 5739.029, 5739.12, 5739.122, 5739.13, 5739.17, and 5741.12)

The Governor vetoed a provision that would have allowed Ohio-licensed motor vehicle dealers with more than \$20 million in annual sales to remit sales and use tax collected on vehicle sales directly to the state. Under continuing law, sales and use tax on vehicle sales is collected by the Clerk of the Court of Common Pleas along with the application for a certificate of title. The Clerk is not permitted to issue the certificate before collecting the taxes.

Under the vetoed provision, dealers would have to have made one-year elections to remit taxes directly. Electing dealers would have to submit monthly reports to the Tax Commissioner and notify the Clerk of the purchaser's county of residence. The Commissioner would have been permitted to revoke an election made by a dealer if the dealer failed to comply with the act's requirements.

The "poundage" fee normally retained by clerks from the tax collections and used by clerks to support their vehicle titling functions would have been paid to them from the GRF each month. Under continuing law, the poundage fee equals 1.01% of the tax collected.

### **Lodging taxes**

Counties, townships, municipal corporations, and certain convention facilities authorities are authorized to levy lodging taxes. In general, the maximum lodging tax rate permitted in any location is 6%. Municipalities and townships may levy a lodging tax of up to 3%, plus an additional 3% if they are not located, wholly or partly, in a county that already levies a lodging tax. Counties may levy a lodging tax of up to 3%, but only in municipalities or townships that have not already enacted an additional 3%

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<sup>156</sup> Section 313 of the Streamlined Sales and Use Tax Agreement (adopted November 12, 2002 and amended through December 16, 2016); "Direct Mail Sourcing and Definitions," Ohio Department of Taxation Information Release ST 2013-01 (August 2013), available at [http://www.tax.ohio.gov/Portals/0/communications/information\\_releases/DirectMailSourcing82013.pdf](http://www.tax.ohio.gov/Portals/0/communications/information_releases/DirectMailSourcing82013.pdf).



levy. On occasion, the General Assembly has authorized certain counties to levy additional lodging taxes for special purposes.

Unless specifically authorized otherwise, a county that levies a lodging tax must return up to one-third of its net lodging tax revenue to the municipalities and townships within the county that do not levy a lodging tax. The remaining revenue must be used to support a convention and visitors' bureau. The bureau must generally use the revenue for tourism sales, marketing, and promotion.

### **Extension in Summit County**

(R.C. 5739.09(A)(6))

In 2007 the General Assembly temporarily authorized a charter county that, at the time, levied a 4.5% lodging tax (i.e., Summit County) to increase the rate of the tax by up to an additional 1% for up to ten years. The act authorizes the county to extend the term of the rate increase for an additional ten years by vote of the county legislative authority. Revenue from the tax must be used to finance and operate a convention center by a convention and visitors bureau.

### **Rate increase in Stark County**

(R.C. 5739.09(A)(11))

The act authorizes a county having a population of between 375,000 and 400,000 and that currently levies a 3% lodging tax (i.e., Stark County) to increase the rate of the tax by up to an additional 3%. As with the original tax, the revenue derived from the increase in rate would primarily be allocated to the county's convention and visitor's bureau. The county would be permitted, but not required, to designate a portion of the revenue to each township or municipal corporation in which lodging transactions occurred.

### **Rate increase in Clermont County**

(R.C. 5739.09(A)(12))

The act authorizes a county with a 2010 population of between 190,000 and 200,000 and that already levies a 3% lodging tax (i.e., Clermont County) to increase the rate of the tax up to an additional 1%. The revenue derived from the increase in rate must be used to fund the construction and maintenance of a professional sports facility and to promote tourism with respect to that facility through the county's convention and visitors' bureau.



The tax may only take effect after the convention and visitors' bureau enters into a contract for the construction or maintenance of the facility. If the bureau has not entered into such a contract by January 1, 2019, the authority to levy the tax expires.

The revenue from the tax may be used for the development of a facility intended to house a minor or major league sports team, including a stadium, as well as parking, walkways, and other auxiliary facilities. Unlike the tax already levied, no portion of the revenue derived from the increase in rate would be returned to the townships and municipal corporations in which the lodging transaction occurred.

### **Rate increase in an eligible city**

(R.C. 5739.09(B)(3))

The act authorizes a city that currently levies a 3% lodging tax and that is located in a county having a population of between 300,000 and 350,000 and that currently levies a 3% county lodging tax (Lorain County) to increase the rate of the municipal lodging tax by up to an additional 3%. The revenue derived from the increase must be used for economic development and tourism-related purposes.

### **Use of revenue in Warren County**

(R.C. 5739.09(A)(1) and (8))

The act specifies that the proceeds of a 1% lodging tax that may be levied only by a county with a population between 175,000 and 225,000, that levied a lodging tax rate of 3% in 2014, and has an amusement park with annual attendance of more than two million (i.e., Warren County) may be used to pay the construction and maintenance costs of a sports facility owned by a port authority. Previously, the revenue could only cover the costs of a county-owned sports facility.

The act also authorizes that county to use or pledge any or all of the proceeds from its special 1% or its general 3% lodging tax to service securities issued to construct, operate, or maintain such sports facilities, including any portion of the general lodging tax that, under prior law, had to be returned to townships and municipal corporations in the county that do not levy a lodging tax.



## Severance tax

### Exemption and fee for small gas wells

(R.C. 5749.03; Section 803.220)

The act replaces a previous severance tax exemption for natural resources having an annual value of \$1,000 or less and severed from land owned by the severer with a new exemption for natural gas severed from an exempt domestic well. Generally, an exempt domestic well is a gas well owned by a landowner primarily for the purpose of providing gas for the owner's domestic use. Prior law did not explicitly exempt natural gas severed by exempt domestic wells from severance tax, but, as a practical matter, at least some of those wells might have qualified for the homestead exemption repealed by the act.

Notwithstanding the new severance tax exemption, exempt domestic wells designated on or after June 30, 2010, will continue to be subject to the annual "cost recovery assessment" of \$60. The assessment is payable to the Department of Natural Resources (DNR) and is credited to the Oil and Gas Well Fund.

### Severance tax administrative provisions

The act makes several changes related to the administration of severance taxes levied on the mining or other severance of oil, natural gas, coal, gravel, clay, salt, and sand, as described below. These changes apply beginning October 1, 2017.

#### Severance tax permits

(R.C. 5749.04; Section 803.220)

Prior law permitted a severer to either obtain a license from the Tax Commissioner or, if required to do so under another provision of law, a permit from DNR before severing or selling natural resources from Ohio's soil or water. Under the act, the Commissioner would no longer issue severance tax licenses. Instead, severers would have to obtain a permit from, or register with, DNR. However, before severing natural resources, severers would have to apply to the Commissioner to open a severance tax account. But those severing natural gas from an exempt domestic well, which the act exempts from severance tax, are not required to register for the account (see "**Exemption and fee for small gas wells**," above).

The act also authorizes the Commissioner to request that DNR revoke a severer's permit or registration if the Commissioner finds that the severer failed to comply with Ohio severance tax law. In response, DNR may revoke the severer's permit or registration.



## **Return due dates**

(R.C. 5749.06; Section 803.220)

Under continuing law, severers are generally required to file severance tax returns for natural resources severed in each calendar quarter unless the Tax Commissioner prescribes a different reporting period. The filing deadline under prior law was 45 days after the end of a calendar quarter or other prescribed reporting period. The act sets the deadline as the 15th day of the second month following the end of each quarter or other reporting period.

## **Revenue transfers**

(R.C. 5749.06(H); Section 803.220)

The act provides for monthly distribution of severance tax revenues instead of prior law's quarterly distribution schedule. Prior law required the Tax Commissioner, by the 15th day of the month following the end of each calendar quarter (i.e., January 15, April 15, July 15, and October 15) to certify to the Director of OBM the total amount in the fund that holds all severance tax revenue – the Severance Tax Receipts Fund – after accounting for amounts set aside for severance tax refunds. The certification must include the proportion of such revenue attributed to the tax on each type of natural resource.

The act instead requires the Tax Commissioner to make this certification by the 25th day of each month. Additionally, after making this certification, the Commissioner must pay severance tax revenue from the Severance Tax Receipts Fund to the funds to which each severance tax is required to be credited.

## **Disclosure of severance tax information**

(R.C. 5749.17; Section 803.220)

Prior law could be read to authorize DNR to publicly disclose severance tax information given to it by the Tax Commissioner for the purpose of enforcing oil and gas regulatory laws. The act explicitly limits the ability of DNR to disclose severance tax information by allowing disclosure only to the Attorney General for purposes of enforcing those laws.

## **Excise taxes**

### **Cigarettes and other tobacco products**

Ohio levies an excise tax on the sale, distribution, or use of cigarettes at the rate of \$1.60 per pack. The tax is paid primarily by wholesale dealers through the purchase



of stamps that are affixed to packs of cigarettes. Retail sellers must pay the tax on cigarettes that are not taxed at the wholesale dealer level. A separate tax is levied on tobacco products other than cigarettes at the rate of 17% of the wholesale price, or 37% of wholesale price for "little cigars" – noncigarette, filtered smoking rolls wrapped in any substance containing tobacco, other than natural leaf tobacco. This tax is often referred to as the other tobacco products (OTP) tax. Revenue from the cigarette and OTP taxes is credited to the GRF.

### **Monthly returns**

(R.C. 5743.03 and 5743.081; Sections 803.180 and 812.20)

The act requires that cigarette tax returns be filed monthly rather than semiannually. Under continuing law, wholesale dealers that purchase cigarettes and affix tax stamps are required to file tax returns detailing the dealer's entire purchases and sales of cigarettes and stamps for the reporting period. The return must also include accurate inventories of cigarettes and stamps as of the beginning and end of each period.

Under prior law, wholesale dealers were required to submit a return and remit payment of any tax deficiency every six months. The return for the period running from January 1 to June 30 was due on July 31, and the return and payment for the period running from July 1 to December 31 were due on January 31. The act instead requires that such returns and payments be filed on a monthly basis. Each month's return is due on the last day of the following calendar month.

### **Tax on premium cigars**

(R.C. 5743.01, 5743.51, 5743.62, and 5743.63; Section 803.370)

The act creates a new category of tobacco products – "premium cigars" – with respect to which the OTP tax is capped at 50¢ per cigar. Premium cigars are defined to be rolls of tobacco with (1) a binder and wrapper consisting entirely of leaf tobacco, (2) no tip or filter or mouthpiece that is not made of tobacco, and (3) a weight of at least six pounds per 1,000 rolls.

The act's OTP tax ceiling for premium cigars is effective July 1, 2017. The Tax Commissioner is required to annually increase the 50¢ ceiling at the same rate as an increase in the Consumer Price Index.



## **Kilowatt-hour tax: chlor-alkali manufacturing process exemption**

(R.C. 5727.80 and 5727.81)

The act allows an exemption from the kilowatt-hour tax for the distribution of electricity to consumers who use that electricity in a chlor-alkali manufacturing process. A "chlor-alkali manufacturing process" is defined to be a "process that uses electricity to produce chlorine and other chemicals through the electrolysis of a salt solution."

The kilowatt-hour tax is a tax imposed on the distribution of electricity to end users in Ohio, at rates depending on the kilowatt-hour consumption of the end user. Continuing law exempts the distribution of electricity used in a "qualifying manufacturing process" – i.e., an "electrochemical reaction in which electrons from direct current electricity remain a part of the product being manufactured" – but that exemption only applies to consumers who use at least 3 million kilowatt-hours of electricity in the process per day.

The act's exemption applies to any consumer without regard to the amount of kilowatt-hours used in the process per day. However, unlike the qualifying manufacturing process exemption, the exemption for electricity used in a chlor-alkali manufacturing process does not apply to electricity provided by a municipal electric company unless the consumer first obtains the consent of the legislative authority of the municipal corporation that owns or operates the utility.

Most revenue from the kilowatt-hour tax is credited to the GRF. The remainder is distributed to municipal corporations for taxes paid on the basis of electricity distributed by municipal utilities to users within municipal territory.

## **Publication of information on motor fuel dealers**

(R.C. 5735.07; Sections 120.30 to 120.32)

The act reinstates language in a motor fuel tax statute that was recently amended by Sub. H.B. 26 of the 132nd General Assembly (the transportation appropriations act). The statute requires the Tax Commissioner to publish certain information about motor fuel taxpayers each month. Under prior law, that information included the number of gallons of motor fuel upon which dealers were required to pay tax. H.B. 26 removed this requirement, effective January 1, 2018. The act reinstates the requirement, thereby requiring the publication of such information to continue uninterrupted.



## **Petroleum activity tax licensing**

(R.C. 5736.06)

Continuing law levies the petroleum activity tax (PAT) on suppliers of motor fuel on the basis of each supplier's "calculated gross receipts" – the volume of the supplier's first sales of motor fuel in the state multiplied by the average price for unleaded gasoline or diesel fuel, as applicable. Suppliers are prohibited from distributing, importing, or causing the importation of motor fuel into the state without applying for and obtaining a supplier's license from the Tax Commissioner. The act clarifies the deadline by which a new motor fuel supplier must apply for a supplier's license and stipulates an annual expiration date for all supplier's licenses.

Under prior law, persons subject to the PAT had to apply for a supplier's license by March 31, 2014, or within 30 days of first becoming subject to the tax, whichever was earlier. This provision, enacted in 2013 by H.B. 59 of the 130th General Assembly, set up a mass licensing date as part of the initial phase-in of the PAT. Now that the tax is fully implemented, the provision is outdated. The act eliminates the reference to March 31, 2014, and instead requires that new motor fuel suppliers apply for a license within 30 days after first becoming subject to the PAT.

The act also specifies that supplier's licenses expire on the last day of February each year. Continuing law requires each person issued a supplier's license to annually apply for renewal on or before March 1. However, the prior provision did not explicitly state that the supplier's license would otherwise expire.

## **Property taxation**

### **Current agricultural use value (CAUV) changes**

(R.C. 5713.31, 5713.34, and 5715.01)

The act changes the state's policy for valuing agricultural land for property tax purposes (known as current agricultural use valuation, or CAUV). Specifically, it prescribes in statute two elements of a capitalization rate that must be used to calculate CAUV values. The act also effectively places a ceiling on the taxable value of CAUV land that is used for conservation purposes, thereby reducing the taxable value of any such land not otherwise valued according to the lowest-valued soil type.

### **Codification of aspects of administrative formula**

Continuing law does not prescribe the specific method for determining CAUV values. Instead, it requires the Tax Commissioner to adopt a formula by administrative



rule that "reflect[s] standard and modern appraisal techniques."<sup>157</sup> The formula adopted by the Commissioner is published annually in CAUV "land tables," which apply to CAUV land in counties undergoing reappraisal or update that year and continue to apply in those counties for the following two years until the ensuing reappraisal or update year.

The act codifies the inclusion of some of the factors used in the CAUV formula. It states that the valuation method must take into consideration "typical cropping and land use patterns" and "typical production costs," both of which were required by the administrative rules but were not required by statute. The act deletes a statutory requirement that market value of land for agricultural purposes be taken into consideration, but doing so is not expressly prohibited. (In the administrative rules, estimating the agricultural market value is stated to be the objective to be achieved by the valuation method.<sup>158</sup>)

### **Capitalization rate**

Prior law did not expressly provide for the capitalization rate; it was incorporated into the CAUV method by administrative rule. The capitalization rate is intended to represent the combined, after-tax rate of return that an investor and lender would expect to earn from an average Ohio farm, considering only agricultural factors (i.e., the farm's income-producing potential). The calculation of the capitalization rate takes into account supposedly typical farm mortgage terms, the average return on equity for investors, the expected depreciation or appreciation of agricultural land values, and average tax rates.

The act expressly requires the Tax Commissioner to determine the CAUV capitalization rate using "standard and modern appraisal techniques" but changes the determination in two specific ways explained below. The act also expressly requires the capitalization rate (before considering taxes) to be added to a "tax additur," which reflects the statewide effective property tax rate on agricultural land. (The preexisting CAUV calculation rule included such a tax additur.) The act states that the sum of the pre-tax capitalization rate and the tax additur "shall represent as nearly as possible the rate of return a prudent investor would expect from an average or typical farm in [Ohio] considering only agricultural factors."

The computation of the capitalization rate employed in the pre-existing administrative formula adopts a real estate valuation formulation known as the

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<sup>157</sup> R.C. 5715.01(A).

<sup>158</sup> O.A.C. 5703-25-31(C).



"Akerson mortgage-equity method," and, under prior rules, was computed as follows (the 2015 inputs are in square brackets):

**Debt factor**

(Loan % [80%] × Annual payments as % of loan amount [6.15% interest rate loan for a 25-year term – referred to in the act as the "loan interest rate"])

*plus*

**Equity factor**

(Equity % [20%] × Owner's required rate of return [5.25% – referred to in the act as the "equity yield rate"]) *minus*

**Equity build-up factor**

(Equity build-up over 5-year holding period – i.e., Loan % × % of loan paid off × Sinking fund factor)

(The equity build-up factor is meant to account for the increasing equity a landowner gains as part of the loan principal is paid off over a given period of the loan term (assuming, as is typical, that part of the loan principal is being paid – i.e., amortized – with each loan installment). The rationale for the equity build-up factor is that, since the loan principal is partly repaid by the time the land is eventually sold, the part of principal that has been repaid by that time – the built-up equity – is a positive cash flow to the landowner realized at the time the landowner sells the land.)

*minus*

**Appreciation factor**

(Land value appreciation over 5-year holding period × Sinking fund factor)

(The land value appreciation deduction reflects changes in farm values in Ohio as measured by the U.S. Department of Agriculture. The administrative rules call for this measure to be adjusted to disregard the influence of speculation so that it indicates land value changes brought about by improvements in technology and farming practices.)



*plus*

### **Tax additur**

Effective tax rate as % of land market value<sup>159</sup>

Under the administrative CAUV calculation, taxable land value is computed by dividing net income by the capitalization rate. Accordingly, any factor that increases the capitalization rate reduces taxable land value, and vice versa. In turn, a decrease in taxable CAUV land value will tend to reduce property tax revenue derived from unvoted levies ("inside millage"), shift some tax liability to all non-CAUV property (both real and utility tangible personal) to the extent of fixed-sum levies, and shift some tax liability from other levies to residential property and non-CAUV agricultural land through the operation of the "H.B. 920" tax reduction factor mechanism. An increase in taxable CAUV land value arising from a reduction in the capitalization rate would have the opposite effects.

### *Equity yield rate*

The act statutorily prescribes the manner in which the equity yield rate is calculated. Under prior CAUV methodology, the equity yield rate equaled the seven-year average of the prime rate plus 2% from the Wall Street Journal's bank survey with the highest and lowest rates for those years disregarded, a method that rendered an equity yield rate of 5.25% for 2015. The act instead specifies that the equity yield rate equals the 25-year average of the "total rate of return on farm equity" published by the U.S. Department of Agriculture (or another source) – a rate that would have equaled 7.9% if used for 2015 – but cannot exceed the loan interest rate used in the debt factor of the capitalization rate computation, which was 6.15% for 2015.<sup>160</sup>

Changing the method of calculating the equity yield rate affects not only the equity factor, but also the equity build-up and appreciation factors. Had this new method been in effect for 2015, the equity yield rate would have increased, ultimately increasing the capitalization rate and decreasing the calculated taxable value of CAUV land for that year.

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<sup>159</sup> "Explanation of the Calculation of Values for Various Soil Mapping Units for Tax Year 2015," Ohio Department of Taxation, May 28, 2015, available at [http://www.tax.ohio.gov/Portals/0/personal\\_property/Explanation2015.pdf](http://www.tax.ohio.gov/Portals/0/personal_property/Explanation2015.pdf).

<sup>160</sup> The 7.9% rate was calculated from annual rates available from the USDA's Economic Research Service.



### *Holding period*

The act statutorily sets the period for which farmland is assumed to be held (holding period) for purposes of the equity build-up and appreciation factors at 25 years. The assumed holding period under the prior CAUV formula was five years. Had the increased holding period been in effect for 2015, the equity build-up factor would have increased and the appreciation factor would have decreased, and the net effect of the adjustments to these two factors would have ultimately increased the capitalization rate and decreased the calculated taxable value of CAUV land for that year.

### **Conservation land**

One of the factors that influence a farm's CAUV is the soil type or types underlying the farm. There are about 3,500 soil types, each with an associated productivity, plotted according to a soil map of Ohio. A given farm's soil type is determined according to where the farm appears on that map. Each year, the Tax Commissioner determines the value associated with each soil type.

The act requires land devoted to conservation practices or enrolled in a federal land retirement or conservation program on the first day of a tax year to be valued as though the land's soil type is the lowest valued of all soil types according the Tax Commissioner's annual determination. For the purposes of the formula, such land would be considered to consist of that soil type even if the soil map indicated otherwise. This change effectively reduces the CAUV of such lands that overlie any soil type other than the soil type or types with the least associated value for the year. Under the act, if a county auditor discovers that such land has ceased to be used for those purposes, the county auditor must levy a charge on the land equal to the extra tax savings for the most recent three years that the land was valued at the lowest-valued soil type.

Under continuing law, farmland in a federal land retirement or conservation program is eligible for CAUV. Land used for conservation practices is eligible for CAUV if such land comprises 25% or less of the landowner's total CAUV land. Conservation practices are farm management practices to abate soil erosion, including the installation, construction, development, planting, or use of grass waterways, terraces, diversions, filter strips, field borders, windbreaks, riparian buffers, wetlands, ponds, and cover crops.<sup>161</sup>

### **Publication of capitalization rate**

The act explicitly requires the Tax Commissioner to annually publish the capitalization rate and tax additur and the individual components used in computing

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<sup>161</sup> R.C. 5713.30, not in the act.



those amounts at the same time the Commissioner publishes the values for each soil type. Under prior practice, the Commissioner published this information annually in the land tables.

### **Phase-in of CAUV formula changes**

The act requires that the changes to the CAUV formula be phased in over two reassessment cycles, beginning with counties undergoing a reappraisal or triennial update in 2017.

Under continuing law, any change in the CAUV valuation method applies in a county for the first time when that county undergoes a reappraisal or update, which occurs every three years in each county. The act requires, however, that instead of the full effect of the act's changes applying at a county's first reappraisal or update after the provision's effective date (September 29, 2017), values for that reassessment cycle will reflect only one-half of that effect. Then, at the next reappraisal or update, the effects of the act's changes will be fully applied.

As an example, consider a parcel of farmland that is reappraised at \$100,000 in 2015. Suppose that, at the 2018 update, the act's changes would otherwise result in a decrease in the value of that parcel to \$80,000. Under the act, the parcel would be valued for purposes of that update at \$90,000, to reflect only one-half of the effect of the new formula. Then, at the 2021 reappraisal, assuming no other changes, the parcel would be valued at \$80,000. (In actuality, changes in the CAUV formula inputs – e.g., the average interest rate, tax rate, crop prices – after the 2018 update would be reflected in the 2021 reappraisal, so the value would likely vary somewhat from \$80,000.)

### **Publication of CAUV values**

(R.C. 5713.33)

The act requires the Tax Commissioner to combine information related to agricultural land values into one state-wide report. The report – which must be published electronically on an annual basis – must include, for each taxing district, the aggregate value of the district's parcels at their CAUV and the aggregate value such parcels would have if they were not valued according to their CAUV. The report must be compiled in such a manner that the information can be sorted by county and by school district.



## **Appeals of Board of Tax Appeals decisions**

(R.C. 5717.04)

The act disallows an appeal of a decision of the Board of Tax Appeals (BTA) from being filed directly with the Ohio Supreme Court, instead requiring that such appeals be filed initially with a Court of Appeals. Prior law authorized appeals of BTA decisions to be filed with a Court of Appeals or the Supreme Court, except for decisions on BTA's small claims docket, which, under continuing law, are conclusive and not appealable.

However, the act authorizes a party to the appeal to file a petition with the Supreme Court requesting that the Court take jurisdiction over the appeal from the Court of Appeals, which the Supreme Court may do if the appeal involves a substantial constitutional question or a question of great general or public interest. The petition must be filed within 30 days after the appeal is filed with a Court of Appeals. If jurisdiction is transferred, the appeal proceeds as though it was originally filed with the Supreme Court.

## **Nonprofit housing organization retail store exemption**

(R.C. 5709.12; Section 757.90)

The act exempts from tax certain property owned and operated by a charitable nonprofit organization that constructs or rehabilitates residences for eventual transfer to low-income families. The exemption applies to a retail store and underlying land owned by such an organization, provided the store sells primarily donated items suitable for residential housing purposes and the proceeds of those sales are used solely for the purposes of that organization.

The exemption begins to apply in tax year 2017 and also applies to any tax year at issue in an exemption proceeding pending on September 29, 2017 (the act's 90-day effective date), i.e., a pending exemption application or exemption challenge pending before the Tax Commissioner or in the Board of Tax Appeals or a state court.

## **Property tax exemption for certain municipal property**

(R.C. 5709.101; Section 803.250)

The act authorizes a property tax exemption for property that meets all of the following criteria: (a) the property is owned by a municipality, was conveyed to that municipality by a community improvement corporation (CIC), and was conveyed to that CIC by a federal agency, (b) the property is subject to an agreement under which the municipality is required to convey the property back to the CIC before it is



developed, and (c) less than 75% of the rentable square footage of the property is rented to tenants.

The exemption applies to tax year 2016 and thereafter. Because the deadline for applying for tax exemptions for the 2016 tax year has passed, the act allows the property owner, until August 1, 2017, to apply for an exemption for that year. If the owner has already paid taxes for the 2016 tax year with respect to the property and the exemption application is approved, the owner is entitled to a refund of those taxes.

### **Property tax penalty waiver appeals**

(R.C. 5715.20 and 5715.39)

Penalties and interest are charged for late property tax and manufactured home tax payments. Continuing law requires county auditors to remit (i.e., waive) late payment penalties under certain circumstances, including the following: the taxpayer is incapacitated; mail delivery fails; the county auditor or treasurer errs; the taxpayer does not receive the bill but tries, in good faith, to obtain the bill within 30 days after the due date; or the property owner satisfies a mortgage, the lender fails to notify the county auditor that the mortgage has been satisfied and the tax bill is not mailed to the property owner. In all other cases, the failure to receive a tax bill does not excuse a taxpayer from having to pay taxes on time or prevent the imposition of late payment penalties, unless the county board of revision finds that the lateness is "due to reasonable cause and not willful neglect."

Under continuing law, the county auditor, in consultation with the county treasurer, makes the initial decision with respect to applications for remission. If the auditor determines that waiver of the penalty and interest is not warranted, the application is submitted to the board of revision for further review. The act clarifies the manner in which the board of revision must issue its determination and revises the procedure for appealing that determination.

The act specifies that the board of revision must send notice of its determination by certified mail to the person who submitted the application for remission. Prior law referred to the date on which the board's determination was mailed, but did not explicitly require certified as opposed to regular mail.

The act also requires that appeals of the board of revision's determination be filed with the BTA. BTA appeals must be filed within 30 days of the date the board of revision mails its determination. The appeal may be filed in person or by certified mail, express mail, facsimile transmission, electronic transmission, or authorized delivery service. Under prior law, the determination of the board of revision was appealable first



to the Tax Commissioner, then to the BTA. The applicant had 60 days to file an appeal to the Tax Commissioner in person or by certified mail.

### **Property tax exemption procedures**

(R.C. 5715.27)

The Tax Commissioner is responsible for approving or disapproving exemption applications for most kinds of property. However, in the case of some kinds of publicly owned property, including property of state universities, the county auditor, not the Tax Commissioner, decides on the application.

Under the act, exemption applications respecting state university property must be reviewed by the Tax Commissioner rather than the county auditor.

### **Homestead exemption: application deadline for mobile homeowners**

(R.C. 4503.066; Section 803.330)

The act extends, by 18 months, the deadline by which manufactured and mobile homeowners may apply for the homestead exemption, from June of the year before the tax year for which the exemption is sought, to December 31 of the tax year.

### **Homestead exemption background**

Continuing law authorizes a homestead exemption for homeowners, including owners of manufactured and mobile homes, who are aged 65 or older, permanently and totally disabled, or at least 59 years old and the surviving spouse of an individual who previously received the exemption. The exemption reduces the taxes that would be charged on up to \$25,000 of the fair market value of the homeowner's property (\$50,000 in the case of qualified disabled veterans). This essentially exempts \$25,000 (or \$50,000) of the value of the homestead from taxation.

### **Extension of application deadline**

Under prior law, owners of manufactured and mobile homes had to apply for the homestead exemption on or before the first Monday in June of the year before the tax year for which the exemption is sought. So, for example, in order to receive the homestead exemption in tax year 2017, the homeowner must have applied before June 6, 2016.

The act extends the application deadline for such homeowners to December 31 of the year for which the exemption is sought. Using the example above, a homeowner would have until December 31, 2017, to apply for the exemption.



## **Overpayments**

Under continuing law, if a manufactured or mobile home is located in Ohio on January 1 of a tax year, the homeowner's property taxes for that tax year are due on or before March 1 and July 31. Consequently, the act's deadline extension allows homeowners to apply for the exemption after they have paid taxes for a tax year. (Following the example above, the owner would pay taxes in March and July of 2017, but would have until December 31, 2017, to apply for the exemption.) The act allows homeowners whose applications are approved after they have paid their taxes to receive a refund of the amount overpaid.

## **Extension of deadline for reporting change in circumstances**

The act correspondingly extends, by the same dates, the deadline by which such homeowners must report changes in circumstances that would affect the owner's homestead exemption. In addition, the county auditor must provide such homeowners with the form for reporting changes in circumstances in February, rather than January, of each year.

## **Application date**

The act's changes apply beginning in the 2017 tax year, meaning that homeowners will have until December 31, 2017, to apply for a reduction in the first half installment of taxes that were due this past March 1 and the second half installment falling due July 31, 2017.

## **Transfer of taxing authority funds**

(R.C. 5705.16)

The act removes a requirement that a subdivision authorized to levy property tax (a "taxing authority") petition and receive approval from a court of common pleas before transferring revenue between certain of the subdivision's funds, but maintains the requirement that the taxing authority receive approval of the Tax Commissioner before making such a transfer.

Continuing law regulates a taxing authority's ability to transfer revenue between its funds. Some funds may not be transferred at all, e.g., proceeds of funds derived from a tax or license fee imposed for a specific purpose.<sup>162</sup> In contrast, a taxing authority may

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<sup>162</sup> R.C. 5705.15.



make certain fund transfers unilaterally, without obtaining approval from any official or court – e.g., transfers from the subdivision's general fund to another fund.<sup>163</sup>

Under prior law, any other type of fund transfer had to be approved by both the Tax Commissioner and a common pleas court. Under this process, the taxing authority petitioned the Commissioner and the court to allow the transfer. If the Commissioner approved the transfer, the petitioned court had to hold a hearing and accept comments, and could approve the transfer upon finding it is justified or necessary and that no injury would result.

The act removes the requirement that the taxing authority obtain permission from a court before making such a funds transfer, but continues to require the Commissioner to approve a transfer, provided the Commissioner finds that the transfer is justified or necessary and that no injury will result.

### **Pre-1995 township TIF extension**

(R.C. 5709.73(L); Section 803.400)

Townships may grant property tax exemptions under a tax increment financing (TIF) resolution that enables the township to essentially divert the property tax revenue from increased property values on parcels (i.e., the increment) to finance public infrastructure improvements that benefit the parcels. The tax exemptions may be for up to 30 years, but continuing law authorizes the board of trustees of a township with a population of at least 15,000 to extend a TIF exemption originally granted before December 31, 1994, for up to 15 additional years. The township must notify the affected school district board and the board of county commissioners at least 14 days before taking formal action to approve the extension.

The act requires the township, before extending the term of such a pre-1995 TIF, to obtain the approval of each school board whose property tax collections will be affected by that extension. To do so, the township must notify each affected school board not later than 45 days before adopting the TIF extension. A school board may adopt a resolution approving or disapproving the extension, or may condition its approval on a mutually agreeable arrangement with the township under which the township compensates the school district for all or a portion of property tax collections the district will forgo because of the extension. The procedures for obtaining school board approval largely mirror a process under continuing law for a township to obtain school board approval for a TIF exemption that is for a term longer than ten years or that exempts more than 75% of a parcel's value. Ultimately, the township may not

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<sup>163</sup> R.C. 5705.14.



proceed with the extension unless it receives an approval resolution from each affected school board.

However, the township is not required to obtain the approval of an affected school board that, under a provision of continuing law, adopts or has adopted a resolution waiving the need for its approval to be obtained. In that case, the township is only required to give that school board 14-day notice before taking formal action to approve the extension, as under continuing law.

### **Pre-1994 community reinvestment area term extension**

(R.C. 3735.661)

The act authorizes a county or municipal corporation, under certain circumstances, to extend the term of a community reinvestment area (CRA) property tax exemption without triggering an existing law requiring that the CRA conform to various requirements and limitations enacted in 1994.

Under continuing law, a CRA is a geographic area designated by a municipal corporation or county in which new construction or improvements to existing structures are exempted from taxation. CRAs created after mid-1994 are subject to various limitations and requirements such as school board approval in some circumstances, standardized agreements, and clawbacks, among others, which would apply even to pre-existing CRAs altered later. However, certain pre-1994 CRAs were given limited ability to be altered by up to two amendments before the post-1994 provisions would be triggered.<sup>164</sup> Continuing law specifies the substance of amendments that would or would not count towards triggering application of the 1994 limitations and requirements. One such action that counts as one of those triggering amendments is any increase in the term of any CRA tax exemption or category of exemptions.

H.B. 463 of the 131st General Assembly increased the maximum CRA exemption term for improvements to 15 years from what had been 10 or 12 years depending on the type of property and the cost of renovations. The act allows a municipal corporation or county to amend its CRA resolution to increase the term of a CRA exemption for improvements without the change counting as an amendment that could trigger the 1994 law, provided the increase is no more than the 15-year term authorized in H.B. 463, and that the CRA's prior maximum term was the 10 or 12 maximum year term authorized before H.B. 463.

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<sup>164</sup> Section 3(B) of Am. Sub. S.B. 19 of the 120th General Assembly.



## **Community reinvestment area designation approval**

(R.C. 3735.66)

The act extends the deadline by which a municipal corporation or county must petition the Director of Development Services to approve the subdivision's designation of a CRA from 15 to 60 days after the subdivision's adoption of a designating resolution. Under continuing law, property located in a CRA may be eligible for property tax exemptions on new construction or remodeling projects. However, a CRA is not established until the Director determines that a resolution designating a CRA comports with zoning regulations and contains valid findings that (1) housing facilities or historical structures are located in the CRA and (2) new housing construction and repair of existing facilities is discouraged within the CRA.

## **County treasurer tax collection compensation**

(R.C. 321.26)

The act revises the schedule for the fees that are exacted from taxes collected by county treasurers by increasing the fee amounts, by establishing a minimum fee when collections are less than \$5 million per semiannual settlement, by reducing the number of fee brackets, and by causing the fees to be adjusted upward if and as statewide taxes charged on real property and public utility property increase.

Under the revised schedule there would be two fee brackets beginning in 2018: 0.9495% on collections up to \$5 million and 0.1996% on collections in excess of \$5 million; the first \$5 million would generate \$47,475 in fees, and this amount would be set as the minimum initial fee when collections are less than \$5 million. After 2018, the \$5 million threshold would be increased to the nearest \$10,000 each year by the same percentage (to the nearest 0.1%) by which total statewide real and public utility property taxes charged increase.

Under prior law there were four brackets: 0.29947% on collections up to \$100,000, 0.9982% on \$100,000 to \$2.1 million, 0.7986% on \$2.1 million to \$4.1 million, and 0.1996% on collections in excess of \$4.1 million; thus, the first \$5 million would generate \$38,032 in fees. There was no adjustment for increases in taxes charged as there is in the act.

The fees are subtracted from the tax distributions to local taxing units and credited to the county general fund. They are not directly related to the county treasurers' compensation, which is a fixed salary.



## Contents of property tax resolutions

(R.C. 5705.03)

The act requires a subdivision proposing to submit the question of a property tax to voters ("taxing authority") to provide additional details on the scope and nature of the tax to the appropriate county auditor and board of elections. To initiate the process under continuing law, a taxing authority is required to certify a resolution to the county auditor of each county in which the subdivision has territory to obtain the tax rate required to generate a certain amount of revenue or the amount of revenue that a particular tax rate will generate, based on the current tax valuation within the subdivision's territory.

Under prior law, the taxing authority's initial resolution had to state only the purpose of the tax, the law authorizing submission of the tax, and whether the tax was an additional tax or the renewal or replacement of an existing tax. The act requires the following additional information:

- (1) If the proposed tax is a renewal or replacement of an existing tax, whether the tax also increases or decreases the rate of the existing tax;
- (2) The term of the tax;
- (3) The subdivision's territory in which the tax will be voted upon and levied;
- (4) The date of the election;
- (5) The first tax year to which the tax will apply;
- (6) Each county in which the subdivision has territory.

Under prior law, after obtaining rate information from the county auditor, the taxing authority could proceed to submit the tax to voters by certifying a resolution, a copy of the auditor's rate certification, and the proposed rate of the tax to the appropriate board of elections. The act clarifies this procedure by explicitly requiring the taxing authority to adopt and certify a second resolution stating the proposed rate and that the taxing authority will proceed with submitting the tax to voters. The taxing authority also must submit its original tax resolution and a copy of the county auditor tax rate certification to the board of elections.<sup>165</sup>

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<sup>165</sup> Prior law did not clearly distinguish between the initial resolution seeking the auditor's rate certification and the resolution submitted to the board of elections. The Secretary of State's Ballot Questions and Issues Handbook refers to them as district resolutions (pp. 2-9 to 2-11).



## **Property tax exemption for burial grounds**

(R.C. 1721.01 and 5709.17; repealed R.C. 759.24)

The act eliminates several superfluous provisions in the law pertaining to the property tax exemption for burial grounds. Under continuing law, R.C. 5709.14 (not in the act) exempts all lands used exclusively as burial grounds except those that are held by a person, company, or corporation with a view to profit. This exemption is broad enough to fully encompass all property described in the exemptions eliminated by the act (i.e., cemeteries established and operated by a village and land held exclusively for cemetery or burial purposes with no view to profit by a company or association incorporated for such purposes).

## **Tax credits and exemptions**

### **Biennial forecasts for business incentive tax credits**

(R.C. 107.036; Section 757.40)

The act requires that every main biennial budget bill include detailed estimates of the state revenue that will be foregone due to "business incentive" tax credits in the current biennium and future biennia. The estimates must be provided for the Job Creation Tax Credit, Job Retention Tax Credit, Historic Preservation Tax Credit, Motion Picture Tax Credit, New Markets Tax Credit, Research and Development Credit, and InvestOhio small business investment tax credit. For each credit, the bill must include estimates of (a) the amount of credits that may be authorized in each year of that biennium, (b) the amount of credits that may be claimed in each year of that biennium, and (c) the total amount of authorized credits that could be claimed in future biennia. The estimates must be provided in the state budget that the Governor submits to the General Assembly, and in the final bill passed by the General Assembly.

The act itself includes estimates for the listed business incentive tax credits for the FY 2018-2019 biennium.

### **Job creation tax credit**

(R.C. 122.17; Section 803.270)

The act allows employers that apply for a job creation tax credit (JCTC) on or after September 29, 2017, to count compensation paid to certain "work-from-home" employees for the purposes of qualifying for and complying with the terms of the JCTC agreement.



Under continuing law, the Tax Credit Authority (TCA) is authorized to enter into JCTC agreements with employers to foster job creation 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 JCTC agreement). The credit may be claimed against the commercial activity tax (CAT), financial institutions tax (FIT), petroleum activity tax (PAT), domestic or foreign insurance company premiums taxes, or personal income tax. If the amount of the credit exceeds the tax otherwise due, the excess is refundable.

Continuing law allows employers to receive a JCTC based on "home-based employees," but special conditions and reporting requirements apply. For example, all of the employees must reside in Ohio and be paid at least 131% of the federal minimum wage. Furthermore, the JCTC agreement must not include any employees who work at the project location and must expire before 2019.

Under the act, a new category of "work-from-home" employees is created. They are treated the same as employees who work at the project location as long as the work-from-home employees reside in Ohio and are supervised from the project location. The act also specifies that the movement of a work-from-home employee to another residence or the migration of their work duties to the project location does not trigger a provision under continuing law that requires employers subject to a JCTC agreement to notify the impacted political subdivisions before relocating a substantial number of employment positions.

### **Motion picture tax credit**

(R.C. 122.85)

The act makes the following changes to Ohio's motion picture tax credit:

(1) Requires that, to be eligible for the credit, a motion picture company must show that it has already secured funding equal to at least 50% of the motion picture's total production budget. This requirement is more specific than prior law, which required only that the company document its "financial ability" to "complete the motion picture."

(2) Provides that, if the amount of credits allowed in any fiscal year is less than continuing law's annual \$40 million credit cap, the difference may be carried forward and added to the cap in the following fiscal year.



(3) Requires the Director of Development Services to charge a tax credit application fee equal to 1% of the estimated value of the credit or \$10,000, whichever is less. Under prior law, the Director was authorized, but not required, to charge an application fee. At the time of enactment, the Director had exercised this discretion to charge a fee equal to .5% of the estimated value of the credit or \$10,000, whichever is less.

(4) States that the Director must give priority to tax credit-eligible productions that are television series or miniseries.

Continuing law authorizes the refundable motion picture tax credit for companies that produce at least part of a motion picture in Ohio and incur at least \$300,000 in Ohio-sourced expenditures. The credit is allowed against the commercial activities tax, financial institutions tax, or personal income tax.

### **Annual cap on New Markets Tax Credit**

(R.C. 5725.33)

The act modifies the annual cap on the New Markets Tax Credit. Under prior law, the cap was expressed as a limit on the amount of credits that taxpayers may claim in a year. The act converts the cap into a limit on the amount of credits the Director of Development Services may approve in a year. The amount of the annual cap – \$10 million – remains the same.

The New Markets Tax Credit is modeled on the federal New Markets Tax Credit program. The credit is nonrefundable and may be claimed against the insurance and financial institution taxes. The credit is awarded to insurance companies and financial institutions that purchase and hold securities issued by Community Development Entities to finance investments in qualified businesses operating in low-income communities in Ohio.

### **Enterprise zone agreement extension**

(R.C. 5709.62, 5709.63, and 5709.632)

The act removes the October 15, 2017, sunset on local governments' authority to enter enterprise zone agreements. Under continuing law, counties and municipal corporations may designate areas within the county or municipal corporation as "enterprise zones." After designating an area as an enterprise zone, the county or municipal corporation must petition the Director of Development Services for certification of the designated enterprise zone. If the Director certifies a designated enterprise zone, the county or municipal corporation may then enter into enterprise



zone agreements with businesses for the purpose of fostering economic development in the enterprise zone. However, the authority to do so was set to expire October 15, 2017. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone or to relocate its operations to the zone in exchange for property tax exemptions and other incentives.

### **Exemption for computer data center equipment**

(R.C. 122.175)

The act increases, from five to six, the number of years that the operator of a 2013 computer data center project has to meet the capital investment requirement associated with an existing sales and use tax exemption. Continuing law authorizes the Tax Credit Authority (TCA) to fully or partially exempt from taxation the purchase of certain computer data center equipment if the operator of the data center agrees to make a \$100 million capital investment at a site in this state within a specified number of years. The exemption applies to computer equipment, cooling systems, electricity management devices, construction materials, and other tangible personal property to be used in the construction and operation of a data center.

The extension applies only to such projects that began in 2013. For projects beginning in 2014, the capital investment must continue to be made within four years, and for all subsequent projects the investment must continue to be made within three years.

### **Temporary historic rehabilitation CAT credit**

(Section 757.70)

The act extends, to July 1, 2019, the temporary authorization for owners of a historic rehabilitation tax credit certificate to claim the credit against the commercial activity tax (CAT) if the owner cannot claim the credit against another tax and the certificate becomes effective after 2013 but before June 30, 2019 ("qualifying certificate owner"). Additionally, the act authorizes a qualifying certificate owner that is not a CAT taxpayer to file a CAT return for the purpose of claiming the historic rehabilitation tax credit. This enables a business with less than \$150,000 in taxable gross receipts that is not a sole proprietor or a pass-through entity composed solely of individual owners, or that is a nonprofit organization, to claim a tax "credit" as if the business or organization were a CAT taxpayer.

Uncodified law enacted in 2014 by H.B. 483 of the 130th General Assembly authorized certificate owners to claim a similar credit against the CAT only for tax periods ending before July 1, 2015. H.B. 64 of the 131st General Assembly extended the



authorization for tax periods ending between July 1, 2015, and June 30, 2017. Except for these prior temporary provisions, a certificate holder may claim the credit against the personal income tax, financial institutions tax, or foreign or domestic insurance company premiums tax.

### **Required filing of tax credit certificates**

(R.C. 122.17, 122.171, 122.175, and 5703.0510)

Under continuing law, before claiming certain tax credits, a taxpayer must receive a tax credit certificate demonstrating the taxpayer's eligibility for the credit. The certificate may indicate the credit amount for which the taxpayer is eligible, the tax year in which the credit may be claimed, or other relevant information. Examples of tax credits for which certificates are issued include: the job retention and creation tax credits, the historic building rehabilitation tax credit, and the motion picture tax credit.

Under prior law, for many tax credits, taxpayers were only required to submit tax credit certificates to the Tax Commissioner upon the Commissioner's request. The act instead provides that taxpayers must always submit an accompanying certificate whenever claiming a tax credit. In addition, the act allows the Commissioner to create, and requires taxpayers to submit, a form tracking the credits claimed by a taxpayer. If a taxpayer fails to submit that form or any tax credit certificate, the Commissioner may deny the tax credit.

### **Tax credit administrative fees**

(R.C. 122.17, 122.171, 122.174, 122.175, 122.85, 122.86, 3735.672, 5709.68, and 5725.33)

The act credits existing administrative fees charged by the Development Services Agency (DSA) to administer several economic development tax incentive programs to a new Tax Incentives Operating Fund to pay the expenses of DSA's Business Services Division and expenses DSA otherwise incurs in administering those programs. The fees affected are those for the job creation, job retention, motion picture, small business investment, and New Markets Tax credits; community reinvestment area and enterprise zone property tax exemptions; and a computer data center sales and use tax exemption. The amounts of the fees are unchanged.

Under prior law, administrative fees DSA charges for the small business investment tax credit and the New Markets Tax Credit were credited to separate funds used exclusively to fund those programs. Administrative fees charged by DSA to administer the other incentive programs were credited to the Business Assistance Fund and used exclusively to fund the administrative expenses of DSA's Business Services



Division. (Under continuing law and practice, this Division administers many of these incentive programs.)

### **Rural and high growth industry investment credit (VETOED)**

(R.C. 122.15, 122.151, 122.152, 122.153, 122.154, 122.155, 122.156, 5725.98, 5726.98, and 5729.98)

The Governor vetoed a provision that would have authorized a nonrefundable tax credit for insurance companies and financial institutions that invested in special purpose "rural and high-growth industry funds" certified by the Development Services Agency (DSA) if the fund contributed capital to certain types of businesses with substantial operations in Ohio.

The credit would have equaled the amount of the investor's "credit-eligible capital contribution" and would have been spread evenly over a four-year period beginning three years after the date of the contribution. The total amount of credits awarded under the program would have been limited to \$60 million. The vetoed provision would have required that 50% of a fund's loans and investments be made in rural businesses and 50% be made in businesses engaged in certain specified "high-growth industries" or certified by DSA as being beneficial to the economic growth of the state.

The vetoed provision would have also stipulated various procedures and requirements related to the process of certifying a rural and high-growth industry fund, investment benchmarks, progress reports, limited credit recapture, and decertification of funds.

## **Tax Administration**

### **Temporary tax amnesty program**

(Sections 409.20, 512.140, and 757.110)

The act requires that the Tax Commissioner administer a six-week tax amnesty program from January 1 through February 15, 2018, with respect to delinquent personal income tax, commercial activity tax, sales and use tax, school district income tax, financial institutions tax, alcoholic beverage tax, and the cigarette and tobacco excise taxes. The program applies only to such taxes that were due and payable as of May 1, 2017, which were unreported or underreported, and which remain unpaid. The amnesty does not apply to any tax for which a notice of assessment or audit has been issued, for which a bill has been issued, or for which an audit has been conducted or is



pending. Nor does the amnesty apply to any unpaid tax that pertains to a tax period that ends after September 29, 2017.

If, during the amnesty, a person pays the full amount of delinquent taxes owed by the person and one-half of any interest that has accrued on the taxes, the Commissioner is required to waive or abate all applicable penalties and the other one-half of any interest that accrued on the taxes. The act authorizes the Commissioner to require a person participating in the amnesty to file applicable returns or reports, including amended returns or reports.

In addition to receiving a waiver of penalties and one-half of accrued interest, a person who participates in the amnesty is immune from criminal prosecution or any civil action with respect to the taxes paid through the amnesty. The act specifies, further, that no assessment may be issued against any person with respect to tax paid through the amnesty.

The act requires that the Commissioner issue forms and instructions for the amnesty, and take any other actions necessary to implement it. The act directs the Commissioner to publicize the program so as to maximize public awareness of the program and participation in it.

Revenue from the amnesty is not allocated in the same manner as it would be if it were not collected through the amnesty. Under the amnesty, the first \$20 million that would otherwise be credited to the GRF is instead to be credited to the Budget Stabilization Fund. Collections from taxes that normally are destined for the GRF in excess of \$20 million would then be credited to the GRF. To the extent that amnesty collections are from taxes that are not credited to the GRF (e.g., school district income taxes or local sales and use taxes), or not credited entirely to the GRF (e.g., commercial activity tax), those collections would be credited as they normally would be and would not be diverted to the BSF.

### **Licensing and permitting issues**

(R.C. 3734.9011, 4303.26, 4303.271, 5703.21, 5703.26, 5735.02, and 5743.61; Section 803.120)

### **General authority to deny fraudulently obtained licenses**

The act generally authorizes the Department of Taxation, the Treasurer of State, and certain county officials to deny or revoke a license if certain prohibited acts are performed in relation to an application to approve or renew the license.



Continuing law generally prohibits any person from providing false or fraudulent information to the Department of Taxation, the Treasurer of State, a county auditor, a county treasurer, or a county clerk of courts. Similarly, assisting a person in providing false or fraudulent information, or altering records upon which such information is based in an attempt to defraud the state, are also prohibited. The act adds that, when such fraudulent acts relate to an application to approve or renew a license, such acts are cause for the denial or revocation of the license. Although the Revised Code includes license-specific provisions for denying or revoking a fraudulently obtained license, the act provides a blanket authorization that applies to any license administered by such officials.

#### **Tax compliance: licenses administered by the Tax Commissioner**

Continuing law requires certain businesses to register with or obtain a license from the Tax Commissioner in order to operate in the state. The act modifies the registration or licensing requirements for four such business classes: (1) retail tire dealers, (2) wholesale tire distributors, (3) motor fuel dealers, and (4) distributors of tobacco products other than cigarettes.

Under the act, when a person registers or applies for a new or renewal license to operate as a dealer or distributor listed above, the Commissioner must specifically confirm that the person has filed any tax returns, paid any outstanding taxes or fees, and submitted any required information that, to the Commissioner's knowledge, are due at the time of registration or application. Under prior law, the Commissioner was already required to confirm that an applicant for one of the licenses described above – the motor fuel dealer license – was in compliance with Ohio's tax laws, but that provision did not specifically mention delinquent returns, payments, or information.

#### **Tax compliance: liquor permits**

Continuing law requires that, before approving the transfer or renewal of a liquor license, the Division of Liquor Control must confirm with the Tax Commissioner that the applicant is not delinquent in remitting any sales tax or withheld income taxes. The act additionally requires the Commissioner to confirm that the applicant is not delinquent in paying, filing returns for, or providing information regarding the following: horse-racing taxes, alcoholic beverage taxes, motor fuel taxes, petroleum activity taxes, cigarette and other tobacco product taxes, and casino gross receipts taxes.

Under continuing law, the Commissioner is also required to annually review the Department of Taxation's sales and income tax records and notify the Division of Liquor Control if any liquor permit holder is delinquent in paying or filing returns for either of those taxes. The act adds that the Commissioner must also review the records for the taxes listed above and notify the Division of any related delinquencies. The act



also expressly authorizes Department of Taxation agents and employees to disclose such information to the Division of Liquor Control. (Under continuing law, taxpayer information possessed by the Department of Taxation may not be disclosed to anyone unless the law specifically authorizes disclosure.)

### **Public utility excise tax collection**

(R.C. 5727.26, 5727.28, 5727.31, 5727.311, 5727.38, 5727.42, 5727.47, 5727.48, 5727.53, and 5727.60)

The act transfers from the Treasurer of State to the Tax Commissioner the collection and refund responsibilities for the public utility excise tax. Under prior law, the Commissioner determined the amount of tax due and certified it to the utility company and the Treasurer, and the company paid the tax to the Treasurer; estimated tax installments also were paid to the Treasurer, and tax reports were filed with the Commissioner. The Treasurer also issued refunds, although the Commissioner determined refund amounts. The act requires all payments to be made to, and all refunds to be made by, the Commissioner, except for tax payments required to be made by electronic funds transfer, which will continue to be paid to the Treasurer.

The act also shortens the maximum tax filing extension that the Tax Commissioner may allow for public utilities, from 60 to 30 days; removes a requirement that excise tax penalties not paid within 15 days be certified to the Attorney General for collection (another existing law still provides for certification of tax debts but not within 15 days); and states that the Commissioner may assess the excise tax against utilities, but is not required to (the effect of this change is not clear since utilities subject to the tax still must report and pay the tax).

The public utility excise tax is imposed on the basis of the gross receipts of various classes of utilities, including natural gas, water-works, and pipe-line companies. All revenue from the public utility excise tax is credited to the General Revenue Fund.

### **CAT administrative expense earmark**

(R.C. 5751.02; Section 812.20)

The act reduces the percentage of commercial activity tax (CAT) revenue to be credited to the Revenue Enhancement Fund from prior law's 0.85% to 0.75%, beginning July 1, 2017. The fund is used to defray the Department of Taxation's expenses in administering the CAT and "implementing tax reform measures."



## **Pollution control, energy facility tax exemption fees**

(R.C. 5709.212)

Under continuing law, a pollution control facility or a facility that converts natural gas, oil, solid waste, or waste heat to other forms of energy in industrial or commercial settings may apply to the Department to exempt property used for such purposes from property tax and purchases of such property from sales and use taxation. Before approving a facility for such exemptions, the Department must obtain certification that a facility qualifies for those exemptions from the Environmental Protection Agency (EPA) in the case of a pollution control facility or the Development Services Agency (DSA) in the case of an energy conversion facility.

Applicants for such exemptions must pay an application fee. Under prior law, one-half of the fee revenue was allocated to the Department and one-half was allocated to the agency that certifies the facility's eligibility – EPA or DSA. The act instead allocates all revenue arising from the administrative fees to that certifying agency.

### **Fee payments and refunds: \$1 minimum**

(R.C. 5703.75)

The act establishes a \$1 minimum payment floor for all fees administered by the Tax Commissioner. A person liable for such a fee is not required to pay it if the amount due is \$1 or less. Similarly, the Commissioner is not required to issue a refund of any such fee if the amount of the refund is \$1 or less. Under prior law, these \$1 minimums applied only to taxes administered by the Commissioner. Fees administered by the Commissioner include a wireless 9-1-1 fee and a tire fee.

### **Interest on wireless 9-1-1 fees**

(R.C. 5739.132)

The act conforms two statutes pertaining to charging or paying interest for late wireless 9-1-1 fee remittances or for refunds of overpaid fee remittances. The wireless 9-1-1 fee is a state fee imposed on wireless telephone service (both prepaid and other) payable by the subscriber to the provider of the wireless service, who must remit the fee collections to the state in a manner similar to vendors remitting sales tax collections. Revenue from the fees provides financial support for 9-1-1 systems. The act expressly incorporates the interest provisions into the appropriate sales and use tax statute. Prior law incorporated that statute only by cross reference.



## **Estate tax: annual settlements**

(R.C. 319.54, 321.27, 5731.46, and 5731.49; Section 803.110)

The act reduces the number of times each year that county auditors and treasurers are required to distribute estate tax revenue. Under prior law, treasurers were required to make semiannual settlements for all received estate tax revenue on February 25 and August 20 each year. The act eliminates the August settlement and instead requires treasurers to distribute all revenue received in the preceding calendar year on February 25.

The estate tax has been repealed and does not apply to any person whose death occurred after 2012. Generally, the tax is due within nine months of death. However, extensions (with interest) were permitted in some cases and are still being collected. Eighty per cent of the revenue is distributed to the municipal corporation or township where the tax originates and 20% (less administrative costs) is allocated to the state GRF.

## **Local Government Fund and other revenue distributions**

### **Local Government Fund: township and village set-aside**

(R.C. 131.44, 131.51, 5747.50, 5747.502, and 5747.503; Sections 757.20 and 803.210)

The act codifies and makes permanent a monthly \$1 million set-aside of Local Government Fund (LGF) money for townships and smaller villages that was allowed in temporary law for FYs 2016 and 2017. Under the act, the \$1 million is paid each month to villages with a population of less than 1,000 (16.6%) and to all townships (83.3%). This money is divided among the townships and villages half in equal amounts, and half based on the road miles in each subdivision. As an example, each month, the \$833,333 allocated to townships would be distributed as follows: (a) one-half divided equally among all townships and (b) one-half allocated to townships based on the proportion of the township-controlled road miles in that township as compared to the total miles of all township-controlled roads in the state.

The set-aside payments are made to county LGFs, and county treasurers are responsible for distributing the payments among townships and villages. Each month, the Tax Commissioner must identify the amount to be distributed to each subdivision. The Commissioner must also update the road mile information used to determine the payments at least once every five years.

Under continuing law, the LGF receives 1.66% of the total state tax revenue credited to the General Revenue Fund each month. Most of these funds are distributed



to county undivided local government funds (county LGFs). A smaller portion of the funds has been used to make direct payments to municipal corporations.

The \$1 million used to make the act's set-aside payments each month is subtracted from the LGF money that would otherwise be used to make direct payments to municipal corporations. Those funds were also used to make the set-aside payments in FYs 2016 and 2017.

### **Local Government Fund: allocation for addiction services**

(R.C. 757.20)

For FYs 2018 and 2019 only, the act combines the remaining LGF money that would otherwise be used to make direct payments to municipal corporations each month, after the \$1 million set-aside, and allocates it to a new Targeting Addiction Assistance Fund. Money in that Fund must be used to provide specified substance abuse and mental health services.

### **Public Library Fund**

(R.C. 131.51(B); Section 387.20)

The act requires that the share of General Revenue Fund revenue earmarked for the Public Library Fund (PLF) equal 1.68% during the FY 2018-2019 biennium. This percentage is a temporary increase from the 1.66% required in permanent law, but is less than the 1.70% allocated to the PLF in the FY 2016-2017 biennium pursuant to a prior temporary increase authorized in H.B. 64 of the 131st General Assembly.

Under continuing law, county undivided public library funds in every county receive a distribution from the state PLF. Agreements among local governments (and, in a few cases, the county budget commission) determine the amounts to be allocated to libraries within the county, and county treasurers distribute the amounts accordingly. (In a few counties, other kinds of local governments receive a share of the county PLF.) The amount a county undivided PLF receives in a given year depends upon the Fund's "guaranteed share" and its "share of the excess." A fund's "guaranteed share" is the amount the fund received in the previous year after an adjustment for inflation. In any year, if the guaranteed shares of all counties exceed the total balance of the state PLF, then the share of county funds must be reduced proportionately. Alternatively, if the balance of the state PLF exceeds the guaranteed shares of the counties, then each county may receive a "share of the excess." That share is calculated by determining an equalization ratio for each county that is based on the county's population and its guaranteed share from the previous year, with the effect that a greater share of the



excess is paid to county PLF funds that have received a relatively smaller share of PLF money on a per-capita basis.

### **Commercial activity tax revenue**

(R.C. 5751.02; Section 812.20)

Beginning for FY 2018 and thereafter, the act reallocates commercial activity tax (CAT) revenue, less 0.85% of such revenue allocated for administrative expenses and "tax reform" measures, as follows:

- (1) Increases the share credited to the General Revenue Fund from 75% to 85%;
- (2) Decreases the share allocated to reimburse school districts for the loss of tangible personal property taxes from 20% to 13%;
- (3) Decreases the share allocated to reimburse taxing units other than school districts for the loss of tangible personal property taxes from 5% to 2%.

### **Columbus water and sewer LGF penalties (VETOED)**

(R.C. 5747.504, 5747.51, 5747.53; Section 803.210)

The Governor vetoed a proposal to penalize a municipal corporation with a population in excess of 700,000 for engaging in certain actions related to its provision of water and sewer services outside of its territory by reducing or withholding payments the municipal corporation receives from the LGF. Only Columbus would have met this population threshold at the time the proposal would have gone into effect.

The vetoed provision required the Tax Commissioner to withhold all LGF payments that would otherwise have been made to the city of Columbus if it had taken any of the following actions after 2017 with respect to providing sewer and water service to an area outside its territory (referred to for purposes of this analysis as "offending conditions or actions"):

- (1) Required as a condition of providing such services that such an area be annexed to Columbus;
- (2) Required as a condition of providing such services that the township or municipal corporation in which such an area is located make direct payments to Columbus in excess of those reasonably related to the cost of providing sewer or water services in that territory;



(3) Required as a condition of providing such services that the township or other municipal corporation comply with any condition not reasonably related to the cost of providing sewer or water services in that territory;

(4) Withdrew or threatened to withdraw sewer or water service from the territory of a township or another municipal corporation if that subdivision failed to make any direct payment or comply with any condition described in (2) or (3), above.

The vetoed provision also would have reduced LGF payments to the city of Columbus by 20% if Columbus either (1) failed to develop and publish, within two years after the provision took effect, a plan to equalize the sewer and water rates it charges to residents and nonresidents by 2022 and continued to charge different sewer and water rates for residents and nonresidents after the publication deadline or (2) charged different sewer and water rates for residents and nonresidents after 2021.

### **School district tangible personal property tax reimbursements (VETOED)**

(R.C. 5709.92)

The Governor vetoed a provision that would have modified the phase-out of payments that school districts receive as reimbursement for their loss of tangible personal property (TPP) tax revenue. The payments compensate districts for the revenue lost due to legislated reductions in the taxable value of utility company TPP and by the repeal of taxes on TPP used in business.

The act would have affected payments that are based on tax losses from local operating levies that are imposed at a fixed millage rate (i.e., not emergency levies or bond levies). Under continuing law, reimbursement payments for such levies are scheduled to phase-down each year according to a fixed percentage of each district's taxable property valuation. Specifically, payments will begin to decline in FY 2018 by  $\frac{1}{16}$  of 1% of a district's taxable property valuation averaged over the three-year period from 2014 to 2016 ( $\frac{1}{16}$  of 1% is the equivalent of  $\frac{5}{8}$  mills per dollar of valuation, or 0.0625%). In each year thereafter, a district's payment will equal the preceding year's payment minus 0.0625% of the three-year average valuation, until the payment amount reaches zero.

The act would have established separate phase-out schedules for joint vocational school districts (JVSDs) and all other school districts. For JVSDs, each year's payment would have equaled the preceding year's payment minus 3.5% of the district's "total resources." In general, a district's "total resources" would have equaled the district's combined tax revenue, state aid, and TPP reimbursements for a fiscal year.



For school districts other than JVSDs, payments would have equaled the following:

(1) In FY 2018, the greater of (a) the amount the district would have received under pre-existing law (the district's FY 2017 TPP reimbursement, not including any supplemental payment authorized in S.B. 208 of the 131st General Assembly, minus 0.0625% of its average property valuation, which is equivalent to the taxes raised by a  $\frac{5}{8}$ -mill levy), or (b) the district's FY 2017 reimbursement, including any supplemental payment, minus 3.5% of the district's total resources.<sup>166</sup>

(2) In FY 2019, the district's FY 2018 TPP reimbursement minus 0.0625% of its average property valuation.

(3) In FY 2020 and thereafter, the district's preceding year's payment minus 0.025% of the district's average taxable property valuation averaged over the three-year period from 2016 to 2018 (equivalent to the taxes raised by a one-fourth mill levy).

For districts other than JVSDs, the effect of these formula changes would have been to slow the phase-out of payments, beginning in FY 2018 for some districts and in FY 2020 for all others that continued to receive payments.

## **Special taxing districts**

### **Tourism development district modifications**

Under continuing law, a township or municipal corporation located in a county with a population between 375,000 and 400,000 that levied a county sales tax rate of 0.50% or less in September 2015 (currently only Stark County) may designate a special district within which the municipal corporation or township may levy certain taxes or fees or receive certain revenue to fund tourism promotion and development in that district. Such a district is referred to as a "tourism development district" or a TDD. The act makes several modifications to the requirements for creating and financing a TDD.

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<sup>166</sup> S.B. 208 provided for a separate "supplemental" payment for city, local, and exempted village school districts. The payment guaranteed that the combined amount of state foundation funding and TPP reimbursement for fixed-rate operating levies that a district received in FY 2017 equaled at least 96% of the combined amount of state foundation funding and TPP reimbursement for fixed-rate operating levies that the district received in FY 2015.



### **Tourism development district creation**

(R.C. 503.56(B) and 715.014)

Under prior law, a TDD could consist of no more than 200 contiguous acres, and new TDDs could not be designated after 2018. The act increases the maximum permissible size of a TDD to 600 contiguous acres and allows municipal corporations and townships in Stark County to designate new TDDs through 2020.

### **Tourism development district lodging taxes**

(R.C. 5739.09(N))

The act requires a county, township, or municipal corporation in which a TDD is located (again, only Stark County and townships and municipalities therein) to use the proceeds collected from its lodging tax on hotels located in the TDD exclusively to foster and develop tourism in that TDD. Stark County must divert such revenue for all lodging taxes it levies, including the special lodging tax increase authorized by the act (see "**Rate increase in Stark County**," above). Also, any municipal corporation or township that designates a TDD must use all lodging tax proceeds collected from hotels located in the TDD to foster and develop tourism in that TDD.

Before a county, township, or municipal corporation may make use of such proceeds to foster and develop tourism in the TDD, it must obtain the approval of the convention and visitors' bureau (CVB) operating there. After obtaining the CVB's approval, it may pay the proceeds to the CVB for it to use for that purpose in an agreed-upon manner.

Under continuing law, county lodging tax proceeds generally are used to fund the county's convention and visitors' bureau, though up to one-third of the proceeds may be paid to municipal corporations and townships where hotels are located but that have not levied a lodging tax. (Stark County has special authority to use up to \$500,000 of lodging tax proceeds annually to finance the cost of constructing or maintaining a stadium or pay the debt charges on obligations issued for that purpose.) Continuing law requires one-half of municipal and township lodging tax revenue to be used to make contributions to the county's convention and visitors' bureau, while the other one-half supplements the subdivision's general fund. Various exceptions to these revenue allocation requirements have been enacted previously; the act adds these additional exceptions for Stark County and townships and municipalities in that county with a TDD.



## **Report of affected taxpayers**

The act changes a reporting date concerning businesses located in a TDD. TDDs may generate revenue through the imposition of a gross receipts tax of up to 2% on local businesses located in the TDD. The township or municipal corporation that has created a TDD must provide the Tax Commissioner with a list of businesses that will be subject to the TDD gross receipts tax, which will be collected and enforced by the Commissioner. Previously, the list had to be submitted by January 1 and June 1 of each year. Under the act, the second report is due on July 1.

## **Tourism development district infrastructure financing**

(R.C. 307.678 and 5739.09(A)(1) and (J)(2); Section 803.290)

The act modifies a provision that had, until the end of 2015, authorized Stark County to enter into a cooperative agreement with the county's convention and visitors' bureau under which parties agreed to use up to \$500,000 of annual revenue from the county's existing lodging tax to fund the improvement of a stadium, including by issuing bonds for that purpose. Additional parties to the agreement could have included: the municipal corporation and school district within which the stadium was located, a port authority, and a nonprofit corporation that has authority under its organization documents to acquire, construct, renovate, or otherwise improve a stadium.

The act removes that date restriction and essentially transforms this cooperative stadium financing mechanism into an authorization for local governments and private parties to enter into a cooperative agreement to finance the costs of constructing, renovating, or maintaining any permanent improvements located in a TDD designated by a municipal corporation. As part of that transformation, the act expands the types of subdivisions that may be parties to a cooperative agreement to include a transit authority whose territory overlaps with the TDD, which may agree to contribute proceeds from the growth of its sales tax from sales within the TDD, or a new community authority, which may agree to pledge bond proceeds to support the construction or maintenance of such improvements.

For the county and other subdivisions that may be parties to such a cooperative agreement, the act further specifies the revenue sources that may be pledged or contributed to finance such permanent improvements, including by the servicing of debt obligations. For example, while a county may contribute up to \$500,000 of lodging tax annually for that purpose, the act also permits a county to contribute its sales tax growth from sales within the TDD, and allows a municipal corporation, county, or transit authority to contribute revenue from a tax imposed by that subdivision to the



extent such revenue is derived from property located or activities conducted in the TDD and is not prohibited from being used for that purpose.

The act's modifications to cooperative infrastructure financing agreements apply to any future TDD project and any TDD project that has already commenced or been completed.

#### **Tourism development district interstate signage**

(R.C. 5516.20)

The act specifically authorizes a sign incorporating LED lights to be located within a TDD next to an interstate highway, provided the sign complies with all state and federal interstate highway signage requirements and limitations prescribed under continuing law.

#### **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 complete transportation improvements within the territory of the participating counties. The improvements may include construction, repair, maintenance, or expansion of streets, highways, parking facilities, rail tracks and necessary related rail facilities, bridges, tunnels, overpasses, underpasses, interchanges, approaches, culverts, and other means of transportation. The improvements may also include the erection and maintenance of traffic signs, markers, lights, and signals.

An RTIP is governed by a cooperative agreement that describes the scope of the project and includes a comprehensive plan for its completion. The agreement is administered by a governing board consisting of one county commissioner and the county engineer from each participating county.

#### **Revenue pledges**

(R.C. 5595.06, 5709.45, 5739.021, 5739.023, 5739.026, 5741.021, and 5741.022; Section 803.300)

The governing board of an RTIP does not have direct taxing authority, but it may solicit and receive pledges of revenue and issue securities backed by that revenue for the purpose of funding the transportation improvements. The state, participating counties, and political subdivisions or taxing units located within the participating counties may pledge revenue to the governing board. The revenue may come from the state General Revenue Fund, payments in lieu of taxes derived from tax increment



financing (TIF), income tax revenue derived from a joint economic development zone (JEDZ) or joint economic development district (JEDD), revenue derived from special assessments levied in a special improvement district (SID), and revenue derived from an income source of a new community district.

The act adds additional possible tax sources by permitting municipal corporations to pledge contributions of income tax revenue and counties and transit authorities to pledge contributions of sales tax revenue to the RTIP if the revenue may lawfully be spent for that purpose. The act also specifies that contributions of revenue to an RTIP by the state, a political subdivision, or a taxing unit may take any form and may be made subject to any terms that are mutually agreeable to the revenue contributor and the governing board of the RTIP.

### **Dissolution**

(R.C. 5595.03 and 5595.13; Section 803.300)

The act limits the duration of an RTIP to 15 years or, if the governing board is authorized to issue securities, 20 years after the first such issuance. The governing board is required to fulfill all contractual duties and repay all bonds before that date. Previously, an RTIP could continue for any number of years specified in the cooperative agreement.

The act requires unencumbered funds held by the governing board upon the dissolution of an RTIP to be distributed proportionally to the state and to each political subdivision and taxing unit that contributed revenue to the RTIP (unless the cooperative agreement provides otherwise). Under continuing law, the boards of county commissioners that created the RTIP assume title to all real and personal property acquired by the governing board upon its dissolution. That property is divided and distributed in the manner specified by the cooperative agreement.

### **Transportation financing districts**

(R.C. 5595.06, 5709.48, 5709.49, and 5709.50)

The act establishes a procedure by which one or more counties participating in an RTIP may designate "Transportation Financing Districts" (TFDs) for the purpose of funding the transportation improvements described in the cooperative agreement for the RTIP. The rules and procedures associated with TFDs are similar to those that apply, under continuing law, to tax increment financing (TIF) incentive districts. Under the act, the counties are authorized to exempt a percentage of the increased value of parcels located within the TFD from property taxation and require the owners of the parcels to make service payments in lieu of taxes for the RTIP.



### **Prerequisites to creation**

Creating a TFD is a four-step process that starts with notifying and obtaining the approval of each subdivision and taxing unit within the proposed district. The boards of county commissioners may, in the process of seeking approval, negotiate compensation agreements with any or all of the subdivisions and taxing units. Then, each property owner must be notified and give their approval, after which the boards of county commissioners may adopt a resolution creating the district. The resolution must describe the area included in the district, the percentage of improvements to be exempted from taxation, the number of years the district will exist (which cannot exceed the remaining life of the RTIP), and a plan describing the transportation improvements and how they will benefit the property owners.

Finally, one of the participating boards of county commissioners must submit a copy of the resolution and supporting documentation to the Director of Development Services for approval. The Director must evaluate the proposed district and determine if the boards of county commissioners have met all substantive and procedural TFD requirements.

### **Area of the district**

A TFD may include territory in more than one county as long as each such county has adopted the resolution creating the district and is a participant in the RTIP. A TFD may not include areas used exclusively for residential purposes or exempted from taxation under an existing TIF or Downtown Redevelopment District (DRD) ordinance. The district need not be enclosed by a continuous boundary. The resolution creating the TFD may designate excluded parcels located within the general boundary of the district that are not included in the district and noncontiguous parcels that are outside the general boundary of the district to be included in the district.

### **Service payments**

A TFD would generate revenue in the same manner as a TIF. The boards of county commissioners that adopted the TFD resolution may exempt up to 100% of improvements to parcels located within the district. In lieu of the taxes on the exempted portion of increased property value, the counties would receive annual payments, called "service payments," from the owners of the exempted property. Service payments equal the amount of real property taxes that would have been charged on the value exempted from taxation and would be distributed to the regional transportation improvement project fund (RTIP Fund) of the county in which the exempted parcel is located.



As with TIFs, revenue from certain special-purpose levies may not be diverted; the revenue continues to be received by the taxing unit that imposes it.



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## DEPARTMENT OF TRANSPORTATION

### Rest areas

- Prohibits the Department of Transportation (ODOT) from closing any rest area that is located along a scenic byway.

### Repeal date for towing exemption

- Fixes a technical error in the transportation budget act (H.B. 26) in which a section pertaining to size and weight exemptions for towing vehicles was erroneously scheduled for repeal one year after its effective date, when it should have been scheduled for repeal two years after that date.

### Ohio Maritime Assistance Program (VETOED)

- Would have created the Ohio Maritime Assistance Program, which would have been administered by ODOT.
- Would have permitted certain municipal corporations and port authorities to apply to ODOT for grants to construct or improve marine cargo terminals and other maritime structures located on the shores of Lake Erie, a Lake Erie tributary, or the Ohio River.
- Would have required the grant recipient to provide a match not to exceed \$1 for each \$1 in state grant funding received for the proposed project.

### Rest areas

(R.C. 5515.07)

The act prohibits the Department of Transportation (ODOT) from closing any rest area that is located along a scenic byway. There are presently 27 scenic byways designated within Ohio.<sup>167</sup>

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<sup>167</sup> A map of Ohio's scenic byways is available at <http://www.dot.state.oh.us/OhioByways/Documents/OhioByways2018.pdf>.



## **Repeal date for towing exemption**

(Section 610.110 (amends Section 812.50 of H.B. 26 of the 132nd G.A.))

The act fixes a technical error in the transportation budget act of the 132nd G.A. (H.B. 26). In that act, a provision pertaining to size and weight exemptions for towing vehicles was erroneously scheduled for repeal on June 30, 2018, when it should have been scheduled for repeal on June 30, 2019.<sup>168</sup> For more information regarding that provision, see pages 25-26 of the final analysis for H.B. 26, at <https://www.legislature.ohio.gov/download?key=7230&format=pdf>.

## **Ohio Maritime Assistance Program (VETOED)**

(R.C. 5501.91; Sections 411.10 and 411.13)

The act would have created the Ohio Maritime Assistance Program, which would have been administered by ODOT. The Program would have permitted certain municipal corporations and port authorities to apply to ODOT for grants to construct or improve marine cargo terminals and other maritime structures located on the shores of Lake Erie, a Lake Erie tributary, or the Ohio River. The Program would have included specified eligibility criteria, particularly focused on the likely success of the proposed project, and would have required a grant recipient to provide matching amounts equivalent to \$1 for each \$1 received from ODOT. The act would have appropriated \$2.0 million in FYs 2018 and 2019 for the Program via the Ohio Maritime Assistance Fund, which the act would have created.

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<sup>168</sup> Section 755.30 of H.B. 26 of the 132nd G.A.



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## TREASURER OF STATE

### Credit unions as public depositories

- Creates the Business Linked Deposit Program under which the Treasurer of State may purchase share certificates issued by credit unions to facilitate lending to eligible small businesses.
- Permits credit unions to participate in the ongoing Agricultural Linked Deposit Program.

### Administration of linked deposit programs

- Requires the Treasurer to adopt rules addressing the participation of eligible lending institutions in business and agricultural linked deposit programs, including the manner in which the linked deposits are placed, held, and collateralized.
- Permits the Treasurer to require an eligible lending institution that holds public deposits under a linked deposit program to pay interest at a rate not lower than the product of the "prevailing interest rate" multiplied by the sum of one plus the "treasurer's assessment rate."
- Defines "prevailing interest rate" as a current interest rate benchmark selected by the Treasurer that banks are willing to pay to hold deposits for a specific time period.
- Defines "treasurer's assessment rate" as a number not exceeding 10% that is calculated in a manner determined by the Treasurer and that seeks to account for the effect that varying tax treatment among different types of financial institutions has on the ability of financial institutions to pay competitive interest rates to hold deposits.

### Ohio Pooled Collateral Program

- Authorizes the Treasurer to impose reasonable fees on public depositories participating in the Ohio Pooled Collateral Program to defray the Program's costs.
- Specifies that certain information obtained or created about a public depository for purposes of the Program is confidential.
- Permits the Treasurer to adopt rules necessary to implement the Program in connection with the other methods by which public depositories provide security for the repayment of public deposits.



## **Ohio Subdivision's Fund**

- Permits the Treasurer to invest money held in the Ohio Subdivision's Fund also in separately managed accounts, and pooled accounts of that Fund, rather than just in the Treasurer's investment pool.
- Requires a treasurer, governing board, or investing authority of a subdivision to have an agreement with the Treasurer in order to invest subdivision public money in the separately managed account or pooled account.
- Prohibits subdivision public money investment in a pooled account that does not maintain the highest rating if no agreement has been entered into with the Treasurer.
- Provides that the continuing law 25% investment limit on debt interests other than commercial paper does not apply to investments of subdivision excess reserves under the agreement.
- Relieves the Treasurer and the Treasurer's bonders or surety for the loss of any state or subdivision interim moneys invested as the act provides if the loss is due to (1) a public depository failure or (2) an investment made pursuant to law.
- Requires the Treasurer to adopt rules to implement the separately managed account and pooled account requirements.

## **Credit unions as public depositories**

### **Linked deposit programs**

(R.C. 1733.04 and 1733.24)

The act expands the financial institutions that are authorized to hold public money by allowing credit unions to participate in the Business Linked Deposit Program, which the act creates, and in the ongoing Agricultural Linked Deposit Program.



## **Business linked deposits**

(R.C. 135.77, 135.771, 135.772, 135.773, and 135.774)

The act creates the Business Linked Deposit Program, under which the Treasurer of State may purchase share certificates issued by the following types of credit unions to facilitate lending to eligible small businesses:

- (1) A federal credit union located in Ohio;
- (2) A credit union that is chartered under the laws of another state, is located in Ohio, and is licensed by the Superintendent of Credit Unions as a foreign credit union;
- (3) An Ohio-chartered credit union located in Ohio.

The stated purpose for the Program is to foster economic growth and development within Ohio's small businesses and to protect Ohio jobs.

The act adopts the following definitions for this purpose:

**"Eligible small business"** means any person that:

- (1) Is domiciled in Ohio;
- (2) Maintains offices and operating facilities exclusively in Ohio and transacts business in Ohio;
- (3) Employs fewer than 150 employees, the majority of whom are Ohio residents;
- (4) Is organized for profit; **and**
- (5) Is able to save or create one full-time job or two part-time jobs in Ohio for every \$50,000 borrowed.

**"Full-time job"** means a job with regular hours of service totaling at least 40 hours per week or any other standard of service accepted as full-time by the employee's employer.

**"Part-time job"** means a job with regular hours of service totaling fewer than 40 hours per week or any other standard of service accepted as part-time by the employee's employer.



### **Loan application, package, and agreement**

An eligible credit union that desires to receive a business linked deposit must accept and review loan applications from eligible small businesses, and forward a linked deposit loan package to the Treasurer. The Treasurer may accept or reject the package, or any portion of it, and then enter into a deposit agreement with respect to an accepted package. The act sets the monetary limit of a loan issued under the Program at \$400,000.

### **Loan rates**

Once the business linked deposit has been placed with an eligible credit union, the credit union must lend the funds to each approved and eligible small business listed in the loan package in accordance with the deposit agreement. The loan must be at a rate that reflects the following reduction below the present borrowing rate applicable to each eligible small business:

- (1) 3% if the present borrowing rate is greater than 5%;
- (2) 2.1% if the present borrowing rate is equal to or less than 5%.

### **Administration and compliance**

The Treasurer must take any and all steps necessary to implement the Program and monitor compliance of eligible credit unions and eligible small businesses, including the development of guidelines as necessary. The Treasurer also must require eligible credit unions to complete a certification of compliance in the form and manner prescribed by the Treasurer.

### **Immunity for payment of loans**

The state of Ohio and the Treasurer are not liable to any eligible credit union in any manner for payment of the principal or interest on a loan made to an eligible small business under the act. Any delay in payments or default on the part of an eligible small business does not in any manner affect the deposit agreement between the eligible credit union and the Treasurer.

### **State interim funds**

(R.C. 135.143 and 135.63)

The Uniform Depository Law authorizes the Treasurer to invest the interim funds of the state in specified classifications of obligations. Under that authority, the Treasurer may invest in certificates of deposit of eligible institutions applying for



interim moneys under the Law. The act expands these permissible investments to include the new business linked deposits.

### **Agricultural linked deposits**

(R.C. 135.71)

The act expands the eligible lending institutions for the Agricultural Linked Deposit Program to include:

- (1) A federal credit union located in Ohio;
- (2) A credit union that is chartered under the laws of another state, is located in Ohio, and is licensed by the Superintendent of Credit Unions as a foreign credit union;
- (3) An Ohio-chartered credit union located in Ohio.

### **Administration of linked deposit programs**

(R.C. 135.78)

The act requires the Treasurer to adopt rules addressing the participation of lending institutions in the business and agricultural linked deposit programs, including the manner in which an eligible lending institution is designated and the manner in which the linked deposits are placed, held, and collateralized. Participation of eligible lending institutions in these programs cannot begin until those rules have been adopted.

The Treasurer, in the Treasurer's sole discretion, may require an eligible lending institution that holds public deposits under any of the state linked deposit programs (the Linked Deposit Program, the Short-term Installment Loan Linked Deposit Program, the Agricultural Linked Deposit Program, and the Business Linked Deposit Program) to pay interest at a rate not lower than the product of the "prevailing interest rate" multiplied by the sum of one plus the "treasurer's assessment rate." For this purpose:

**"Prevailing interest rate"** is a current interest rate benchmark, selected by the Treasurer, that banks are willing to pay to hold deposits for a specific time period, as measured by a third-party organization.

**"Treasurer's assessment rate"** means a number, not exceeding 10%, that is calculated in a manner determined by the Treasurer and that seeks to account for the effect that varying tax treatment among different types of financial institutions has on their ability to pay competitive interest rates to hold deposits.



Further, the act authorizes the Treasurer to adopt rules under the Administrative Procedure Act as necessary to implement this provision.

## **Ohio Pooled Collateral Program**

(R.C. 135.182)

Ongoing law requires the Treasurer to create the Ohio Pooled Collateral Program not later than July 1, 2017. Under the Program, a public depository may pledge to the Treasurer a single pool of securities to secure the repayment of all uninsured public deposits at that public depository. The total market value of the pledged securities must equal at least:

(1) 102% of the total amount of uninsured public deposits; or

(2) An amount determined by rules adopted by the Treasurer that set forth criteria for determining the necessary aggregate market value, such as prudent capital and liquidity management by the public depository and its safety and soundness.

### **Confidentiality of information**

The act states that the following information is confidential and not a public record:

- All reports or other information obtained or created about a public depository for purposes of the determination made under (2), above;
- The identity of a public depositor's public depository;
- The identity of a public depository's public depositors.

The act does not, however, prevent the Treasurer from releasing or exchanging the confidential information as required by law or for the operation of the Program.

### **Fees to defray cost of Program**

The act permits the Treasurer to impose reasonable fees, including late fees, on public depositories participating in the Program to defray the actual and necessary expenses incurred by the Treasurer in connection with it.

### **Rulemaking**

The Treasurer is authorized by the act to adopt rules under the Administrative Procedure Act necessary for the implementation of the Program in connection with the



other methods by which public depositories provide security for the repayment of public deposits.

## **Ohio Subdivision's Fund**

### **Investment in pooled and separately managed accounts**

(R.C. 135.45(A) and (G))

The act permits the Treasurer to invest the public moneys of a subdivision held in the Ohio Subdivision's Fund in separately managed accounts and pooled accounts, including the Treasurer's investment pool. A "subdivision" in this context generally refers to local authorities such as municipal corporations, counties, school districts, and "any governmental entity for which the fund is a permissible investment."<sup>169</sup> "Public moneys of a subdivision" includes all moneys lawfully in the subdivision treasurer's possession.

Prior law required the Treasurer to invest the Ohio Subdivision's Fund as the Treasurer's investment pool.

### **Subdivision investments: less than highest rating**

(R.C. 135.45(B))

The act prohibits a treasurer, governing board, or investing authority of a subdivision from investing public money in a pooled account of the Ohio Subdivision's Fund if the pool does not maintain the highest letter or numerical rating provided by at least one nationally recognized standard rating service. This limitation does not apply if the subdivision has an agreement with the Treasurer (described below). Phrased differently, the act requires the highest rating only when (1) the subdivision invests its public money in such a *pooled* account, and (2) the subdivision does not have an agreement with the Treasurer. Prior law simply prohibited investment of public moneys of a subdivision in the Ohio Subdivision's Fund if the Fund did not maintain the highest letter or numerical rating.

### **Agreement with the Treasurer**

(R.C. 135.45(C) and (G))

The act permits a treasurer, governing board, or investing authority of a subdivision that wishes to invest public money in a separately managed account or

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<sup>169</sup> Presumably the "Fund" referred to is the "Ohio Subdivision's Fund," but this may need further clarification (R.C. 135.45(G)).



pooled account of the Ohio Subdivision's Fund to enter into an agreement with the Treasurer that establishes the manner in which the money is to be invested.

The act also provides that the 25% investment limit imposed by continuing law on debt interests other than commercial paper does not apply to investments of subdivision excess reserves under the agreement. "Excess reserves" are the amount of a subdivision's public moneys that exceed the average of a subdivision's annual operating expenses in the immediately preceding three fiscal years.

### **Relief from liability**

(R.C. 135.45(F))

The act relieves the Treasurer and the Treasurer's bonders or surety for the loss of any state or subdivision interim moneys invested as the act provides if the loss is due to (1) the failure of the public depository or (2) an investment made pursuant to law.<sup>170</sup>

### **Rules**

(R.C. 135.45(D))

The act requires the Treasurer to adopt rules to implement the separately managed account and pooled account requirements in the act.

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<sup>170</sup> R.C. 135.19, not in the act.



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## DEPARTMENT OF VETERANS SERVICES

- Authorizes the Department of Veterans Services to establish a physician recruitment program.
- Allows the Ohio Veterans' Home to conduct bingo games at the facility for residents of the home under certain conditions.
- Creates a veteran peer counseling network administered by the Department.

### Veterans' physician recruitment program

(R.C. 5907.17)

The act authorizes the Department of Veterans Services to establish a physician recruitment program. Under the program, the Department agrees to repay all or part of the principal and interest of a governmental or other educational loan incurred by a physician who agrees to provide services to the institutions.

Under the program, the Department and physician must enter into a contract in which:

(1) The physician agrees to provide a scope of medical or osteopathic services for a specified number of hours per week and a specified number of years;

(2) The Department agrees to repay all or a specified portion of the principal and interest of a governmental or other educational loan if the physician fulfills the service obligation and the expenses were incurred while the physician was in school and was used for tuition, other educational expenses, and room and board; and

(3) The physician agrees to pay the Department a specified amount as damages if the physician fails to comply with the contract terms.

The contract may include any other agreed upon terms.

The Department must adopt rules under the Administrative Procedure Act to establish the criteria for designating institutions that will be supported under the program, selecting physicians, determining the portion of a physician's loan the Department agrees to repay, determining reasonable amounts for other school expenses and room and board, procedures for monitoring compliance with the terms, and any other necessary criteria.



A physician is eligible to participate if the physician attended a medical or osteopathic medical school that either was (1) located in the U.S. and accredited by the Liaison Committee on Medical Education or the American Osteopathic Association or (2) located outside the U.S. and acknowledged by the World Health Organization and verified by a member state of that Organization.

### **Ohio Veterans' Homes – bingo**

(R.C. 5907.18)

The act notwithstanding the Charitable Bingo Law to allow Ohio Veterans' Homes to conduct bingo for the residents of the home. The homes can only conduct bingo if the following conditions are met:

- All bingo games are conducted only on the premises of the home;
- All participants are residents of the home and are at least 18 years old;
- No bingo game operators can receive compensation for acting as an operator;
- Participants do not pay any money or thing of value, including an admission fee, or any fee for bingo cards or sheets, objects to cover the spaces, or other devices used in playing bingo, for the privilege of participating in the bingo game, or to defray costs of the game, or pay tips or make donations during or immediately before or after the game;
- Individual prizes awarded during a bingo game do not exceed \$100 and the total value of all prizes awarded during the game do not exceed \$500;
- The bingo game is not conducted during or within ten hours of a charitable bingo game, a scheme or game of chance, or an instant bingo, punch boards, or raffles bingo game;
- The bingo games are conducted on different days of the week and not more than twice per calendar week.

### **Veteran peer counseling network**

(R.C. 5902.20)

The act creates a veteran peer counseling network. The purpose of the network is to offer veterans the opportunity to work with other veterans in order to assist with overcoming the issues unique to veterans in Ohio. The act authorizes the Director of



Veterans Services to adopt rules under the Administrative Procedure Act to administer the network.



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## CONSOLIDATION OF HEALTH-RELATED BOARDS

### Creation of new boards via consolidation

- Creates the State Vision Professionals Board and the State Speech and Hearing Professionals Board by consolidating several existing health professional licensing boards.
- Establishes regulatory procedures for the new boards that are similar to provisions that applied to the boards abolished by the act.
- Requires the new boards to establish a code of ethical practice for each occupation they regulate, and authorizes each board to take disciplinary action against an applicant or license holder for violating a code of ethics, which applies under continuing law to most of the occupations.

### Regulation of dietitians; respiratory care professionals; orthotists, prothetists, and pedorthists

- Places the regulation of dietitians under the State Medical Board and abolishes the Ohio Board of Dietetics.
- Abolishes the Ohio Respiratory Care Board and places its duties with respect to respiratory care professionals with the State Medical Board and its duties with respect to home medical equipment service providers with the State Board of Pharmacy.
- Abolishes the State Board of Orthotics, Prosthetics, and Pedorthics and places its duties with the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board (PYT Board).
- Requires the State Medical Board to appoint a dietetics advisory council and a respiratory care advisory council to advise the Board on issues relating to the practice of dietetics and respiratory care.
- Requires the State Board of Pharmacy to appoint a home medical equipment services advisory council to advise the Board on issues relating to providing home medical equipment services.
- Requires the PYT Board to appoint an orthotics, prosthetics, and pedorthics advisory council to advise the Board on the regulation of the practice of orthotics, prosthetics, and pedorthics.



## Existing board employees

- Provides that employees of the abolished boards are transferred to one of the new boards, the State Medical Board, the State Board of Pharmacy, or the PYT Board, and retain their positions and benefits.
- Allows the boards abolished by the act to establish a retirement incentive plan for eligible employees of those boards who are Public Employees Retirement System members.

## Other changes

- Requires license applicants for all occupations regulated by the new boards to undergo criminal records checks to receive a license.
- Generally provides for electronic occupational license applications and renewals.
- Authorizes the State Vision Professionals Board to increase optical dispensing and ocularist licensing examination fees under certain circumstances.

## Creation of new boards via consolidation

(R.C. Chapters 4725. and 4744.; Sections 130.11 to 130.14, 515.30, 515.33, and 515.35; conforming changes in numerous other R.C. sections)

The act creates the State Vision Professionals Board and the State Speech and Hearing Professionals Board by consolidating four health professional licensing boards that existed under prior law. These boards will regulate the appropriate professions beginning January 21, 2018. The manner in which the boards are consolidated is listed in the table below:

<b>Board consolidation</b>	
<b>State Vision Professionals Board</b>	<b>State Speech and Hearing Professionals Board</b>
State Board of Optometry	Hearing Aid Dealers and Fitters Licensing Board
Ohio Optical Dispensers Board	Board of Speech-Language Pathology and Audiology



## Membership

The boards consist of the following members:

<b>State Vision Professionals Board</b>
Four licensed optometrists
Two licensed dispensing opticians
One individual representing the general public

<b>State Speech and Hearing Professionals Board</b>	
Two licensed speech-language pathologists	Three licensed audiologists
Two licensed hearing aid fitters	Two individuals representing the general public

Members of these boards are appointed by the Governor with the advice and consent of the Senate. The Governor must make initial appointments by December 28, 2017.

Terms of office for board members are three years, except that initial members serve staggered terms of one to three years. Except for initial appointments, terms for board members begin on March 23 and end on March 22. However, a member continues in office until the member's successor takes office. No member may serve more than three consecutive terms. The act includes the standard vacancy provisions. When a member's term expires or a vacancy occurs, the act allows a professional association representing the interests of the occupation of the board position to be filled to recommend to the Governor individuals to fill the position. The Governor must consider the recommendation in making an appointment.

The act prohibits an individual from being appointed to either of the new boards who has been convicted of or pleaded guilty to a felony. The Governor may remove a board member for malfeasance, misfeasance, or nonfeasance after a hearing in accordance with the Administrative Procedure Act. The Governor must remove, after a hearing, any member who has been convicted of or pleaded guilty to a felony.

A board member receives a per diem for each day the member performs the member's official duties and is reimbursed for actual and necessary expenses incurred in performing those duties.



## Regulatory procedures

The act adds regulatory procedures for the two new boards that are similar to former law that applied to the abolished boards. In some cases, prior law did not apply each of these provisions to each abolished board. The provisions include:

- Requirements for meetings, recordkeeping, and office space;
- Appointing board officers and employees and setting their compensation;
- Maintaining a register of every individual holding a certificate, license, permit, registration, or endorsement and every individual whose certificate, license, permit, registration, or endorsement has been revoked;
- Annually reporting to the Governor on the board's official acts, receipts and disbursements, and the conditions of the professions regulated by that board, requiring the first report by February 1, 2019;
- Requiring all payments collected by the board to be deposited into the Occupational Licensing and Regulatory Fund (rather than the General Operations Fund for hearing aid dealers and fitters as under prior law);
- Rulemaking;
- Qualified immunity from liability for board members, employees, agents, and representatives;
- Authorizing the board to (1) enter into contracts to implement the laws and administrative rules governing the professions it regulates, (2) join national licensing organizations, and (3) appoint advisory committees or other groups to assist in fulfilling its duties;
- Prohibiting the board from discriminating against an applicant or license holder based on the person's race, color, religion, sex, national origin, disability, or age;
- Requiring the board to permit the health care professionals it regulates to satisfy a portion of their continuing education requirements by providing health care services without compensation to indigent and uninsured persons.



## **Code of ethics**

The act requires the two new boards to establish a code of ethical practice for each occupation regulated by that board, and authorizes each board to take disciplinary action against an applicant or license holder for violating a code of ethics. Prior licensing laws governing optometrists, dispensing opticians, and hearing aid dealers and fitters did not include these provisions.

## **Regulation of dietitians and respiratory care professionals**

(R.C. 4729.021, 4759.011, and 4761.011; Sections 130.11 to 130.14, 515.31, 515.34, and 515.35; conforming changes in numerous other R.C. sections)

Effective January 21, 2018, the act places the regulation of dietitians under the State Medical Board and abolishes the Ohio Board of Dietetics. The act also abolishes the Ohio Respiratory Care Board on that date and places its duties with respect to respiratory care professionals with the State Medical Board and its duties with respect to home medical equipment service providers with the State Board of Pharmacy.

## **Advisory councils**

The act requires the State Medical Board to appoint (1) a dietetics advisory council to advise it on the practice of dietetics and to investigate complaints regarding the practice of dietetics and (2) a respiratory care advisory council to advise it on the practice of respiratory care. The State Board of Pharmacy likewise must appoint a home medical equipment services advisory council to advise it on issues relating to providing home medical equipment services.

Each advisory council must consist of no more than seven individuals knowledgeable in dietetics, respiratory care, or home medical equipment services, as applicable. A majority of the dietetics advisory council must be individuals actively engaged in the practice of dietetics who meet the requirements for licensure. The dietetics advisory council must include one educator with a doctoral degree who holds a regular faculty appointment in a program that prepares students to meet the requirements of an accredited dietetics degree and one individual who is not affiliated with any health care profession, appointed to represent the interest of consumers. The Ohio Academy of Nutrition and Dietetics may nominate up to three qualified individuals for consideration by the Board in making appointments for each dietetics advisory council vacancy.

The Medical Board and the Pharmacy Board must make initial appointments to the advisory councils by April 21, 2018. Members serve three-year staggered terms in accordance with rules adopted by those boards. Dietetics advisory council members



continue in office after the term expires, until the successor takes office or 60 days has elapsed, whichever occurs first. With approval from the DAS Director, each advisory council member may receive a per diem for each day the member performs official duties and be reimbursed for actual and necessary expenses incurred in performing those duties.

The dietetics advisory council must meet at least four times annually and at other times as necessary to carry out its responsibilities. It must submit to the Medical Board recommendations concerning licensure requirements and procedures, proposed rules of practice, fees, standards of practice and ethical conduct, complaints and grounds for license suspension or revocation, and the safe and effective practice of dietetics.

### **State Medical Board regulatory procedures**

The act applies regulatory procedures that apply to the other health care professionals whom the State Medical Board regulates to the regulation of dietitians and respiratory care professionals. These procedures include:

- Notifications to be provided to the Board by physicians and professional associations regarding possible violations of the laws governing dietetics, respiratory care, and other laws enforced by the Board;
- Requirements relating to dietitians and respiratory care professionals suffering impairment from the use of drugs or alcohol;
- Keeping a register of license applicants and licenses issued and a directory of license holders;
- Requiring fees, penalties, and other funds relating to the regulation of dietitians and respiratory care professionals to be deposited in the State Medical Board Operating Fund (rather than the Occupational Licensing and Regulatory Fund);
- Use of universal blood and body fluid precautions in performing exposure prone procedures.

### **Regulation of orthotics, prosthetics, and pedorthics**

(R.C. Chapter 4779.; Sections 130.11 to 130.14, 515.32, and 515.35; conforming changes in numerous other R.C. sections)

Effective January 21, 2018, the act places the regulation of the practice of orthotics, prosthetics, and pedorthics under the Ohio Occupational Therapy, Physical



Therapy, and Athletic Trainers Board (PYT Board). It abolishes the State Board of Orthotics, Prosthetics, and Pedorthics on that date.

### **Advisory council**

The act requires the PYT Board to appoint an advisory council to advise it on issues relating to the practice of orthotics, prosthetics, and pedorthics and the investigation of complaints regarding the practice.

The advisory council must consist of no more than five individuals knowledgeable in the area of orthotics, prosthetics, and pedorthics, and a majority must be individuals actively engaged in the practice who meet the requirements for licensure. The Ohio Orthotics and Prosthetics Association may nominate up to three qualified individuals for consideration by the Board in making appointments for each vacancy.

The PYT Board must make initial appointments to the council by April 21, 2018. Members serve three-year staggered terms of office in accordance with rules adopted by the PYT Board. An advisory council member continues in office after the member's term expires until a successor is appointed and takes office or 60 days has elapsed.

With approval from the DAS Director, each advisory council member may receive a per diem for each day the member performs the member's official duties and may be reimbursed for actual and necessary expenses incurred in performing those duties.

The advisory council must meet at least four times annually and at other times as necessary to carry out its responsibilities. The advisory council must submit to the PYT Board recommendations concerning licensure requirements and procedures, proposed rules of practice, fees, standards of practice and ethical conduct, complaints and grounds for license suspension or revocation, and the safe and effective practice of orthotics, prosthetics, and pedorthics.

### **Existing licenses and board employees**

The act includes general transfer authority provisions. With respect to existing licenses, any licenses, certificates, permits, registrations, or endorsements issued before January 21, 2018, by any of the boards that are abolished will continue in effect as if issued by one of the two new boards, the State Medical Board, the State Board of Pharmacy, or the PYT Board, as applicable.

### **Existing board employees**

Under the act, all employees of the abolished boards are transferred to one of the two new boards, the State Medical Board, the State Board of Pharmacy, or the PYT



Board, as applicable, and retain their positions and benefits. Beginning January 21, 2018, and ending June 30, 2019, the executive directors of those boards may establish, change, and abolish positions on the boards and assign, reassign, classify, reclassify, transfer, reduce, promote, or demote all board employees.

### **Retirement incentive plans**

Continuing law permits a public employer to establish a retirement incentive plan for its employees who are members of the Public Employees Retirement System (PERS). Under a plan, an employer purchases service credit for eligible members in return for an agreement to retire within 90 days after receiving the credit.

The boards abolished under the act may, at that board's discretion and with approval from the Office of Budget and Management, establish a retirement incentive plan for eligible employees of those boards who are PERS members. Any retirement incentive plan established under the act remains in effect until January 20, 2018.

### **Other changes**

#### **Criminal records checks**

Continuing law generally requires an individual applying for an occupational license to undergo a criminal records check as a condition of receiving a license. The act adds that, beginning January 21, 2018, individuals applying for any of the following must submit to a criminal records check:

- Hearing aid dealer's or fitter's licenses or permits;
- Speech-language pathology and audiology licenses.

#### **Electronic applications**

Beginning January 21, 2018, the act generally allows for electronic occupational license applications by eliminating both of the following:

--A requirement that most occupational license renewals be mailed to the individual; and

--A requirement that applications for the following licenses and certificates be written:

- All of the following initial licenses and certificates: certificates of licensure to practice optometry, therapeutic pharmaceutical agents certificates, optical dispensing and ocularist licenses, and dietetics licenses;



- Certificate reinstatement for optometrists; and
- Renewed dietetics licenses.

If a failure in any electronic license renewal system occurs, a licensing agency may extend the renewal date. The licensing agency may extend a renewal period for a reasonable time period after the system failure is resolved. A licensing agency must obtain approval from the DAS Director for an extension exceeding 14 days beyond the failure's resolution.

### **Fee increases**

The act authorizes the State Vision Professionals Board, with the Controlling Board's approval, to increase fees for the optical dispensing and ocularist licensing examinations in excess of the fee established by rule, so long as the increase does not exceed 50% of the fee.

### **Complaints**

The act eliminates the requirement that a person must file with the PYT Board (formerly, the State Board of Orthotics, Prosthetics, and Pedorthics) three copies of a complaint against an orthotics, prosthetics, or pedorthics license holder, and instead requires a person to file a complaint.



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## LOCAL GOVERNMENT

### County auditor financial report filing

- Conforms county law to general law applicable to public offices using generally accepted accounting principles by increasing, from 90 to 150, the number of days within which a county auditor must prepare a financial report of the county.

### Board of county commissioners deadline to organize

- Modifies the date by which a board of county commissioners must organize annually to choose one of its members to serve as president for one year.

### Township road construction estimates

- Eliminates the requirement that a board of township trustees provide notice of the cost estimate of a proposed road improvement project when advertising for bids for the project.
- Specifies that a board is not required to provide notice of the cost estimate or amended estimate when the board readvertises for bids if the original bidding process did not yield a bid within 110% of the estimate.

### Transient vendors in township territory

- Authorizes boards of township trustees to prohibit transient vendors from soliciting at any residence at which the owner or tenant has either posted a no solicitation sign, or has filed a no solicitation registration form with the township.
- Eliminates the board's authority to outright prohibit transient vendors from soliciting within the township's unincorporated territory.
- Revises the definition of "transient vendor."

### Commercial advertising on township websites

- Authorizes townships to sell commercial advertising space on their websites under certain conditions.

### Village dissolution

- Allows the electors of a village to petition the board of elections, as an alternative to the legislative authority, for the dissolution of the village.



- Decreases, from 40% to 30%, the portion of electors in a village that is sufficient to petition the legislative authority or board of elections for the dissolution of the village.
- Provides for the timely transfer of village property and services upon the dissolution of the village.
- Allows the village and affected townships to enter into agreements concerning the transfer of real and personal property other than electric, water, and sewer utility property, or the property vests by law in the affected townships.
- Requires the Auditor of State to perform and complete an audit or agreed-upon procedure audit before transferring any cash balances to a township or utility service provider following the village dissolution.
- Specifies that the surrender of corporate powers by a village does not affect the village's power to operate utilities.
- Specifies that a dissolving village may incur liability to the extent it is necessary in connection with the operations of the village's utilities.
- Requires water and sewer utility property to be transferred by agreement entered into by the village and the entity that will be taking over the provision of utility services.
- Requires a dissolving village to take all necessary steps to transfer the ownership and operation of electric utilities to a successor entity.
- Requires a dissolving village's electric utility to continue "normal operations and activities," to continue fulfilling the village's contractual obligations, and to collect charges at rates in effect on the date a certificate of dissolution was filed.

### **Local annual reports to Auditor of State**

- Eliminates the Auditor of State as an entity to which a municipality and a board of alcohol, drug addiction, and mental health services must provide a copy of their annual reports.

### **Cybersecurity training for local fiscal officers**

- Adds cybersecurity to the list of subjects to be covered in the education programs conducted by the Auditor of State and the Treasurer of State for persons elected to local government fiscal offices.



## **Metropolitan housing authorities**

- Permits two or more metropolitan housing authorities (MHAs) to enter into a shared services agreement.
- Clarifies that MHA plans to improve blighted areas can include housing as well as other projects, and those projects can include commercial and residential purposes.
- Prohibits an MHA from providing a federal rent subsidy to a tenant who does not meet federal HUD income restrictions, instead of requiring the MHA to deny housing to the tenant.

## **Regional councils of governments**

- Authorizes a regional council of governments to contract to administer and coordinate the self-funded health benefits program of a nonprofit corporation if the council has an educational service center as its fiscal agent.

## **Reimbursement to law enforcement agencies**

- Authorizes a court to order an OVI offender to reimburse a law enforcement agency for costs associated with administering blood or urine tests if the tests indicated a prohibited concentration of a controlled substance.

## **Commissary profits for screening equipment**

- Allows the sheriff of a county jail to use profits from the jail's commissary to purchase technology designed to prevent contraband from entering the jail.

## **Multi-jurisdictional local correctional centers**

- Specifies that a multi-jurisdictional local correctional center's operational standards and procedures may be amended by agreement of a majority of the voting members of the center's corrections commission or by other means specified in the contract establishing the center.
- Clarifies that items required for the standards and procedures are also required for the amendments.

## **Port authority competitive bid threshold**

- Changes to \$150,000 the threshold amount above which a port authority generally must use competitive bidding for construction contracts.



## **Foreclosure and auctioning**

- Expressly permits deposits to be made by a financial transaction device if the foreclosure sale is held online.
- Requires the purchaser at a foreclosure sale to submit a statement indicating intent to use the property as residential rental property, instead of a statement indicating whether the purchaser will occupy the property.
- Expands who can be the contact person for a business entity for the purposes of providing this information.
- Exempts the purchaser at a foreclosure sale from the requirement to submit contact information if the purchaser is the plaintiff or a lienholder who is a party to the foreclosure action.

## **Urban renewal projects**

- Adds environmental remediation as a purpose for which a municipal corporation can undertake an urban renewal project to prevent the spread of blight.
- Adds contamination by hazardous substances or petroleum to the definition of "blight," for purposes of the urban renewal projects laws.
- Permits parties to a development agreement (an agreement to rehabilitate the real property structures in an urban redevelopment area) to agree to a level of service payments, in lieu of property taxes, that is higher than the amount that would be generated by the assessed value of the improvements.
- Adds to the definition of "revenues," for purposes of the urban renewal projects laws, revenue available to the municipal corporation pursuant to a development agreement.

## **Municipal planning commissions**

- Authorizes the appointment of some "public members," who may be nonresidents of the municipal corporation, to serve on a municipal planning commission.
- Requires these nonresident public members to reside within the county in which the municipal corporation is located or in a township adjacent to the county.
- Retains the requirement for the "citizen members" to be residents of the municipal corporation.



- Specifies that all members are subject to the prohibition against public officials having an unlawful interest in a public contract.

### **Noncharter village disbursements**

- Requires two signatures for noncharter village fund disbursements.

### **Funds disbursed to municipal treasurers**

- Requires that the county auditor disburse to a municipal treasurer taxes and assessments certified to the county auditor by a municipality and placed on the tax list for collection, and moneys accruing to and debts due the municipality, on the order of any person authorized by law or ordinance to issue orders therefor.

### **Investment of county inactive moneys**

- With respect to the investment of a county's inactive moneys and money in the public library fund: (1) increases, from 25% to 40%, the amount of a county's total average portfolio that can be used for certain commercial paper notes and bankers acceptances and (2) limits the total investments in commercial paper notes of a single issuer to 5% of interim moneys available for investment at the time of purchase.

### **Storage of firearms in private motor vehicles**

- Creates a civil cause of action against a business entity, property owner, or employer whose policy prohibits a valid concealed handgun licensee from transporting or storing a firearm or ammunition in the person's privately owned motor vehicle in accordance with the law.

### **County auditor financial report filing**

(R.C. 319.11)

The act increases, from 90 to 150, the number of days after the close of the fiscal year within which a county auditor must prepare a financial report of the county for the preceding fiscal year. The former 90-day requirement varied from the general requirement under continuing Ohio law that public offices using generally accepted accounting principles ("GAAP") prepare the report within 150 days.<sup>171</sup> Because counties

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<sup>171</sup> R.C. 117.38, not in the act.



are required to prepare their financial reports using GAAP, the act conforms county law with the 150-day requirement applicable to local public offices using GAAP.<sup>172</sup>

### **Board of county commissioners deadline to organize**

(R.C. 305.05)

The act modifies the date by which a board of county commissioners must organize annually to choose a president. Under the act, a board must organize *not later than* the second Monday of January each year. Under former law, a board was required to organize on that specific day.

### **Township road construction estimates**

(R.C. 5575.02 and 5575.03)

The act modifies the content that must be included in an advertisement for bids for a township road improvement project. Specifically, it eliminates the requirement that a board of township trustees provide notice that estimates of the project cost are on file with the board.

The act also specifies that a board is not required to provide notice of the county engineer's estimate or amended estimate if the board readvertises for bids for a road improvement project. Under continuing law, unchanged by the act, the board must readvertise for bids based either on the county engineer's original estimate or an amended estimate if the board has not received a bid that is equal to or less than 110% of the county engineer's original estimate.

### **Transient vendors in township territory**

(R.C. 505.94)

The act authorizes a board of township trustees, by resolution, to prohibit transient vendors from soliciting at any residence at which the owner or tenant has either posted a sign on the property prohibiting solicitation, or for which the owner or tenant has filed a no solicitation registration form with the township, on a form prescribed by the board. The act eliminates the board's authority to outright prohibit transient vendors from selling, offering for sale, or soliciting orders for the future delivery of goods, within the township's unincorporated territory.<sup>173</sup>

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<sup>172</sup> O.A.C. 117-2-03.

<sup>173</sup> Courts have held that laws regarding vendor solicitation must be narrowly tailored to serve a substantial governmental interest. *See, e.g., Ohio Citizen Action v. City of Englewood*, 671 F.3d 564 (6th Cir.



One of the characteristics of being a "transient vendor" was that the person solicits orders for future delivery of goods "where payment is required prior to the delivery of the goods." The act eliminates the phrase in quotation marks, thus expanding the definition of "transient vendor."

Under prior law, a nonprofit entity was not a transient vendor if it notified a board of township trustees of its presence in the township for the purpose of selling or offering for sale goods, soliciting orders for future delivery of goods, or attempting to arrange an appointment for a future estimate or sales call. The act eliminates the notification requirement so that any person that is a nonprofit entity is not a transient vendor.

## **Commercial advertising on township websites**

(R.C. 503.70)

The act authorizes townships to sell commercial advertising space on their websites if the websites are not on the dot-gov domain, where such advertising is prohibited by federal guidelines. The use of commercial advertising must comply with state and federal law, including R.C. 9.03, explained below, and any federal regulations or guidelines on the use of commercial advertising on the Internet dot-gov domain or other federally controlled public domains.

The act requires a township to adopt a resolution to authorize commercial advertising on its website. The resolution must specify the manner of making requests for proposals that identify advertisers whose advertisements will meet the criteria specified in the request for proposals and any requirements and limitations specified in the resolution. The act authorizes a contract between the township and a qualified advertiser for the placement of commercial advertising on the township's website in exchange for a fee paid to the township general fund.

Continuing state law, R.C. 9.03, provides specific parameters on the use of public funds for communications with the public. Among other things, it provides that a political subdivision may use public funds to publish and distribute newsletters, "or to use any other means, to communicate information about the plans, policies, and operations of the political subdivision to members of the public within the political subdivision and to other persons who may be affected by the political subdivision." Public funds may not be used for certain types of communication, including among

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Ohio 2012); and *City of Tiffin v. Boor*, 109 Ohio App.3d 337 (Ohio Ct. App., Seneca County 1996) in which the court held that while the city of Tiffin is free to place restrictions on the practice of door-to-door solicitation, it may not enforce an ordinance that completely bans the practice.



others, things that support or oppose "the nomination or election of a candidate for public office, the investigation, prosecution, or recall of a public official, or the passage of a levy or bond issue." The use of public funds for charitable or public service advertising is allowed if it is not commercial in nature and otherwise complies with the section. Presumably, the authority to sell commercial advertising that is authorized by the act could not be used for charitable or public service advertising because it is commercial in nature and would be in violation of the prohibition in R.C. 9.03.

## **Village dissolution**

(R.C. 703.20 and 703.21)

### **Petition to the board of elections**

The act provides an alternative means for submitting a petition for dissolution (surrender of corporate powers) to the legislative authority when the legislative authority fails to act on a petition within 30 days after receiving it. Under the act, the electors alternatively may present the petition to the board of elections of the county in which the largest portion of the village's population resides to determine the validity and sufficiency of the signatures. If the petition is sufficient, the board of elections will submit the question of surrendering corporate powers to the electors at the next general or special election occurring at least 90 days after filing the petition with the board of elections. If the result is in favor of the surrender, the board of elections must certify the results to the Secretary of State and the county recorder as required under continuing law, along with the Auditor of State as required under the act. The act provides that the corporate powers of the village cease upon the recording in the county recorder's office.

The act decreases, from 40% under prior law to 30% under the act, the portion of electors in a village that is sufficient to petition the legislative authority or board of elections for the dissolution of the village.

### **Disposition of money and property upon dissolution**

When a petition is filed directly with the board of elections, a copy must also be filed with the board of township trustees of each township affected by the dissolution. Under prior law, upon the dissolution of a village, all moneys or property remaining after the dissolution belongs to the township or townships located wholly or partly within the village. The act makes the ownership of remaining money and property subject to agreements between or among the village and township or townships and subject to an audit or, at the discretion of the Auditor of State, agreed-upon procedures performed by the Auditor. The audit or agreed-upon procedures must begin within 30



days after the Auditor receives the notice of dissolution<sup>174</sup> provided for under continuing law. Cash balances are to be transferred at the completion of the audit or agreed-upon procedures. The Auditor must assist in facilitating a timely and systematic manner for complying with the requirements for transfer of village money and property.

Under prior law, if more than one township was to receive the remaining money or property, the money or property would be divided among the townships in proportion to the amount of territory that each township had within the village boundaries as compared to the total territory within the village. The act allows the agreements to provide otherwise.

### **Real and personal property**

The act requires that village real and personal property, other than electric, water, and sewer utility property, must be transferred in a timely manner in accordance with *agreements* between or among the affected village and township or townships. If agreements are not reached within 60 days after the certificate of dissolution is filed with the county recorder, the title to real and personal property vests by operation of law in the affected township or townships as specified under prior law: in proportion to the amount of territory that each affected township has within the village boundaries as compared to the total territory within the village.

The act requires that any agreements regarding the transfer of real property must be recorded with the county recorder of the county in which the affected real property is situated along with affidavits stating facts relating to title. The county recorder must make appropriate notations in the county records to reflect the conveyance of the village's interest in real property as provided by the recorded agreements resulting from the dissolution. The notations must include a reference to the county's recorded certificate of dissolution.

In the absence of any agreements and upon the recording of affidavits relating to title, the county recorder must make appropriate notations in the county records to reflect the conveyance of the village's interest in real property and to evidence that title vested by operation of law in the township or townships as otherwise provided by continuing law and as a result of the dissolution. The certificate of dissolution or a certified copy of it, any agreements regarding the transfer of real property, and supporting affidavits are sufficient evidence of a transfer of title from the former village to a township or townships. The act requires that these documents be recorded in the

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<sup>174</sup> R.C. 117.10(E), not in the act.



same manner as a deed of conveyance, except that affected townships are exempt from paying any county recording fees.

Cash balances must be transferred at the completion of the Auditor of State's audit or, at the discretion of the Auditor, agreed-upon procedures performed by the Auditor.

### **Electric, water, and sewer utility property**

The act requires that electric, water, and sewer utility property be transferred by agreement between the affected village and the entity or entities that will be taking over the electric, water, and sewer utilities property and assets. Cash balances must be transferred at the completion of the Auditor of State's audit or, at the discretion of the Auditor, agreed-upon procedures performed by the Auditor. The act provides that the provision of utility and other services must remain uninterrupted during the transition period following the dissolution, and that the surrender of a village's corporate powers does not affect the village's power to operate its utilities, including the collection of existing rates and charges for services rendered, until the ownership and operation of the utility is transferred to another entity. Under the act, a dissolving village may incur liability to the extent necessary in connection with the operations of the village's utilities consistent with prudent utility practice; a dissolving village generally may not incur new liabilities under continuing law.

If a county or a regional water and sewer district utility must assume water and sewer utility property and assets by default, the act allows the board of county commissioners or the district's board of trustees to petition a court to order to revise the existing user fees, rates, and charges charged, or assessments levied, by the utility. The board must file with the petition a systems audit, which must address specific items such as the financial solvency of the utility and the necessary system maintenance. The systems audit may not prevent the Auditor from conducting an audit or agreed-upon audit procedures. The court must review the audit in determining whether to grant the order. Any order the court grants must assure the utility's operational viability and financial solvency is maintained, and that acquisition of the utility does not place an unreasonable financial burden on the county or district.

The act also requires a dissolving village to take all "necessary steps" to transfer its contractual and other obligations to a successor entity in a timely manner following the filing of the certificate of dissolution. The village must hire a third-party engineer knowledgeable about the operation of municipal electric systems to conduct a systems audit of the electric utility, which must address specific items such as the financial



solvency of the utility and the necessary system maintenance,<sup>175</sup> the audit must begin not later than 60 days after the certificate of dissolution is filed. The act specifies that the audit is a proper expense of the village's electric utility fund, and requires the absorbing entity to pay for the audit if the dissolving village's electric utility fund has a zero or negative fund balance. Finally, the act requires a dissolving village's electric utility to continue "normal operations and activities," to continue fulfilling the village's contractual and other obligations, including with its customers, users, and licensees of its poles, conduits, and rights-of-way, and to collect charges at rates in effect on the date the certificate of dissolution was filed.

### **Local annual reports to Auditor of State**

(R.C. 340.03 and 705.22)

The act eliminates the requirement for a municipal corporation and a board of alcohol, drug addiction, and mental health services to provide a copy of their annual reports to the Auditor of State.

### **Cybersecurity training for local fiscal officers**

(R.C. 321.46, 507.12, and 733.81)

The act adds cybersecurity to the list of subjects to be covered in the education programs conducted by the Auditor of State and the Treasurer of State for persons elected as county treasurers, township fiscal officers, and municipal (city or village) fiscal officers. Under continuing law, the Auditor and the Treasurer must conduct education programs to enhance the background and working knowledge of fiscal officers in areas such as government accounting, budgeting and financing, and financial report preparation.

### **Metropolitan housing authorities**

(R.C. 3735.31, 3735.33, 3735.40, and 3735.41)

#### **Shared service agreements**

Metropolitan Housing Authorities (MHAs) are public entities that own and manage property and provide rent subsidies to low-income families. Continuing law tasks MHAs with clearing, planning, and rebuilding blighted areas within their districts

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<sup>175</sup> The reference in division (D)(1)(b) to division (D)(2) regarding the items the audit must address should be to division (D)(1)(a).



and providing safe and sanitary housing for low-income families. The act permits two or more MHAs to enter into a shared service agreement to achieve these goals.

### **Projects to improve blighted areas**

The act clarifies that MHA plans to improve blighted areas can include housing as well as other projects; prior law only provided for plans including housing projects. Additionally, MHAs can undertake housing or other projects that include providing land, facilities, and property for commercial and residential purposes, in addition to streets, utilities, parks and recreation, gardening, community, health, educational, welfare, and other purposes.

### **Tenant eligibility**

The act prohibits an MHA from providing a federal rent subsidy to a tenant who does not meet HUD income restrictions. Under prior law, an MHA must deny housing to such a tenant.

### **Regional councils of governments**

(R.C. 167.03)

The act authorizes a regional council of governments to contract to administer and coordinate the self-funded health benefits program of a nonprofit corporation organized under Ohio law if the council (1) is established to provide health care benefits to its officers and employees and their dependents and (2) has an educational service center as its fiscal agent.

### **Reimbursement to law enforcement agencies**

(R.C. 4511.19)

The act authorizes a court to order a person who is convicted of, or pleads guilty to, an operating a vehicle while intoxicated (OVI) offense to reimburse a law enforcement agency for costs associated with administering one or more chemical tests of the person's blood or urine, if the tests indicated that the offender had a prohibited concentration of a controlled substance or a metabolite of a controlled substance in the offender's blood or urine. This is in addition to any penalties, including financial sanctions, that may be imposed by the court under continuing law.



## **Commissary profits for screening equipment**

(R.C. 341.25)

The act allows a sheriff to use profits from the county jail's commissary to purchase technology designed to prevent contraband from entering the jail. Under continuing law unchanged by the act, the sheriff may also use commissary profits to pay commissary employees and to purchase supplies and equipment and to provide life skills training and education or treatment services for the benefit of jail inmates.

## **Multi-jurisdictional local correctional centers**

(R.C. 307.93)

Under continuing law, two or more adjacent counties may jointly establish a multicounty correctional center, and one or more counties and one or more municipal corporations may jointly establish a municipal-county or multicounty-municipal correctional center. The political subdivisions prescribe the manner of funding of, and debt assumption for, the center and the standards and procedures for its operation, and generally form a corrections commission to oversee the center's administration. The standards and procedures must include specified items and may be amended.

Regarding the amendment of the operational standards and procedures, the act specifies that they may be amended by agreement of a majority of the voting members of the center's corrections commission, or by other means specified in the contract between the contracting counties and municipal corporations (instead of by agreement of the parties to the establishing contract upon the commission's advice, as under prior law). The act clarifies that the items required for the standards and procedures are also required for the amendments.

## **Port authority competitive bid threshold**

(R.C. 4582.12 and 4582.31)

The act changes to \$150,000 the threshold amount above which a port authority generally must utilize competitive bidding when contracting for the construction of a building, structure, or other improvement. Under prior law, the threshold was the higher of:

--\$100,000; or

--\$100,000 plus an annual adjusted amount determined by the Director of Commerce based on the average increase for the prior two years in the Producer Price



Index for Material and Supply Inputs for New Nonresidential Construction as determined by the U.S. Bureau of Labor Statistics.

## **Foreclosure and auctioning changes**

(R.C. 2329.211, 2329.271, 2329.31, and 2329.311)

The act makes the following changes relating to real property foreclosure sales.

### **Sale deposit**

The act expressly permits sale deposits to be made by a financial transaction device when property is purchased through an online sale. A *financial transaction device* includes a credit card, debit card, charge card, prepaid or stored value card, automated clearinghouse network credit, debit, or e-check entry, or any other device or method for making an electronic payment or transfer of funds.<sup>176</sup>

### **Purchaser's contact information**

The act also makes changes relating to the information the purchaser of the property at the foreclosure sale must provide. Continuing law, modified in part by the act, requires a business entity that purchases residential rental property to provide the name, address, and telephone number of a specified contact person. The act, however, specifies that this requirement applies if the residential property purchased *is intended to be used as residential rental property*. Also, the act adds that, in the case of a limited liability company that purchases the residential rental property, a contact person for the limited liability company can satisfy the contact information requirements, not just a member, manager, or officer, as required under continuing law.

In addition, the act adds that when the property purchased at a foreclosure sale is not residential rental property and the property is purchased by a business organization, the contact information also can be provided by a contact person of the business organization, not just an employee of the organization as required under continuing law.

Lastly, the act expressly exempts a plaintiff or a lien holder who is a party to the foreclosure action from providing the specified contact information to the officer.

### **Purchaser's statement regarding use of property**

The act eliminates the requirement that the purchaser of the property at a foreclosure sale provide a statement indicating whether the purchaser will occupy the

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<sup>176</sup> R.C. 301.28, not in the act.



property, and instead requires the purchaser to submit a statement indicating if the purchaser intends to use the property as residential rental property.

### **Purchaser's payment of balance due**

Under prior law, the officer making the sale had to require the purchaser, *including a lienholder*, to pay the balance due on the purchase price within 30 days after the court issued a confirmation of the sale, in which the court formally found that it was satisfied with the legality of the sale. The act removes the express reference to the lienholder.

### **Urban renewal projects**

(R.C. 725.01 and 725.04)

The act adds to the reasons that a municipal corporation can undertake an urban renewal project to include cleanup or remediation of hazardous substances or petroleum. Under continuing law, a municipal corporation can undertake an urban renewal project to eliminate and prevent the development or spread of slums and blight. The act adds contamination by hazardous substances or petroleum to the definition of "blight."

The act allows owners, and subsequent owners, subject to a development agreement, to agree to make a semiannual urban renewal service payment, instead of property taxes, that is higher than the amount that would be generated by the assessed value of the improvements. Under continuing law, all semiannual urban renewal service payments are collected at the same time that real property taxes are collected. The entire amount of these payments must be deposited in an urban renewal debt retirement fund. The act also adds to the definition of "revenues," for purposes of the urban renewal projects laws, to include revenue available to the municipal corporation pursuant to a development agreement.

### **Municipal planning commissions**

(R.C. 713.01)

The act authorizes some "public members," who may be nonresidents, to be appointed to a municipal planning commission, to serve instead of the former requirement for all "citizen members" to be residents of the municipal corporation. For each city having a board of park commissioners that establishes a seven-member planning commission, instead of four resident citizens of the municipal corporation serving, two members may be nonresident public members and two must be citizens of the municipal corporation. For the five-member boards under continuing law, instead



of three citizen members serving under the former requirement, one public member and two citizen members must be appointed. The act specifies that the public members need not be residents of the municipal corporation but they must live in the county in which the municipal corporation is located or in a township adjacent to the county. All members are subject to the prohibition against public officials having an unlawful interest in a public contract.

### **Noncharter village disbursements**

(R.C. 733.44 and 733.46)

The act prohibits the treasurer, clerk-treasurer, or fiscal officer of a noncharter village from disbursing funds unless the order disbursing funds contains at least two signatures, as follows:

(1) If the noncharter village has a treasurer, by order signed by the treasurer and at least one member of the village's legislative authority or the village clerk; or

(2) If the noncharter village has a clerk-treasurer or fiscal officer, by order signed by the clerk-treasurer or fiscal officer and at least one member of the village's legislative authority.

### **Funds disbursed to municipal treasurers**

(R.C. 733.44)

Under continuing law, the treasurer of a municipal corporation must demand and receive from the county treasurer taxes levied and assessments made and certified to the county auditor by the municipality's legislative authority and placed on the tax list for collection, and moneys accruing to and debts due the municipality. The county treasurer must disburse those funds on the order of any person authorized by law or ordinance to issue disbursement orders. The act adds that the county auditor also must disburse funds on the order of any person authorized by law or ordinance to issue disbursement orders.

### **Investment of county inactive moneys**

(R.C. 135.35(A)(8))

The act does both of the following with respect to the investment of a county's inactive moneys and money in the county public library fund:



--Revises the restriction on investments in certain commercial paper notes and bankers acceptances by increasing, from 25% to 40%, the amount of a county's total average portfolio that can be used for those investments;

--Limits the total investment in commercial paper notes of a single issuer to 5% of interim moneys available for investment at the time of purchase.

### **Storage of firearms in private motor vehicles**

(R.C. 2923.1210)

The act creates a civil cause of action against a business entity, property owner, or public or private employer whose policy prohibits a valid concealed handgun licensee from transporting or storing a firearm or ammunition in the person's privately owned motor vehicle in accordance with the law. The court in such a case may grant any injunctive relief it finds appropriate.

Under continuing law unchanged by the act, a business entity, property owner, or public or private employer may not establish, maintain, or enforce a policy or rule that prohibits or has the effect of prohibiting a concealed handgun licensee from transporting or storing a firearm or ammunition in a motor vehicle, if the vehicle is in a location where it is otherwise permitted to be and the firearm or ammunition is either in the motor vehicle while the person is physically present or is locked in the trunk, glove box, or other enclosed compartment or container in or on the vehicle.



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## MISCELLANEOUS

### Land conveyances

- Authorizes the conveyance of state-owned land in Allen, Fairfield, Lorain, Madison, Marion, Pickaway, Richland, Ross, Scioto, and Warren counties under the jurisdiction of the Department of Rehabilitation and Correction, through a real estate purchase agreement, sealed bid auction, or public auction.
- Authorizes the conveyance of state-owned land under the jurisdiction of the University of Akron through a sale process acceptable to the University's Board of Trustees.
- Authorizes the conveyance of state-owned land under the jurisdiction of the University of Cincinnati to the Cincinnati Center City Development Corporation through a real estate purchase agreement.
- Authorizes the conveyance for \$1 of the Department of Developmental Disabilities' Youngstown Developmental Center property to the Mahoning County Mental Health and Recovery Board, or to an alternate purchaser.

### Sunset Review Law

- Authorizes the continuation of the ABLE Account Program Advisory Board until December 31, 2020.
- Authorizes the continuation of the Underground Technical Committee, an advisory board to the Public Utilities Commission, until December 31, 2020.
- Authorizes the continuation of the Ohio Healthier Buckeye Advisory Council, a council in the Department of Job and Family Services, until December 31, 2020.

### Food policy coordinator in Ashtabula County

- Requires the county OSU Extension office serving Ashtabula County to establish a pilot program through which it employs a food policy coordinator who will be responsible for connecting local food producers with local consumers.



## Land conveyances

### Department of Rehabilitation and Correction

(Section 753.40)

The act authorizes the conveyance of various state-owned land in Allen, Fairfield, Lorain, Madison, Marion, Pickaway, Richland, Ross, Scioto, and Warren counties through a real estate purchase agreement or by sealed bid auction or public auction. Before selling the real estate, the Directors of Administrative Services and Rehabilitation and Correction must determine the real estate is surplus real property no longer needed by the state, and that the conveyance is in the state's best interest. The authorization expires September 29, 2020.

If sold through a real estate purchase agreement, the consideration and terms and conditions must be acceptable to the Directors of DAS and DRC, and the consideration must be paid at closing.

If a sale is conducted by sealed bid auction or public auction, the real estate must be sold to the highest bidder at a price acceptable to the Directors of DAS and DRC. The Director of DAS must advertise the auction by publication in a newspaper of general circulation in the county where the property is located, once a week for three consecutive weeks before the date on which the sealed bids are to be opened or the public auction takes place. The Director must notify the successful bidder in writing, and may reject any or all bids. The purchaser must pay a 10% deposit to the Director not later than five business days after receiving notice that the purchaser's bid has been accepted, and must enter into a real estate purchase agreement in the form prescribed by DAS. The purchaser must pay the balance at closing, which must occur not later than 60 days after execution of the purchase agreement. Payment must be made by bank draft or certified check payable to the Treasurer of State. A purchaser who does not satisfy the conditions of the sale must forfeit the 10% deposit as liquidated damages. If a purchaser fails to complete the purchase, the Director may accept the next highest bid subject to the same conditions. If the Director rejects all bids, the Director may repeat the sealed bid auction or public auction, or may use an alternative sale process considered acceptable by the Directors of DAS and DRC.

DRC must pay all advertising costs incident to the sale, and the purchaser must pay all other costs associated with the purchase, closing, and conveyance. The proceeds must be deposited into the state treasury to the credit of the Adult and Juvenile Correctional Facilities Bond Retirement Fund.

The Directors of DAS and DRC must determine whether to convey the real estate as entire tracts or as multiple parcels, and whether to convey the real estate to a single



purchaser or multiple purchasers. The deeds conveying the property must contain restrictions prohibiting the purchaser from occupying, using, developing, or selling the real estate if the occupation, use, development, or sale will interfere with the quiet enjoyment of neighboring state-owned land. The deed must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the purchaser or purchasers. The purchaser or purchasers must present the deed or deeds for recording in the office of the county recorder of the county in which the real estate is located.

### **University of Akron**

(Section 753.20)

The act authorizes the Governor to execute a deed in the name of the state conveying real estate in Summit County currently under the jurisdiction of the University of Akron. The University may use a sale process acceptable to its Board of Trustees, including by sealed bid auction or public auction, or through contracting for the services of a real estate broker selected by the University using its normal competitive selection process for vendors. Consideration for the conveyance is a purchase price and any terms and conditions acceptable to the Board. The net proceeds of the sale must be paid to the University and deposited in its endowment account, for purposes to be determined by the Board. The authorization expires September 29, 2020.

The real estate must be sold as an entire tract and not in parcels. The conveyance must include the improvements and chattels situated on the real estate, and is subject to all easements, covenants, conditions, and restrictions of record; all legal highways and public rights-of-way; zoning, building, and other laws, ordinances, restrictions, and regulations; and real estate taxes and assessments not yet due and payable. The real estate must be conveyed in an "as-is, where-is, with all faults" condition. The purchaser or purchasers must pay the costs of the conveyance, including recordation costs of the deed or deeds, closing and conveyance fees, including any surveys, title evidence, title insurance, transfer costs and fees, recording costs and fees, any taxes and other fees, assessments, and costs that may be imposed. The Auditor of State, with the assistance of the Attorney General, must prepare a deed to the real estate described in the authorizing resolution adopted by the Board of Trustees. The deed must contain any exceptions, reservations, or conditions and any right of reentry or reverter specified in the resolution. The deed must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the purchaser or purchasers. The purchaser or purchasers must present the deed or deeds for recording in the Office of the Summit County Recorder. The Board may release any



exceptions, reservations, or conditions or any right of reentry or reverter contained in any deed without further need for legislation.

### **University of Cincinnati**

(Section 753.30)

The act authorizes the Governor to execute a deed in the name of the state conveying real estate in Hamilton County currently under the jurisdiction of the University of Cincinnati to the Cincinnati Center City Development Corporation or a wholly owned subsidiary thereof through a real estate purchase agreement. If the Corporation or its subsidiary does not complete the purchase within the time period provided in the agreement, the University may use any reasonable method of sale considered acceptable by the Board to select an alternate purchaser. Consideration for the conveyance is a purchase price acceptable to the Board. The net proceeds of the sale must be deposited in the University's accounts for purposes to be determined by the Board. The authorization expires September 29, 2020.

The real estate must be sold as an entire tract and not in parcels, and must be conveyed in an "as-is, where-is, with all faults" condition. The conveyance must include the improvements and chattels situated on the real estate, and is subject to all easements, covenants, conditions, and restrictions of record; all legal highways and public rights-of-way; zoning, building, and other laws, ordinances, restrictions, and regulations; and real estate taxes and assessments not yet due and payable. The Corporation must pay all costs associated with the purchase, closing, and conveyance, including surveys, title evidence, title insurance, transfer costs and fees, recording costs and fees, taxes, and any other fees, assessments, and costs that may be imposed. If the real estate is conveyed to an alternate purchaser, the University must negotiate these costs with the purchaser. The Auditor of State, with the assistance of the Attorney General, must prepare a deed to the real estate described in the authorizing resolution adopted by the Board of Trustees. The deed may contain any restrictions, exceptions, reservations, reversionary interests, or other terms and conditions the Board of Trustees determines are in the state's best interest. The deed must state the consideration and be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the purchaser or purchasers. The purchaser or purchasers must present the deed or deeds for recording in the Office of the Hamilton County Recorder. The state or Board may release any restrictions, exceptions, reservations, reversionary interests, or other terms and conditions contained in the deed without further need for legislation.



## Youngstown Developmental Center

(Section 753.50)

The act authorizes the Governor to execute a deed in the name of the state conveying to the Mahoning County Mental Health and Recovery Board, and its heirs, and to its successors and assigns, or to an alternate purchaser, and the alternate purchaser's heirs, and to its successors and assigns, all of the state's right, title, and interest in real estate located in Austintown Township, Mahoning County (the Youngstown Developmental Center). The consideration for the conveyance of the real estate is \$1. The authorization expires September 29, 2020.

The act includes a legal description of the property and requires DAS to prepare a legal description of the real estate to be conveyed, as necessary, in order to facilitate the recording of the deed.

The conveyance must include improvements and chattels situated on the real estate, and is subject to all easements, covenants, conditions, and restrictions of record; all legal highways and public rights-of-way; zoning, building, and other laws, ordinances, restrictions, and regulations; and real estate taxes and assessments not yet due and payable. Furthermore, the real estate must be conveyed in an "as-is, where-is, with all faults" condition and must be sold as an entire tract and not in parcels. The purchaser must pay all costs associated with the purchase, closing, and conveyance of the real estate, including surveys, title evidence, title insurance, transfer costs and fees, recording costs and fees, taxes, and any other fees, assessments, and costs that may be imposed. Proceeds of the sale must be deposited into the state treasury to the credit of the Mental Health Facilities Improvement Fund or another fund designated by the Director of Budget and Management.

The Auditor of State, with the assistance of the Attorney General, and upon payment of the purchase price, must prepare a deed to the real estate which must state the consideration and must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the purchaser. The purchaser must present the deed for recording in the Office of the Mahoning County Recorder.



## **Sunset Review Law**

### **ABLE Account Program**

(Section 701.10)

The act authorizes the continuation of the ABLE Account Program Advisory Board until December 31, 2020. This entity is subject to expiration under the Sunset Review Law,<sup>177</sup> and would have expired under operation of that law before the next Sunset Review Committee is scheduled to convene (during the 133rd General Assembly). The act brings the expiration date of this entity in line with other boards subject to Sunset Review Law.

### **Underground Technical Committee**

(Section 701.10)

The act authorizes the continuation of the Underground Technical Committee, an advisory board to the Public Utilities Commission, until December 31, 2020. This entity is subject to expiration under the Sunset Review Law, and would have expired under operation of that law before the next Sunset Review Committee is scheduled to convene. The act brings the expiration date of this entity in line with other boards subject to Sunset Review Law.

### **Ohio Healthier Buckeye Advisory Council**

(Section 701.10)

The act authorizes the continuation of the Ohio Healthier Buckeye Advisory Council, a council in the Department of Job and Family Services, until December 31, 2020. This entity is subject to expiration under the Sunset Review Law, and would have expired under operation of that law before the next Sunset Review Committee is scheduled to convene. The act brings the expiration date of this entity in line with other boards subject to Sunset Review Law.

### **Food policy coordinator in Ashtabula County**

(Section 733.61)

The act requires the county OSU Extension office serving Ashtabula County to establish a pilot program through which it employs a food policy coordinator. The food policy coordinator is responsible for connecting local food producers with local

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<sup>177</sup> R.C. 101.82 through 101.87, not in the act.



consumers such as the Lake Erie Correctional Institution, hospitals, nursing homes, schools, and supermarkets.



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## ACT ADMINISTRATION

- 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 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition).
- Includes many exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect.
- Includes an expiration clause stating that an item that composes the whole or part of an uncodified section contained in the act (other than an amending, enacting, or repealing clause) has no effect after June 30, 2019, unless its context clearly indicates otherwise.
- With respect to R.C. sections appearing in more than one place in the act, restates the policy of Ohio law that all amendments to a statute are to be given effect if it is reasonably possible to do so.

### Effective dates

(Sections 812.10 to 812.40)

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 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The act was filed with the Secretary of State on June 30, 2017, and the 91st day after that is September 29, 2017. The act also includes many 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 dates of veto overrides**

On July 6, 2017, the House voted to override the Governor's veto of 11 items. On August 22, 2017, the Senate voted to override six of the 11 items. The Senate filed the six items with the Secretary of State on August 23, 2017. Presumably, the items that are subject to the referendum take effect on the 91st day after they were filed: November 22,



2017 (barring the filing of a referendum petition).<sup>178</sup> Presumably, the items not subject to the referendum take effect August 22, 2017, which is the day of the Senate override vote. According to the act, Items 3, 23, 26, and 31 are subject to the referendum. Most of Item 27 is subject to the referendum, but the act designates Section 333.165 as exempt from the referendum. The act also designates Item 34 as exempt from the referendum.

## Expiration

(Section 809.10)

The act includes an expiration clause stating that an item that composes the whole or part of an uncodified section contained in the act (other than an amending, enacting, or repealing clause) has no effect after June 30, 2019, unless its context clearly indicates otherwise.

## Treatment of sections subject to multiple amendments

(Section 815.20)

The act recognizes that several sections of law in the act are amended more than once by the act. In this regard, it states that the multiple amendments are subject to the statute declaring that all amendments to a statute that reasonably can be put into simultaneous operation are to be harmonized and given effect.<sup>179</sup>

These provisions reflect, in general, the policy of Ohio law that all amendments to a statute are to be given effect if it is reasonably possible to do so.<sup>180</sup>

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## HISTORY

ACTION	DATE
Introduced	02-08-17
Reported, H. Finance	05-02-17
Passed House (58-37)	05-02-17
Reported, S. Finance	06-21-17
Passed Senate (24-8)	06-21-17
House refused to concur in Senate amendments (1-93)	06-21-17
Senate requested conference committee	06-21-17
House acceded to request for conference committee	06-21-17
House agreed to conference committee report (59-40)	06-28-17

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<sup>178</sup> See Ohio Constitution Article II, Sections 1c, 1d, and 16.

<sup>179</sup> R.C. 1.52(B), not in the act.

<sup>180</sup> R.C. 1.51, not in the act.



ACTION	DATE
Senate agreed to conference committee report (24-8)	06-28-17
<a href="#"><u>House voted to override vetoed item #3, Controlling Board authority (66-31)</u></a>	07-06-17
<a href="#"><u>House voted to override vetoed item #23, Medicaid coverage of optional eligibility groups (66-31)</u></a>	07-06-17
<a href="#"><u>House voted to override vetoed item #25, Legislative oversight, rules increasing Medicaid rates (66-31)</u></a>	07-06-17
<a href="#"><u>House voted to override vetoed item #26, Medicaid rates for neonatal and newborn services (97-0)</u></a>	07-06-17
<a href="#"><u>House voted to override vetoed item #27, Medicaid rates for nursing facilities (96-1)</u></a>	07-06-17
<a href="#"><u>House voted to override vetoed item #30, Long-term care services added to Medicaid managed care (95-2)</u></a>	07-06-17
<a href="#"><u>House voted to override vetoed item #31, Behavioral health redesign (managed care) (95-2)</u></a>	07-06-17
<a href="#"><u>House voted to override vetoed item #33, Health insuring corporation franchise fee (87-10)</u></a>	07-06-17
<a href="#"><u>House voted to override vetoed item #34, Controlling Board authorization, Medicaid expenditures (66-31)</u></a>	07-06-17
<a href="#"><u>House voted to override vetoed item #36, Healthy Ohio program waiver (66-31)</u></a>	07-06-17
<a href="#"><u>House voted to override vetoed item #37, Oil and Gas Leasing Commission appointments (68-29)</u></a>	07-06-17
<a href="#"><u>Senate voted to override vetoed item #3, Controlling Board authority (23-10)</u></a>	08-22-17
<a href="#"><u>Senate voted to override vetoed item #23, Medicaid coverage of optional eligibility groups (23-10)</u></a>	08-22-17
<a href="#"><u>Senate voted to override vetoed item #26, Medicaid rates for neonatal and newborn services (33-0)</u></a>	08-22-17
<a href="#"><u>Senate voted to override vetoed item #27, Medicaid rates for nursing facilities (32-1)</u></a>	08-22-17
<a href="#"><u>Senate voted to override vetoed item #31, Behavioral health redesign (managed care) (33-0)</u></a>	08-22-17
<a href="#"><u>Senate voted to override vetoed item #34, Controlling Board authorization, Medicaid expenditures (23-10)</u></a>	08-22-17

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