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<p><b>H.B. 110</b> <b>134<sup>th</sup> General Assembly</b></p>	<p><b>Bill Analysis</b></p> <p><a href="#">Click here for H.B. 110's Fiscal Note</a></p>
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## SUMMARY

This analysis is arranged by state agency in alphabetical order. Items that do not directly involve an agency are located under the agency that has regulatory authority over the item, or otherwise deals with the subject matter of the item.

The analysis concludes with chapters on Local Government and Miscellaneous provisions, as well as 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.

## TABLE OF CONTENTS

<b>DEPARTMENT OF ADMINISTRATIVE SERVICES.....</b>	<b>23</b>
State contracts for goods and services.....	26
Ohio preference scoring in state purchases .....	27
Bulk purchasing program .....	27
Cooperative purchasing agreements.....	28
Parental and caregiver leave .....	28
Parental leave.....	28
Caregiver leave .....	29
Fleet management.....	29
Prescription drug advisory council.....	30
DAS insurance program .....	30
Sovereign immunity .....	30
Judicial liability program.....	31

Bond requirements .....	31
Liability insurance program.....	31
Claims against the state .....	31
Compromising of claims .....	31
Public office employee database .....	32
Real estate and planning.....	32
Land conveyance documents.....	32
Land conveyance authority .....	32
Office of Information Technology.....	33
Transferring central warehouse employees from ODH to DAS.....	33
<b>DEPARTMENT OF AGING .....</b>	<b>34</b>
Certification of providers .....	34
Training programs .....	34
Performance-based reimbursement .....	35
At Home Technology Pilot Program .....	35
<b>DEPARTMENT OF AGRICULTURE .....</b>	<b>36</b>
Wine tax diversion to Ohio Grape Industries Fund .....	36
Farmers market registration .....	37
Ohio Proud Program merchandise .....	37
Southern Ohio Agricultural and Community Development Foundation .....	37
<b>ATTORNEY GENERAL .....</b>	<b>39</b>
Collecting debts from gambling winnings.....	40
Lottery winnings.....	40
Casino winnings.....	41
Attorney General’s special counsel .....	41
Attorney General rules on collection of debt.....	42
Ohio Peace Officer Training Academy .....	42
Pilot program – funding peace officer and trooper training .....	43
Creation of pilot program; background on training requirements.....	43
Agency certification of salaries .....	43
Operation of pilot program and payments .....	43
Sole state funding for the training .....	44
Agency and AG reports.....	44
Law Enforcement Training Funding Study Commission .....	44
Federal Treasury Offset Program (TOP).....	45
Foreclosure sale reports to the Attorney General.....	45

<b>AUDITOR OF STATE.....</b>	<b>47</b>
Auditor of State authority.....	47
Auditor responsibilities .....	47
Employees .....	47
Chief Deputy Auditor of State.....	48
State awards for economic development.....	48
<b>OFFICE OF BUDGET AND MANAGEMENT.....</b>	<b>50</b>
Voided income tax refund warrants .....	50
Budget Stabilization Fund investment earnings .....	50
Oversight over fund allocations.....	50
Disposition of financial gifts to support public health.....	51
<b>DEPARTMENT OF COMMERCE .....</b>	<b>52</b>
I Division of Securities.....	55
Ohio Investor Recovery Fund.....	55
Obtaining a restitution assistance award.....	55
Violations.....	56
Funding the OIRF.....	56
Rules .....	57
Elder financial exploitation .....	57
II Division of Industrial Compliance .....	58
Sale of second-hand bedding and toys.....	58
Plumbing inspector certification.....	58
Building inspection fees .....	59
Manufactured homes .....	59
Historical boiler license .....	59
III Division of Real Estate and Professional Licensing .....	60
Real estate broker and salesperson contact information .....	60
Ancillary trustees for brokers .....	60
Rulemaking relating to manufactured home sales.....	60
Disposition of license fees .....	61
IV State Fire Marshal.....	61
Fire investigation.....	61
Revolving loan program .....	61
Self-service gas stations .....	61
V Division of Liquor Control .....	61
Direct beer and wine sales.....	61

S-1 liquor permit eligibility changes .....	62
S-2 liquor permit.....	62
Wine fulfillment warehouse.....	62
B-2a liquor permit changes .....	63
Illegal shipment of beer and wine.....	63
Retail permit holder prohibition .....	64
D-4 liquor permit – club oaths.....	64
Serving alcohol during bingo.....	64
VI Division of Financial Institutions.....	64
Residential Mortgage Lending Act fee increase .....	64
<b>CONTROLLING BOARD .....</b>	<b>66</b>
Controlling Board agenda publication deadline .....	66
<b>COUNSELOR, SOCIAL WORKER, AND MARRIAGE AND FAMILY THERAPIST BOARD .....</b>	<b>67</b>
Registration for master’s level trainee graduates .....	67
<b>DEPARTMENT OF DEVELOPMENT .....</b>	<b>68</b>
Rename agency as Department of Development.....	77
Ohio Residential Broadband Expansion Grant Program.....	77
Definitions .....	77
Broadband Expansion Program Authority .....	79
Authority membership .....	79
Appointed members.....	79
Authority meetings.....	80
Authority duties.....	80
Grant specific duties.....	80
Other duties.....	81
Report.....	82
Application process for program grants.....	82
Ineligible projects .....	82
Application process .....	82
Application requirements.....	83
Application submission period .....	84
Incomplete applications .....	84
Proprietary and trade secret information.....	85
Financial assurance condition for receiving grants.....	85
DOD application website.....	85
Notification process.....	86

County-requested solicitation for broadband providers .....	86
Project challenge process.....	86
Challenge evidence.....	87
Challenge response .....	87
Application revisions permitted .....	88
Failure of challenging provider after challenge is upheld .....	88
Scoring system for application review .....	88
Program grant awards.....	90
Funding for program grants .....	90
Appropriation .....	90
Funding process.....	90
Funding from video service providers (VSPs).....	91
Funding from special assessments.....	91
Distribution of program grant funds .....	92
Speed verification.....	92
Program noncompliance .....	92
Grant award reports.....	93
Report contents .....	93
Authority grant program report.....	93
Broadband infrastructure ownership rights .....	94
Rules .....	94
Use of electric cooperative easements for broadband .....	94
Definitions .....	95
Easement action.....	96
Establishment of fair market value .....	96
Fixed amount of damages .....	96
Evidence of revenue or profits not allowed.....	96
Injunctive relief not allowed.....	96
Statute of limitations.....	96
Other bars to bringing an action for damages .....	96
Effect of court determination .....	97
Filing court determination with county recorder .....	97
State power not expanded.....	97
Appropriation of property laws not applicable.....	97
Electric cooperative pole attachments.....	97
Definitions .....	97

Requesting access and review.....	99
Make-ready work .....	99
Attachment requirements.....	99
Pole modification .....	100
Pole attachment disputes .....	100
Complaints.....	100
Venue requirements.....	100
Burden of proof and court determinations.....	101
Remedies .....	102
Transfer of minority business enterprise and related programs.....	102
Minority Development Financing Advisory Board.....	104
Job creation tax credit .....	104
Background.....	104
Work-from-home employees.....	105
<b>DEPARTMENT OF DEVELOPMENTAL DISABILITIES .....</b>	<b>106</b>
Technology First Task Force and technology first policy .....	108
Medicaid rates for ICF/IID services .....	109
ICF/IID franchise permit fee.....	109
Transfer of residential facility license .....	110
Developmental centers services and cost recovery .....	110
County DD board waiver allocation plan .....	111
County DD board business manager .....	111
County DD boards annual cost reports.....	111
Release of records and reports by county DD boards .....	111
County share of nonfederal Medicaid expenditures .....	112
County subsidies used in nonfederal share .....	112
Medicaid rates for homemaker/personal care services.....	112
Innovative pilot projects .....	113
Ohio Developmental Disabilities Council.....	113
<b>DEPARTMENT OF EDUCATION .....</b>	<b>114</b>
I. School finance .....	126
School financing – overview .....	126
Overview of existing law .....	126
Overview of the school financing system proposed by the bill .....	126
New school financing system.....	128
State operating funding for city, local, and exempted village school districts.....	128

Enrolled ADM and base cost enrolled ADM .....	128
Base cost calculation .....	129
1. Teacher base cost .....	129
2. Student support base cost.....	129
3. District leadership and accountability base cost.....	130
4. Building leadership and operations base cost.....	131
5. Athletic co-curricular activities base cost.....	131
Base cost per pupil and statewide average base cost per pupil .....	131
Statewide average career-technical base cost per pupil .....	132
Per-pupil local capacity percentage .....	132
Per-pupil local capacity amount.....	133
1. Valuation per pupil .....	133
2. Adjusted federal gross income per pupil .....	133
3. Adjusted local share federal adjusted gross income per pupil .....	133
State core foundation funding .....	133
1. State share of the base cost .....	133
2. Targeted assistance .....	134
3. Special education funds.....	134
4. Disadvantaged pupil impact aid .....	135
5. English learner funds .....	136
6. Gifted funds .....	136
7. Career-technical education funds .....	137
8. Career-technical associated services funds.....	137
State core foundation funding after application of the phase-in and the guarantee .....	138
Transportation funding.....	139
Supplemental targeted assistance .....	140
Career awareness and exploration funds.....	141
State operating funding for joint vocational school districts.....	141
Community school and STEM school funding.....	142
Formula transition supplement.....	144
Educational service center funding.....	145
State scholarship programs.....	146
Subsidy for school bus purchases .....	146
Transportation collaboration grants .....	146
Student transportation policy .....	146
Studies .....	147

School Funding Oversight Commission .....	148
Gifted reporting requirements.....	150
Repeal of student wellness and success funds.....	151
Payment for districts with decreases in utility TPP value.....	151
Eligibility determination .....	151
Payment amount.....	151
Payment deadline.....	152
Payment for districts with nuclear plants in territory – repealed .....	152
Recommendations for compensating valuation losses – repealed.....	152
Auxiliary Services funds .....	152
II. Graduation requirements and assessments.....	153
High school graduation requirements .....	153
Background.....	153
Industry-recognized credentials.....	154
State-issued licenses .....	154
Chartered nonpublic schools.....	154
Transfer students and graduation requirements.....	154
Students who transfer between public and chartered nonpublic schools .....	155
Students who transfer into public and chartered nonpublic schools .....	155
Other demonstration of competency changes .....	155
Exemption for certain students with IEPs .....	155
ACT or SAT score as alternative demonstration of competency .....	156
“Foundational” options .....	156
Diploma seal requirement changes .....	156
Citizenship diploma seal .....	156
Science diploma seal .....	157
Nationally standardized college admission assessments .....	157
Dyslexia diagnostic assessments .....	157
Kindergarten Readiness and reading skills assessments .....	158
III. Educator licensure .....	158
Disciplinary actions for educators.....	158
Effect on H.B. 263.....	158
Automatic revocation or denial of license .....	158
Collateral sanctions for certain criminal offenses.....	159
Comparison of criminal offenses.....	159
Discretionary disciplinary action .....	168

Inactivation of licenses .....	169
Investigations for purposes of disciplinary actions .....	169
Release of information obtained during an investigation .....	169
Registration in lieu of State Board licenses .....	170
Assisting individuals in obtaining school employment .....	170
Cheating on assessments .....	171
Prohibited actions .....	171
Consequences for teacher licensure and employment .....	171
Teach for America licenses .....	171
Employment of contractors .....	172
Pre-employment applications and screening .....	172
Written notice on employment applications .....	172
Pre-employment screening process .....	172
Review of personnel files .....	172
Career-technical educator licensure .....	173
School counselor standards .....	173
IV. Community schools .....	173
Automatic closure of community schools .....	173
Background .....	173
Automatic withdrawal of community school student waiver .....	174
Community school sponsor evaluations .....	174
Background .....	175
JCARR review of Department of Education changes .....	175
Montessori preschool payments for students under age five .....	175
Community School Revolving Loan Fund .....	175
Pilot funding for dropout recovery e-schools .....	176
V. STEM schools .....	176
STEM and STEAM schools and equivalents .....	176
STEM Committee membership .....	177
Grades offered by STEM and STEAM schools .....	177
STEM and STEAM school designations for JVSs and ESCs .....	177
STEM and STEAM school equivalent designations for career centers .....	177
Proposals for STEM and STEAM schools and equivalents .....	177
Distinctions as STEM programs of excellence .....	178
Effective period for designations and distinctions .....	178
Renewal of designations and distinctions .....	178

Revocation of designations and distinctions.....	179
Annual list of written assurances .....	179
Repeal of miscellaneous provisions .....	179
VI. College Credit Plus program .....	180
Students in state-operated schools .....	180
Academic eligibility for all students.....	180
Nonpublic school participation.....	181
Course subject matter disclaimer .....	181
VII. Other.....	182
Transportation for community school and chartered nonpublic school students.....	182
Transportation plans .....	183
Exception – ESC to develop transportation plans .....	183
Limits on use of mass transit systems.....	184
Transportation when schools are open for instruction .....	184
Deadline for community schools to accept responsibility to transport students .....	184
Deduction of state funding for school district noncompliance .....	184
Payment in lieu of transportation.....	185
FAFSA data system.....	185
Computer science education .....	186
State plan for computer science education .....	186
Committee to develop plan.....	186
Items to consider .....	186
Plan contents.....	187
Public school students and computer science courses.....	187
Option to enroll .....	187
Courses offered by public schools.....	188
Courses offered by educational providers .....	188
Department’s rulemaking authority.....	188
Annual report .....	189
Computer science education licensure exemption.....	189
Licenses and endorsements to teach computer science .....	190
State Board’s standards and curriculum .....	190
Effects of vaping – school district health curriculum .....	190
Victim counseling.....	190
Academic distress commissions – moratorium .....	190
Adult Diploma Program minimum age .....	191

Ohio Code-Scholar Pilot Program .....	191
Program curriculum by grade level .....	192
Reporting requirements .....	192
Career Promise Academy pilot program .....	192
Autism Scholarship Program.....	193
Interscholastic athletics .....	194
International students.....	194
Transfer rules.....	194
Nonpublic school administration of drugs.....	194
Advanced standing programs for secondary students .....	195
Obsolete reports, plans, or recommendations.....	195
<b>ENVIRONMENTAL PROTECTION AGENCY .....</b>	<b>197</b>
Fees .....	199
Scrap tires removed from “no fault” sites .....	202
Lead and copper notification rules .....	203
Certified and accredited laboratories under the VAP .....	204
Water pollution control: practical qualification level.....	205
Isolated wetland mitigation ratio table reference .....	205
<b>FACILITIES CONSTRUCTION COMMISSION.....</b>	<b>206</b>
Notification of district net indebtedness.....	206
Background.....	206
School water bottle filling stations .....	206
<b>GENERAL ASSEMBLY.....</b>	<b>208</b>
General Assembly open meetings – allow committee caucus .....	208
Evaluation of publicly funded child care and Step Up to Quality .....	208
Committees .....	209
Hearings and report .....	209
Joint committee – career pathways and workforce training .....	210
<b>GOVERNOR .....</b>	<b>212</b>
TANF report.....	212
<b>DEPARTMENT OF HEALTH.....</b>	<b>213</b>
Summary orders at nursing homes and assisted living facilities .....	215
Orders and action .....	215
Expenses and fines .....	216
Requests for hearings.....	216
Inspections of assisted living facilities .....	216

Hospital licensure.....	217
Effective date of mandatory licensure and interim period.....	217
Definitions .....	217
Entities not subject to hospital licensure .....	217
Note on maternity units, newborn care nurseries, and ambulatory surgical facilities .....	218
Penalties for operating without a license .....	218
Applications for licensure.....	219
Eligibility.....	219
License issuance, validity, and renewals .....	219
License transfer .....	219
Hospital inspections .....	220
Process to avoid inspections .....	220
Confidentiality of on-site survey reports.....	220
Unit inspections .....	220
Other inspections .....	220
Inspection fees.....	220
Rulemaking .....	221
Health, safety, welfare, and quality standards .....	221
Standards and procedures for licensure .....	221
Penalties and fees.....	221
Other rules.....	222
Administrative Procedure Act .....	222
Collaboration with hospital industry .....	222
Violations.....	222
Notice of proposed action .....	222
Inspections.....	223
Order of suspension or revocation.....	223
Adjudications and final orders.....	223
Injunctive relief.....	223
Imminent threat of harm .....	223
Notice of proposed action .....	224
Technical assistance .....	224
Hospital governing board .....	224
Admitting privileges .....	224
Opioid reporting .....	225
Disease reporting .....	225

General operations fund .....	225
Home health service provider licensing .....	226
License required .....	226
Skilled home health services license requirements .....	226
Nonmedical home health services license requirements .....	227
ODH duties .....	227
Licensing .....	227
Rulemaking .....	227
Criminal penalties .....	228
Expedited licensing inspections .....	228
Obsolete procedures and terms .....	228
Frontline Health Care Worker Pilot Program .....	229
Home visiting services .....	229
Technological resources .....	229
Newborn screening .....	230
Smoking and tobacco .....	230
Minimum age to sell tobacco products .....	230
Dispensing tobacco cessation drugs without a prescription .....	231
Provider and protocol requirements .....	231
Documentation and notice .....	231
Prohibition .....	231
Rules .....	232
Moms Quit for Two grant program .....	232
Smoke-Free Workplace Law .....	232
Retail tobacco store definition .....	233
Renovation, Repair, and Painting Rule .....	233
<b>DEPARTMENT OF HIGHER EDUCATION .....</b>	<b>234</b>
Restriction on instructional fee increases .....	236
In-state tuition for certain graduate students .....	237
Electronic attendance of board of trustees' meetings .....	237
Textbook auto-adoption at state institutions .....	238
Ohio Innovative Partnership – Choose Ohio First Scholarship .....	239
Ohio Research Scholars Program .....	239
Academic fields for Choose Ohio First scholarships .....	239
Criteria for scholarship proposals .....	239
Statewide participation .....	240

Participation in work-based learning .....	240
Agreement governing use of scholarships .....	241
Recruitment initiatives .....	241
Scholarship amounts .....	241
Extension of awards .....	241
Reserve Fund .....	241
Ohio National Guard Scholarship eligibility .....	241
Commercial Truck Driver Student Aid Program .....	242
Eligibility .....	242
Award amounts .....	242
Promissory note .....	243
Commercial Truck Driver Student Aid Fund .....	243
FAFSA data system .....	243
OhioCorps Program .....	244
State university admissions and computer science education .....	244
Educator preparation programs and computer science .....	245
<b>OHIO HISTORY CONNECTION .....</b>	<b>246</b>
Ohio Commission for the United States Semiquincentennial .....	246
<b>DEPARTMENT OF INSURANCE .....</b>	<b>249</b>
Joint venture title insurance companies .....	249
Long-term care insurance tax credit study .....	250
<b>DEPARTMENT OF JOB AND FAMILY SERVICES .....</b>	<b>251</b>
TANF spending plan .....	257
Individual Development Account (IDA) reports .....	258
Case plans and family service plans .....	258
Permanency plans .....	258
Family service plans .....	258
Caseworker in-service training .....	259
Kinship caregiver placement efforts .....	259
Finding kinship caregivers .....	259
Intensive efforts .....	259
Summary of efforts .....	260
Exemption .....	260
Court review .....	260
Court determination .....	261
Kinship caregiver program .....	261

CDJFS program incorporation .....	261
Program funding.....	261
Kinship guardianship assistance (KGA) .....	262
Federal KGA.....	262
On behalf of a KG young adult .....	263
State plan amendment requirement .....	263
Implementation and performance.....	263
Extension or refusal of federal KGA .....	263
Eligibility for foster care-related programs .....	264
State hearing .....	264
On behalf of an eligible child.....	264
State plan amendment requirement .....	264
Implementation and performance.....	264
County expenditure reports.....	264
Distribution to PCSA .....	264
Interstate compacts.....	265
JFS rules for federal KGA .....	265
State KGA.....	265
Kinship permanency incentive and Ohio Works First .....	266
Gross income and KGA for child support .....	266
PCSA duties regarding impossibility of adoption .....	266
Online training for foster caregivers.....	266
PASSS payments.....	266
Bills of Rights for foster youth and resource families.....	267
Preemption.....	268
Immunity .....	268
Notification for sibling of adopted person .....	268
Criminal records check for individuals overseeing a child.....	268
Background checks for institutions and associations .....	269
Requirement to obtain information.....	269
Background information obtained .....	270
Further action.....	270
Background – current law .....	270
Federal foster care assistance for emancipated young adults.....	270
Jurisdiction .....	271
Voluntary participation agreements .....	271

Best interest determination .....	271
Reasonable efforts determination .....	271
Payment suspension .....	272
Reimbursement for federal juvenile court programs.....	272
Streamlining County Level-Information Access Task Force.....	272
Task Force creation .....	272
Membership .....	272
Meetings.....	273
Duties.....	273
Publicly funded child care .....	273
Step Up to Quality.....	274
Type A family day-care homes.....	274
Child care resource and referral services .....	274
Head Start program definition.....	275
Ohio Commission on Fatherhood .....	275
Elderly Simplified Application Project.....	275
Unemployment compensation review commission .....	276
Confidentiality .....	276
Prohibitions .....	276
SharedWork .....	276
<b>JUDICIARY/SUPREME COURT .....</b>	<b>278</b>
Jefferson County County Court.....	278
Indigent drivers alcohol treatment fund .....	278
Probation Workload Study Committee .....	279
<b>DEPARTMENT OF MEDICAID .....</b>	<b>280</b>
Medicaid waiver component definition .....	283
Duties of area agencies on aging .....	283
Hospital Care Assurance Program, franchise permit fee.....	283
Voluntary community engagement program .....	284
Medicaid Cost Assurance Pilot Program.....	285
Care management entity.....	285
Report and subcommittee .....	285
Rules .....	286
Care Innovation and Community Improvement Program.....	286
Ohio Invests in Improvements for Priority Populations .....	287
Medicaid rates for community behavioral health services .....	287

Adult day care service payment rates .....	287
Value-based purchasing supplemental rebate .....	288
Nursing facilities.....	288
Critical access nursing facilities .....	288
Medicaid payment rate formula .....	288
Resident assessment data .....	289
Special Focus Facility Program .....	289
SFF tables.....	289
Quality payments .....	290
Quality incentive payments.....	291
Nursing Facility Payment Commission .....	292
Nursing facility rebasing.....	293
<b>MEDICAL BOARD .....</b>	<b>294</b>
Massage Therapy Advisory Council .....	294
<b>DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES .....</b>	<b>295</b>
Suspending admissions and taking action against a license.....	297
Suspending admissions .....	297
Procedures.....	298
Certifiable services and supports.....	298
Licensing boards and confidential treatment and monitoring programs .....	298
Confidentiality of substance use disorder records.....	299
Opioid treatment programs.....	299
License expiration.....	299
Employees .....	299
Substance use disorder stabilization centers.....	300
Substance use disorder treatment in drug courts .....	300
Selection of participants.....	300
Treatment.....	300
Planning.....	301
County jails reimbursed for substance use treatment drugs .....	302
Pilot to dispense controlled substances in lockable containers .....	302
Pharmacy participation and reimbursement .....	302
Report.....	303
Qualified immunity.....	303
Rules .....	303
ADAMHS boards.....	303

Composition and appointment .....	303
Duties.....	304
Mental health crisis stabilization centers.....	304
Family and children first council flexible funding pool.....	305
<b>DEPARTMENT OF NATURAL RESOURCES .....</b>	<b>306</b>
Division of Wildlife .....	311
Lake Erie Sport Fishing District permit .....	311
Wildlife Boater Angler Fund .....	311
Veterans fishing and hunting benefits .....	311
Senior deer and wild turkey fees .....	312
Lifetime and multi-year hunting and fishing fees .....	312
Division of Mineral Resources Management.....	313
Performance security for coal mining operations.....	313
Deputy mine inspector eligibility requirements .....	313
Reciprocity for mine personnel.....	314
Division of Oil and Gas Resources Management .....	314
Oil and gas well plugging.....	314
Defective well casing and plugging requirements.....	315
Oil and Gas Leasing Commission .....	316
Renaming and membership .....	316
Funding.....	316
Leasing and nomination procedures.....	317
Division of Water Resources.....	318
Dams and levees enforcement.....	318
Division of Parks and Watercraft .....	320
Fraudulent watercraft identification.....	320
Boat accident reporting threshold .....	320
Division of Forestry .....	321
Forestry projects on federal land .....	321
Wildfire reimbursement to firefighting agencies.....	321
State employees aid in out-of-state wildfires .....	322
Division of Geological Survey.....	322
Elimination of Ohio Geology license plate .....	322
<b>OHIO CONSUMERS' COUNSEL.....</b>	<b>323</b>
Compensation of OCC governing board .....	323
<b>OPPORTUNITIES FOR OHIOANS WITH DISABILITIES AGENCY.....</b>	<b>324</b>

Employer inclusive workplace award .....	324
OHIO OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETIC TRAINERS BOARD.....	325
Board vacancies .....	326
Occupational therapist licensing procedures .....	326
Limited permits .....	326
Inactive licenses.....	326
Physical therapy licensing procedures.....	327
Applications with physical identification .....	327
Acceptable programs .....	327
Orthotists, prosthetists, and pedorthists – enforcement.....	327
Authorized Board actions.....	327
Fee for administrative hearing costs.....	327
Responsibility for investigations .....	328
Sharing of investigatory information .....	328
Discipline based on intervention in lieu of conviction.....	328
Discipline based on sexual interactions with patients.....	328
Jurisdiction for appeals .....	329
<b>DEPARTMENT OF PUBLIC SAFETY .....</b>	<b>330</b>
Certificate of title fee allocation .....	330
Enforcement of illegal tobacco distribution .....	330
Emergency Management Assistance Compact immunity .....	331
Vehicle registration waiver for amusement ride owners.....	331
U.S. Power Squadron License Plate distribution .....	332
<b>PUBLIC UTILITIES COMMISSION .....</b>	<b>333</b>
Hours of operation.....	333
PSB contract for expert or analyst .....	333
Internet telephone directories .....	333
<b>DEPARTMENT OF REHABILITATION AND CORRECTION .....</b>	<b>335</b>
Local confinement for fifth degree felony prison terms .....	336
Mandatory local confinement.....	336
Exceptions .....	337
Mandatory memorandum of understanding.....	337
Post-release control sanctions.....	338
Background.....	338
Mandatory PRC.....	338
Discretionary PRC .....	339

Consideration of delinquent child adjudications .....	339
Use of active GPS monitoring.....	339
Shortening or terminating PRC .....	339
Termination of PRC, if maximum prison time available expires.....	340
Simultaneous parole and PRC; ban on consecutive PRC periods .....	340
Sacramental wine in specified governmental facility.....	341
Notification of possible prison term for community control violation .....	342
Community-based substance use disorder treatment.....	342
Subsidies for community-based corrections programs.....	342
Administrative releases .....	343
Sealing of records related to unconditional pardon.....	343
Internet access for prisoners .....	344
Removing outdated law about the Ohio River Valley Facility .....	344
<b>SECRETARY OF STATE .....</b>	<b>345</b>
Foreign nonprofit corporation certificate of authority .....	345
Service of process fees.....	345
Federal grants .....	345
<b>DEPARTMENT OF TAXATION.....</b>	<b>347</b>
Income tax.....	349
Rate reduction.....	349
Deduction for venture capital gains.....	350
Eligible VCOC certification .....	350
Reporting and administrative requirements.....	350
Deduction amounts; business income deduction .....	351
Deduction for capital gains from sale of business .....	352
Deduction amount.....	352
Relationship to business income deduction.....	352
Taxation of railroad retirement benefits .....	353
Deduction for certain nonresident income.....	353
Income tax credit for tax withholdings .....	353
Resident credit amended return period .....	354
Tax on fraudulent unemployment compensation .....	354
Sales and use taxes .....	355
Investment bullion and coin exemption .....	355
County sales and use taxes for jail operations.....	355
Remote sellers.....	355

Lodging taxes .....	356
For convention facilities .....	356
Commercial activity tax.....	356
Minimum commercial activity tax computation.....	356
Administrative expense earmark .....	357
Kilowatt-hour tax .....	357
Exemptions.....	357
Estate tax.....	358
Newly discovered property and refunds.....	358
Administrative fees .....	358
Property tax .....	358
Emergency and police services combined levy .....	358
Developmental disability housing exemption.....	359
Supportive housing exemption .....	359
Renewable energy facility exemption extension .....	360
Urban agricultural area exemption .....	360
Improper homestead exemption recovery .....	361
Tangible personal property tax reimbursements .....	362
Payments for subdivisions with a nuclear power plant .....	362
Cross-reference corrections.....	362
Tax Administration.....	363
Local funds transfer approval period .....	363
Disclosing taxpayer information to State Racing Commission .....	363
State tax refund review process.....	364
Tax obligations of liquor permit holders.....	364
Wireless 9-1-1 Government Assistance Fund .....	364
<b>DEPARTMENT OF TRANSPORTATION .....</b>	<b>366</b>
Traffic safety study.....	366
<b>TREASURER OF STATE .....</b>	<b>367</b>
Ohio State and Local Government Expenditure Database .....	367
Creation and operation of the Database .....	367
Applicability.....	368
Database expenditure information.....	368
Database features .....	369
Public comment opportunity .....	369
Exclusion from liability for disclosure .....	369

State Board of Deposit secretary .....	370
<b>LOCAL GOVERNMENT .....</b>	<b>371</b>
City health districts .....	372
Soil and water conservation districts.....	373
Acceptance of credit cards by districts .....	373
Dishonesty and faithful performance of duty policy .....	373
Regional councils of governments.....	373
Shoreline improvement district project expansion .....	374
Inverse condemnation proceedings .....	374
Use of eminent domain to provide recreational trails .....	374
Free library photocopies of identification .....	375
<b>MISCELLANEOUS .....</b>	<b>376</b>
COVID violations: expunge, refund fines, reinstate permits .....	376
COVID violations: expunge, refund fines, reinstate permits .....	377
Vacate and expunge violations .....	377
Reinstate rights and privileges .....	377
Cease disciplinary action .....	378
Refund civil and administrative fines .....	378
Venue for enforcement.....	379
Buy Ohio preference for personal protective equipment .....	379
State Teachers Retirement Board meetings.....	380
<b>NOTES .....</b>	<b>382</b>
Effective dates.....	382
Expiration .....	382

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## Department of Administrative Services

### State contracts for goods and services

- Prohibits a state contract for goods or services from including certain provisions the state generally does not include in its contracts, such as indemnification clauses or binding arbitration clauses, and voids such terms by operation of law.

### Ohio preference scoring in state purchases

- Expands the types of purchases under state purchasing law that are eligible for an Ohio preference in scoring.

### Bulk purchasing program

- Allows the Department of Administrative Services (DAS) to permit a political subdivision or special district of another state to participate in DAS contracts for the purchase of supplies and services.
- Allows a board of elections to participate in DAS purchase contracts if DAS has authorized the county to participate in those contracts, instead of requiring the board to apply to DAS separately.
- Clarifies that a board of elections may choose to purchase election supplies through DAS, through the Secretary of State's bulk purchasing program, or by other means.

### Cooperative purchasing agreements

- Clarifies that DAS can join existing procurement contracts of other state agencies with their own purchasing authority, other states, and the U.S. government.

### Parental and caregiver leave

- Allows certain state employees to be eligible, on the delivery of a stillborn child, for paid parental leave of absence and parental leave benefits established in continuing law.
- Includes, for paid parental leave eligibility purposes, persons employed in state positions for which the authority to determine compensation is given by law to another individual or entity.
- Increases, from \$2,000 to \$5,000, the adoption expenses benefit an employee may choose to receive in lieu of paid parental leave.
- Makes certain state employees who are foster caregivers and kinship caregivers eligible for up to five days of caregiver leave with full pay in a calendar year on placement of a child with the caregiver.

### Fleet management

- Modifies the definition of "operating cost," which is a factor in calculating the minimum number of business miles per year an employee of a state agency must drive in order to qualify for approval by the DAS to receive a motor vehicle for business use.

- Allows proceeds from the disposition of state vehicles to be transferred from the Investment Recovery Fund to the Fleet Management Fund.

### **Prescription drug advisory council**

- Specifies that the DAS Director is the chairperson of the existing Prescription Drug Transparency and Affordability Advisory Council, and modifies the frequency at which the Advisory Council must meet (from quarterly to at the call of the chairperson).

### **DAS insurance program**

- Declares the administration of the state's Risk Management Program to be a public duty for purposes of the Sovereign Immunity/Court of Claims Law.
- Authorizes the Office of Risk Management to administer a judicial liability program.
- Replaces the requirement that the state purchase fidelity bonds for state agents and employees with authority to self-insure itself and third parties against loss due to dishonest acts of state officers, employees, and agents.
- Requires public official bonds to be purchased when statutorily required.
- Expands the authority of the state and political subdivisions to insure against liability, from the losses attributable to the operation of specified vehicles during the course of official duties to any loss that occurs in the course of employment or official responsibilities.
- Specifies that recoveries against the state are to be reduced by other recoveries the claimant is entitled to, as opposed to just those other recoveries the claimant has received.
- Prohibits a claim against the state from being filed in the Court of Claims until the claimant has attempted to have the claim compromised by the Office of Risk Management or satisfied by the state's liability insurance.
- Specifies that the authority to commence an action against an officer or employee of the state does not affect the immunity provided to state officers or employees in law.
- Requires an instrumentality of the state to notify the Office of Risk Management of any settlement or compromise made in a claim against the instrumentality for the purpose of reserving funds.
- Requires a copy of a settlement instrument to be forwarded to the Office of Risk Management for payment from the Risk Management Reserve Fund.
- Specifies that DAS's authority to compromise claims does not extend to compromising claims on behalf of agency programs with direct settlement authority.
- Specifies that all compromises made by the Office of Risk Management are to be paid from the Risk Management Reserve Fund and the conditions of such payment.

- Specifies that information related to claims against the state is to be held in confidence, is not to be released, and is not subject to discovery or introduction in evidence in any federal or state civil action.
- Requires a copy of a judgement against the state to be forwarded to the Office of Risk Management for the judgement to be paid from the Risk Management Reserve Fund.

### **Public office employee database**

- Eliminates the requirement that a public office include birth dates on the required public office employee database.

### **Real estate and planning**

- Transfers from the Auditor of State to the DAS Director the responsibility to prepare deeds for the conveyance of state land.
- Transfers from the Auditor of State to the DAS Director the responsibility to keep documents showing the state's interest in real estate, other than public lands and highway rights-of-way, and to maintain a recording system open for public inspection.
- Authorizes DAS to:
  - Grant perpetual easements to public utilities regulated by the Public Utilities Commission of Ohio;
  - Dispose of state-owned real estate worth less than \$1 million, with Controlling Board approval; and
  - Correct legal descriptions or title defects, or release fractional interests in real property, as necessary to cure clouds on title that are reflected in public records.

### **Office of Information Technology**

- Modifies the responsibility of the Office of Information Technology with respect to the acquisition of common information technology.

### **Transferring central warehouse employees from ODH to DAS**

- Requires, on or after July 1, 2021, any Department of Health (ODH) employees identified as necessary to the operation of a central warehouse to be transferred to the DAS.

## State contracts for goods and services

(R.C. 9.27)

The bill prohibits a contract entered into by the state<sup>1</sup> for the procurement of goods or services from including any of the following, unless otherwise required or permitted by state or federal law:

- A provision that requires the state to indemnify or hold harmless another person.
- A provision by which the state agrees to binding arbitration or any other binding extra-judicial dispute resolution process.
- A provision that names a venue for any action or dispute against the state other than a court of proper jurisdiction in Franklin County.
- A provision that requires the state to agree to limit the liability for any direct loss to the state for bodily injury, death, or damage to property of the state caused by the negligence, intentional or willful misconduct, fraudulent act, recklessness, or other tortious conduct of a person or a person's employees or agents, or a provision that would otherwise impose an indemnification obligation on the state.
- A provision that requires the state to be bound by a term or condition that is unknown to the state at the time of signing a contract, that is not specifically negotiated with the state, that may be unilaterally changed by the other party, or that is electronically accepted by a state employee.
- A provision that provides for a person other than the Attorney General to serve as legal counsel for the state or for any state agency, except in cases where the Attorney General may appoint special counsel.<sup>2</sup>
- A provision that is inconsistent with the state's obligations under the Public Records Act.
- A provision for automatic renewal that would obligate state funds in subsequent fiscal years.
- A provision that limits the state's ability to recover the cost of cover for a replacement contractor.

If a contract contains one of these terms or conditions, the term or condition is void *ab initio* (invalid from the outset), and the contract otherwise is enforceable as if it did not contain the invalid term or condition. The bill specifies that a contract containing an invalid term or condition is governed by and must be construed in accordance with Ohio law notwithstanding any term or condition to the contrary in the contract. Finally, this provision does not apply to a

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<sup>1</sup> Includes the General Assembly, Supreme Court, offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state.

<sup>2</sup> R.C. 109.07, not in the bill.

contract in effect before the section's effective date, or to the renewal or extension of a contract in effect before that date.

## **Ohio preference scoring in state purchases**

(R.C. 125.09)

The bill expands the types of purchases under state purchasing law that are eligible for an Ohio preference in scoring. Under current law, Ohio preference scoring is applied to purchases through the competitive sealed bid process. Under the bill, the scoring also must be applied to purchases through the competitive sealed proposal and reverse auction processes. Reverse auction is a purchasing process in which offers submit bids in competing to sell services or supplies in an open environment via the internet.<sup>3</sup>

Generally, Ohio law requires the Director of Administrative Services to adopt rules to prescribe criteria and procedures for use by all state agencies in giving preference to Ohio products. These rules allow for granting waivers of the Buy Ohio requirements on a contract-by-contract basis when compliance would result in paying an excessive price or acquiring a disproportionately inferior product. If the Director determines that selection of the lowest Ohio bid will not result in an excessive price or a disproportionately inferior product or service, the Director must propose a contract award to the lowest responsive and responsible Ohio bid at the bid price quoted.<sup>4</sup>

## **Bulk purchasing program**

(R.C. 125.04 and 3501.302)

The bill makes changes to the law concerning which entities may participate in the Department of Administrative Services (DAS) bulk purchasing program for supplies and services.

First, the bill allows a political subdivision or special district in another state to participate in purchasing contracts in the same manner as an Ohio political subdivision or special district may do. Continuing law already allows federal agencies, other states, other purchasing consortia, and entities established under interstate compacts to participate, along with certain other entities in Ohio. DAS is permitted to charge each participating entity a reasonable fee to cover the costs DAS incurs in allowing the entity to participate.

Second, the bill allows a board of elections to participate in DAS purchasing contracts if the county in which the board is located is authorized to participate in those contracts. The board may participate under the same terms and conditions that apply to the county. Currently, a board of elections may participate but must separately apply to DAS and pay a fee for its own membership, instead of participating through the county's membership.

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<sup>3</sup> R.C. 125.071 and 125.072, not in the bill.

<sup>4</sup> R.C. 125.11, not in the bill.

Finally, the bill clarifies that a board of elections may choose to purchase election supplies through DAS, through an existing bulk purchasing program administered by the Secretary of State, or by other means.

## **Cooperative purchasing agreements**

(R.C. 125.02)

The bill allows DAS to participate in cooperative purchasing by joining existing procurement contracts of other state agencies with their own purchasing authority, other states, and the U.S. government. Current law suggests that DAS must be an original party of a contract and cannot join after a contract is procured.

Continuing law grants DAS the authority to establish contracts for supplies and services, including telephone, other telecommunication, and computer services for use by state agencies. Under the bill, the Director of DAS may participate in cooperative purchasing with several entities enumerated in continuing law.<sup>5</sup> The bill expands this list of entities to include the Capitol Square Review and Advisory Board.

## **Parental and caregiver leave**

(R.C. 124.136 and 124.1312)

### **Parental leave**

Continuing law allows certain state employees who work at least 30 hours per week to take up to six continuous weeks of paid parental leave on a child's birth or adoption. Under the bill, an employee is eligible for parental leave on a child's stillbirth beginning on the day of the stillborn child's delivery. To be eligible, the employee must be listed as a parent on the stillborn child's fetal death certificate. "Stillborn" means that an infant of at least 20 weeks of gestation suffered a fetal death. "Fetal death" means death before the complete extraction from its mother of a product of human conception, irrespective of the pregnancy duration, which after extraction does not breathe or show any other evidence of life.<sup>6</sup>

The bill increases, from \$2,000 to \$5,000, the continuing law adoption expenses benefit an employee may choose to receive in lieu of paid parental leave.

The bill also includes, for parental leave eligibility purposes, persons employed in a position for which the authority to determine compensation is given by law to another individual or entity (who is not the Director, who establishes the job classifications and pay ranges for most state employees under continuing law). Under continuing law, the following employees are

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<sup>5</sup> The Adjutant General for military supplies and services, the General Assembly, the judicial branch, state institutions of higher education, some state elected officials (R.C. 125.02 and 125.041, not in the bill); one or more other states, groups of states, the U.S. or any department, agency, or division of the U.S., other purchasing consortia, the Department of Transportation, or a political subdivision of Ohio (R.C. 125.02 and 125.04).

<sup>6</sup> R.C. 3705.01, not in the bill.

eligible for parental leave: full- and part-time employees paid in accordance with the exempt employee salary schedule; legislative employees and Legislative Service Commission employees; employees in the Governor's office; employees who are in the unclassified civil service and exempt from collective bargaining coverage in the office of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General; Supreme Court employees; and Bureau of Worker's Compensation employees whose compensation the Administrator of Workers' Compensation establishes.<sup>7</sup>

### **Caregiver leave**

Under the bill, a state employee listed under "**Parental leave**," above, who works at least 30 hours per week and who is a foster caregiver or kinship caregiver is eligible for up to five days of caregiver leave with full pay in a calendar year on a child's placement with the employee. Caregiver leave begins on the day on which the child is placed with the employee. Continuing law defines a foster caregiver as a person holding a valid foster home certificate. A kinship caregiver is an adult caring for a related or unrelated child in place of the child's parents.<sup>8</sup>

For part-time employees, the average number of regular hours worked, including all hours of holiday pay and other types of paid leave, during the three-month period immediately before the day caregiver leave begins is used to determine caregiver leave eligibility. If an employee has not worked for three months, the number of hours for which the employee has been scheduled to work per week during the employee's employment period is used to determine caregiver leave eligibility.

Use of caregiver leave does not affect an employee's eligibility for other forms of paid leave granted under Ohio's Department of Administrative Services – Personnel Law. It also does not prohibit an employee from taking leave under the federal Family and Medical Leave Act of 1993, except that caregiver leave is included in any leave time provided under that act.

The Director may adopt rules under the Administrative Procedure Act governing caregiver leave.

### **Fleet management**

(R.C. 125.14 and 125.832)

The Office of Fleet Management within DAS is responsible for the acquisition, maintenance, management, analysis, and disposal of the state's vehicle fleet. The bill makes two modifications related to fleet management.

First, it modifies the definition of "operating cost," which is a factor in calculating the minimum number of business miles per year an employee of a state agency must drive in order to qualify for approval by DAS to receive a motor vehicle for business use. Instead of dividing annual maintenance cost by *vehicle lifetime* miles driven, as under current law, the bill divides

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<sup>7</sup> R.C. 124.152, not in the bill.

<sup>8</sup> R.C. 5103.02; also R.C. 5101.85, not in the bill.

annual maintenance cost by *annual* miles driven. This modification better calculates an annual operating cost.

Second, the bill allows proceeds from the disposition of state vehicles to be transferred from the Investment Recovery Fund to the Fleet Management Fund. Currently, when DAS disposes of a motor vehicle originally purchased with GRF dollars, DAS is required to deposit the proceeds into either the Investment Recovery Fund or the Fleet Management Fund.<sup>9</sup> The bill allows funds originally deposited into the Investment Recovery Fund to be transferred to the Fleet Management Fund.

## **Prescription drug advisory council**

(R.C. 125.95)

The bill specifies that the Prescription Drug Transparency and Affordability Advisory Council's chairperson is the DAS Director. It also modifies the frequency at which the Council must meet after the initial report is submitted from quarterly to at the call of the chairperson.

The Council was established in 2019 by the main appropriations act of the 133<sup>rd</sup> General Assembly (H.B. 166), within DAS. H.B. 166 required the Council to have 14 members: five cabinet heads and nine individuals representing various constituencies. Not later than six months after initial appointments were made, the Council was to submit a report to the Governor, General Assembly, and the Joint Medicaid Oversight Commission's chairperson with various pieces of information, including on how Ohio could best achieve prescription drug price transparency. A copy of that report, and additional information on the Council, is available on the Council's website.

## **DAS insurance program**

(R.C. 9.821, 9.822, 9.83, 2743.01, 2743.02, 2743.15, 2743.16, and 2743.19)

The bill makes several changes in relation to state liability and the risk management program operated by the Department of Administrative Services (DAS).

### **Sovereign immunity**

The bill declares the administration of the state's Risk Management Program to be a public duty for purposes of the Sovereign Immunity/Court of Claims Law. State law specifies that the state is immune from civil liability in the performance of a public duty. Thus, under the bill, the state cannot be sued for losses incurred in relation to any action of the Risk Management Program.

The bill also amends the law related to immunity provided to state officers or employees. In several instances, state law provides immunity to certain state officers or employees in the carrying out their duties. The bill specifies that the authority to sue such an officer or employee

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<sup>9</sup> If a vehicle was purchased with non-GRF funds, the proceeds are deposited into the fund used for the purchase.

in a specific circumstance does not affect the general immunity provided to that officer or employee under the law.

### **Judicial liability program**

The bill authorizes the Office of Risk Management to administer a judicial liability program. This is an already existing self-insurance program operated by DAS that provides insurance coverage to judges and courts for liabilities. Thus, the bill would be providing explicit authority to provide an already existing program.

### **Bond requirements**

The bill amends the law related to fidelity bonds purchased in relation to state agents and employees. Fidelity bonds insure against loss due to dishonest acts of state officers, agents, or employees. The bill removes the requirement that the state purchase bonds for state agents and instead allows the state to self-insure against any such claims. However, the bill requires public official bonds to be purchased when statutorily required.

### **Liability insurance program**

The bill amends the law related to the liability insurance programs administered by DAS and political subdivisions. Under current law, DAS and political subdivisions are authorized to insure against liability in relation to the operation of certain specified vehicles. Under the bill, this authority is expanded to general liability that occurs during the course of employment or official responsibilities.

### **Claims against the state**

The bill amends the law related to the settlement of claims against the state. Continuing law, unchanged by the bill, requires a person making a claim of liability against the state, to attempt to have that claim compromised by the state or satisfied by the state's insurance. The bill specifies that these actions must be taken prior to such a claim being filed with a court. Requires an instrumentality of the state to notify the Office of Risk Management of any settlement or compromise made in a claim against the instrumentality for the purpose of reserving funds.

The bill specifies that information related to claims against the state is to be held in confidence, is not to be released, and is not subject to discovery or introduction in evidence in any federal or state civil action.

Also, the bill specifies that recoveries against the state are to be reduced by other recoveries the claimant is entitled to, such as insurance proceeds, as opposed to just those other recoveries the claimant has received.

### **Compromising of claims**

The bill makes several miscellaneous changes in the law related to the compromising, or settling, of claims made against the state. These changes are as follows:

- Specifies that all settlements made by the Office of Risk Management are to be paid from the Risk Management Reserve Fund and the conditions of such payment;

- When a claim is settled, requires a copy of the settlement instrument to be forwarded to the Office of Risk Management for payment from the Risk Management Reserve Fund;
- Specifies that the authority of DAS to settle claims does not extend to settling claims on behalf of agency programs with direct settlement authority;
- Requires a copy of a judgement against the state to be forwarded to the Office of Risk Management for the judgement to be paid from the Risk Management Reserve Fund;
- Establishes that the compromising of claims is a public duty for the purposes of the Sovereign Immunity/Court of Claims Law.

## **Public office employee database**

(R.C. 149.434)

The bill eliminates the requirement that a public office include the date of birth of all public officials and employees on the database or list that is maintained by the public office. Under current law, each public office must maintain a database or list that includes the name and date of birth of all public officials and employees elected to or employed by that public office. The information in the database is a public record under the Public Records Law.

## **Real estate and planning**

### **Land conveyance documents**

(R.C. 123.02 and 5301.13; repealed R.C. 117.49 and 117.50; conforming changes in numerous other R.C. sections)

The bill transfers responsibility to prepare deeds for the conveyance of state land from the Auditor of State to the DAS Director. The bill also transfers from the Auditor to the DAS Director the related responsibility to keep records showing the state's interest in real estate (aside from public lands and highway rights-of-way), and to maintain a recording system for those records that is open for public inspection.

### **Land conveyance authority**

(R.C. 123.01)

The bill expands the DAS Director's authority to convey state-owned land in three ways.

First, it authorizes the DAS Director to grant perpetual easements over state-owned land to utilities regulated by the Public Utilities Commission of Ohio. Under existing law, the DAS Director is generally limited to granting easements for 15 years, though easements over university land can run to 25 years if approved by the university board of trustees.

Second, the bill allows the DAS Director to correct legal descriptions or title defects, or to release fractional interests in real property, as necessary to cure title clouds reflected in public records. The title clouds the bill allows the DAS Director to address include those arising from boundary disputes, ingress or egress issues, title transfers precipitated through retirement of bond requirements, and the retention of fractional interests in real estate otherwise disposed of in previous transfers.

Third, the bill authorizes the DAS Director to dispose of state-owned land that has a fair market value less than \$1 million, with Controlling Board approval. Fair market value is to be determined using best management or other relevant practices through a method considered reasonable, applicable, and appropriate by the DAS Director. Funds from a sale under the bill's new provision are to be credited, at the direction of the OBM Director, to a fund or funds in the State Treasury, or to accounts held by a state college or university.

## **Office of Information Technology**

(R.C. 125.18)

The bill eliminates the authority, in current law, for the State Chief Information Officer to establish policies and standards for the acquisition of common information technology by state agencies. Instead, the bill requires the State Chief Information Officer to coordinate with the Office of Procurement Services to establish policies and standards for state agency acquisition of information technology supplies and services.

The bill also clarifies that policies that the State Chief Information Officer must establish, for the reduction of printing, are to promote the increased use of electronic records by state agencies.

Under continuing law, the State Chief Information Officer supervises the Office of Information Technology, which is within the DAS.

## **Transferring central warehouse employees from ODH to DAS**

(Section 518.40)

The bill requires, on or after July 1, 2021, any Department of Health (ODH) employees identified as necessary to the operation of a central warehouse be transferred to DAS. The bill specifies that the employees must retain their positions and benefits.

The bill authorizes the DAS Director to establish, change, and abolish positions of ODH and assign, reassign, classify, reclassify, transfer, reduce, promote, or demote all ODH employees who are not subject to Ohio's 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. The employee cannot receive any increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation.

Under the bill, notwithstanding any provision of law to the contrary, the Director of Budget and Management (OBM) may make necessary budget changes, including cancelling encumbrances of ODH and reestablishing them as encumbrances of DAS.

Additionally, the bill specifies that this transfer of employees is subject to Ohio's statutory layoff procedures and any action taken by the ODH Director or the DAS Director is not subject to appeal to the State Personnel Board of Review.

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## DEPARTMENT OF AGING

- Permits the Department of Aging to require non-Medicaid providers to be certified by the Department as a condition of payment for services provided under programs the Department administers.
- Applies existing certification and payment provisions to providers of any services, not just community-based long-term care services.
- Authorizes the Department to develop and offer training programs to area agencies on aging, long-term care facilities and providers, and other interested parties.
- Authorizes the Department, through administrative rules, to design a payment method for PASSPORT administrative agency operation that includes a pay-for-performance incentive component.
- Requires the Department to operate in FY 2022 and FY 2023 an At Home Technology Pilot Program to provide grants for using remote monitoring technologies that assist older adults in staying in their homes, assisted living facilities, and other community-based settings.
- Requires the Department to prepare a report at the conclusion of the Pilot Program.

### Certification of providers

(R.C. 173.39, 173.391, 173.392, and 173.393)

The bill permits the Department of Aging to require non-Medicaid providers to be certified by the Department as a condition of payment for services provided under programs the Department administers. If the Department does not require certification, the provider must continue to comply with existing law that requires the provider to have a contract or grant agreement with the Department to provide the services. As under current law, providers of services under the PASSPORT program and Assisted Living program must be certified as a condition of payment.

The bill applies existing certification and payment provisions that apply to community-based long-term care services to any services provided under a program the Department administers. This extends existing criminal records check requirements to additional providers.<sup>10</sup>

### Training programs

(R.C. 173.012)

The bill authorizes the Department to develop and offer training programs to area agencies on aging, long-term care facilities, providers of long-term care services, and other

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<sup>10</sup> R.C. 173.38, not in the bill.

interested parties. The Department may charge a fee for the training and use fees collected to develop and offer additional training programs. The fees must be deposited into the Senior Community Outreach Fund, which the bill creates.

## **Performance-based reimbursement**

(Section 209.20)

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

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

## **At Home Technology Pilot Program**

(Section 209.40)

The bill requires the Department, during FY 2022 and FY 2023, to operate an At Home Technology Pilot Program to award grants to service providers for the purpose of initiating or enhancing use of remote monitoring technologies that assist older adults to continue residing in their homes, assisted living facilities, and other community-based settings. Examples of that technology include monitoring vital signs, tracking activities in daily living such as wake and sleep times, and assisting in maintaining a healthy, connected quality of life.

At the program's conclusion, the Department must prepare a report regarding its efficacy and the health outcomes of individuals served by it. The report must be submitted to the Governor, the Senate President, the House Speaker, and to the chairpersons of the Senate and House standing committees that consider aging issues.

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## DEPARTMENT OF AGRICULTURE

### Wine tax diversion to Ohio Grape Industries Fund

- Makes permanent the 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund, which is used to support and promote the Ohio grape and wine industry.

### Farmers market registration

- Eliminates the voluntary registration of farmers markets with the Department of Agriculture (ODA) and the corresponding inspection of registered farmers markets by ODA.

### Ohio Proud Program merchandise

- Requires all fees assessed for participation in the Ohio Proud Program to be credited to the existing Ohio Proud, International, and Domestic Market Development (Ohio Proud) Fund, rather than the GRF as under current law.
- Authorizes ODA to sell merchandise that promotes the Program, and requires the Director of Agriculture to deposit proceeds from the merchandise sales in the Ohio Proud Fund.

### Southern Ohio Agricultural and Community Development Foundation

- Abolishes, effective December 30, 2021, the Southern Ohio Agricultural and Community Development Foundation, which is tasked with assisting southern Ohio farmers in replacing their tobacco production with other agricultural products and mitigating the economic impact of reduced tobacco production in the region.
- Eliminates the Foundation's board of trustees and provides for the winding down of the Foundation's affairs by ODA.

### Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

The bill makes permanent the 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund, which is used to support and promote the Ohio grape and wine industry. The earmark expires on June 30, 2021.

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 Ohio Grape Industries Fund for the encouragement of the state's grape and wine industry. The remainder is credited to the GRF.

## **Farmers market registration**

(R.C. 3717.221 and 3717.22)

The bill eliminates the option to voluntarily register a farmers market with the Department of Agriculture (ODA). It also eliminates the corresponding inspection of registered farmers markets by ODA. As a result, local boards of health must inspect farmers markets under the law governing retail food establishments and food service operations. Under current law, a farmers market that is registered with ODA is exempt from inspection by a local board of health under those laws.

A farmers market is a location where producers congregate to offer fruits, vegetables, and other items for sale.

## **Ohio Proud Program merchandise**

(R.C. 901.171)

The bill requires all fees assessed for participation in the Ohio Proud Program to be credited to the existing Ohio Proud, International, and Domestic Market Development (Ohio Proud) Fund. Current law requires those fees to be deposited in the GRF. The Ohio Proud Program promotes food and agricultural products made and grown in Ohio.

The bill authorizes ODA to sell merchandise that promotes the Ohio Proud Program. It also requires the Director of Agriculture to deposit proceeds from the merchandise sales in the Ohio Proud Fund.

## **Southern Ohio Agricultural and Community Development Foundation**

(R.C. 183.12 through 183.17, repealed; R.C. 102.02, 183.021, and 183.33; Section 518.30)

The bill abolishes the Southern Ohio Agricultural and Community Development Foundation on December 30, 2021. As a result of that elimination, it does the following:

1. Eliminates the Foundation's board of trustees;
2. Provides for the winding down of the Foundation's affairs by ODA;
3. Eliminates the Southern Ohio Agricultural and Community Development Foundation Endowment Fund and requires the Treasurer of State to transfer the cash balance in the fund to the Ohio Proud Marketing Fund; and
4. Eliminates the Southern Ohio Agricultural and Community Development Operating Expenses Fund and requires the Director of the Office of Budget and Management to transfer the cash balance in the fund to the existing Ohio Proud Marketing Fund.

The Foundation was created in 2000 by S.B. 192 of the 123<sup>rd</sup> General Assembly as an outgrowth of the 1998 Tobacco Master Settlement Agreement reached between Ohio and other states and major tobacco manufacturers. Generally, the Foundation is tasked with assisting southern Ohio farmers in replacing their tobacco production with other agricultural products and mitigating the adverse economic impact of reduced tobacco production in the region by:

1. Increasing the variety, quantity, and value of agricultural products other than tobacco that are produced in southern Ohio (where tobacco has traditionally been grown);
2. Preserving agricultural land and soils in southern Ohio;
3. Making strategic investments in communities that will be affected by the reduction in the demand for tobacco; and
4. Providing education and training assistance to tobacco growers to help them make the transition out of tobacco production.

The Southern Ohio Agricultural and Community Development Foundation Endowment Fund originally consisted of money derived from the Tobacco Master Settlement Agreement. It also consists of grants and donations made to the Foundation and investment earnings of the fund. The Foundation uses money in the fund to award grants in assisting farmers according to the Foundation's mission.

The Southern Ohio Agricultural and Community Development Operating Expenses Fund consists of money transferred to it from the Southern Ohio Agricultural and Community Development Foundation Endowment Fund. The Foundation uses money in the Southern Ohio Agricultural and Community Development Operating Expenses Fund solely to pay the Foundation's employees.

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## **ATTORNEY GENERAL**

### **Collecting debts from gambling winnings**

- Reduces from \$5,000 to \$600 the threshold at which the State Lottery Commission must withhold from lottery winnings any amounts a lottery winner owes to the state or a political subdivision.
- Requires a casino operator to use a data match program created by the Attorney General to withhold any amounts a patron owes to the state or a political subdivision from the amount of any casino winnings that exceed \$600.
- Requires the casino operator to remit payment to the Department of Job and Family Services for any past due child or spousal support, as required under current law, before giving the remainder to the Attorney General to pay other government debts.

### **Attorney General's special counsel; collection of debts**

- Authorizes the Attorney General to adopt rules as necessary to implement the law governing the Attorney General's special counsel to collect claims.
- Authorizes the Attorney General to adopt rules to aid the implementation of the law governing the collection of debts, and specifically, to adopt a rule shortening the time when the Attorney General may cancel a debt deemed uncollectible.

### **Ohio Peace Officer Training Academy**

- Modifies law with respect to various funds associated with the Ohio Peace Officer Training Academy.

### **Pilot program – funding peace officer and trooper training**

- Requires the Attorney General to create and administer a one-year pilot program for state funding of the training of peace officers and troopers and specifies that the pilot program is the only state funding that will be provided in calendar year 2022 for the training of such peace officers and troopers.

### **Law Enforcement Training Funding Study Commission**

- Creates the 12-member Law Enforcement Training Funding Study Commission to study possible long-term methods for the provision of state funding to law enforcement agencies for the training of their peace officers and troopers and evaluate the plans for the pilot program described above as part of the study.
- Requires the Commission to prepare a report of its findings, and recommendations for a method, to be used after the completion of the pilot program, for the provision of state funding to those law enforcement agencies for the training of their peace officers and troopers.

- Requires the Commission, not later than March 1, 2022, to submit the report to the Governor, the General Assembly, the Attorney General, and the Legislative Service Commission.
- Provides that upon submission of the report, the Commission will cease to exist.

### **Delinquent municipal income tax collection**

- Requires the Attorney General to participate in the federal Treasury Offset Program for the collection of past due municipal income taxes to the extent that such taxes qualify for the program.

### **Foreclosure sale reports to the Attorney General**

- Specifies that the reports submitted to the Attorney General by officers conducting residential property foreclosure sales must contain information of whether the officer met certain deadlines related to sale procedures.
- Replaces the requirement that the Attorney General establish and maintain a public database of information included in foreclosure sale reports with a requirement that the information be made publicly available.

## **Collecting debts from gambling winnings**

### **Lottery winnings**

(R.C. 3770.073 and conforming change in R.C. 5701.11)

The bill lowers to \$600 the winnings threshold that triggers a requirement that the State Lottery Commission withhold the amount of any debt a lottery winner owes to the state or a political subdivision from the person's winnings. Currently, if a person wins \$5,000 or more in the lottery, the Commission must deduct the amount of those debts from the winnings and pay it to the Attorney General (the AG) to satisfy the debts. The bill changes that threshold to match the federal threshold that determines whether the Commission must report the person's lottery winnings to the Internal Revenue Service (IRS) – currently, \$600.<sup>11</sup>

Under continuing law, lottery winnings that exceed the IRS threshold also may be intercepted to satisfy any past due child or spousal support. If the amount of the winnings is not enough to cover both the past due support and any debts to the state or a political subdivision, the support debts are paid first.<sup>12</sup>

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<sup>11</sup> 26 United States Code (U.S.C.) 6041.

<sup>12</sup> R.C. 3770.071, not in the bill.

## Casino winnings

(R.C. 3772.37 and conforming change in R.C. 5701.11)

The bill requires a casino operator to withhold the amount of any debt a patron owes to the state or a political subdivision from the patron's casino winnings, if the winnings exceed the IRS reporting threshold (currently, \$600). Under continuing law, a casino operator also must withhold the amount of any past due child or spousal support the patron owes from any winnings that exceed that threshold.<sup>13</sup>

Under the bill, the AG must develop and implement a real time data match program for casino operators to use to determine whether patrons owe any debts to the state or a political subdivision that have become final. If a patron wins \$600 or more and the program indicates that the patron owes any such amounts, the casino operator must withhold the amount of the debt from the winnings, up to the total amount of the winnings, and transmit it to AG within seven days.

If the casino operator learns through the data match program operated by the Department of Job and Family Services under continuing law that the patron also is in default under a child or spousal support order, the casino operator must withhold the past due amount and transmit it to the Department before transmitting any remaining amount to the AG.

After receiving the money from the casino operator, the AG must apply it toward the patron's debt to the state or a political subdivision. If the patron has multiple debts of that kind, the money must be applied against the debts in the following order of priority, which is the same order of priority that applies under continuing law concerning debts to be satisfied from lottery winnings:

- Personal liabilities for corporate tax debts;
- Amounts owed to the state;
- Amounts owed to political subdivisions.

The AG may adopt rules under the Administrative Procedure Act (R.C. Chapter 119) to implement the bill's requirements.

## Attorney General's special counsel

(R.C. 109.08)

The bill authorizes the AG to adopt rules under the Administrative Procedure Act (R.C. Chapter 119) as necessary to implement the law governing the AG's special counsel to collect claims. Continuing law authorizes the AG to appoint and authorize special counsel to represent the state and any political subdivision in connection with all claims the AG is authorized to collect.

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<sup>13</sup> R.C. 3123.90, not in the bill.

## **Attorney General rules on collection of debt**

(R.C. 131.02)

The bill authorizes the AG to adopt rules to aid the implementation of the law governing the collection of debts, and specifically, to adopt a rule shortening the time when the AG may cancel a debt deemed uncollectible. Under current law, the AG must cancel an unsatisfied claim 40 years after the date the claim is certified for collection.

Statutory law provides that whenever any amount is payable to the state, the officer responsible for administering the law under which the amount is payable immediately must proceed to collect. Generally, if the amount is not paid within 45 days after payment is due, the officer must certify the amount due to the AG, who must give immediate notice to the party indebted of the nature and amount of the indebtedness. Also, the AG and the officer administering the law under which the amount is payable must agree on the time a payment is due, which may be an appropriate time determined by the AG and the officer based on statutory requirements or ordinary business processes.

Existing law requires the AG to follow this process on behalf of state agencies, and also on behalf of state institutions of higher education and of political subdivisions. The bill clarifies that the time the payment is due may be based on the statutory requirements or ordinary business practices of an institution or a political subdivision, as well as of a state agency.

## **Ohio Peace Officer Training Academy**

(R.C. 109.79, 109.802, repealed; R.C. 2981.13, and 3772.01)

The bill makes the following changes to funds associated with the Ohio Peace Officer Training Academy:

1. Eliminates the Law Enforcement Assistance Fund;
2. Codifies the Peace Officer Training Academy Fee Fund into permanent law, and specifies all of the following:
  - a. The fund is in the state treasury;
  - b. Tuition paid by a political subdivision or by the State Public Defenders Office must be deposited into the fund;
  - c. The AG must use money in the fund to pay costs associated with operation of the Academy.
3. Eliminates the Peace Officer Training Commission Fund and transfers its functions and purposes to the Ohio Law Enforcement Training Fund;

Under current law, if a court other than a juvenile court orders a forfeiture, a portion of the forfeiture must be distributed to various law enforcement related funds, including the Peace Officer Training Commission Fund. Under the bill, the forfeiture amount that would be deposited into the Peace Officer Training Commission Fund instead must be deposited into the Ohio Law Enforcement Training Fund. A provision of current law, retained by the bill, requires these funds to be used by the Ohio Peace Officer Commission only to pay the cost of peace officer training.

The Ohio Law Enforcement Training Fund is the fund described in the Ohio Constitution, which must receive 2% of the proceeds of the gross casino revenue tax collected by the state, to enhance public safety by providing additional training opportunities to the law enforcement community.<sup>14</sup>

4. Authorizes the use of money in the Ohio Law Enforcement Training Fund for all training opportunities for the law enforcement community rather than for additional training only.

## **Pilot program – funding peace officer and trooper training**

(Section 701.70(A))

### **Creation of pilot program; background on training requirements**

The bill requires the AG, not later than December 1, 2021, to create a pilot program for state funding of the training of peace officers and troopers that is required under R.C. 109.803. The program must be administered by the AG's office. As used in these provisions, a "peace officer" is a person under the definition of that term set forth in R.C. 109.71 and a "trooper" is an individual appointed as a State Highway Patrol Trooper. The pilot program will be a one-year program, operating in calendar year 2022. The R.C. 109.803 training requirements specify that, with limited exceptions, every appointing authority must require its appointed peace officers and troopers to complete up to 24 hours of continuing professional training each calendar year, as directed by the Ohio Peace Officer Training Commission.

Note that, as described above in "**Ohio Peace Officer Training Academy**," the bill repeals an existing statutory mechanism (R.C. 109.802) that, along with a related Administrative Code mechanism ([Ohio Administrative Code rule 109:2-18-04](#)), provides for state funding of the training of peace officers and troopers that is required under R.C. 109.803.

### **Agency certification of salaries**

Not later than December 2, 2021, each law enforcement agency with peace officers or troopers who are subject to the R.C. 109.803 training requirement must certify to the AG the total of all salaries to be paid in calendar year 2022 to officers or troopers of the agency who will receive that training in calendar year 2022 and their hourly rates of pay.

### **Operation of pilot program and payments**

Not later than January 1, 2022, the AG must begin the program's operation. Prior to that date, the AG must establish rules, under R.C. 111.15, for the program's operation and administration, for determining eligibility for funding and payments, and for providing the funding and payments.

From money appropriated for the pilot program, the AG must pay each law enforcement agency with peace officers or troopers who are subject to the R.C. 109.803 training requirement an amount to cover up to 50% of the cost of the salaries of the officers or troopers who will receive that training in calendar year 2022, during the period of the training. The amount paid

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<sup>14</sup> Ohio Constitution, Article XV, Section 6(C)(3)(f).

must cover only the period when the officers or troopers are receiving that training, and may not exceed an amount covering 24 hours of the training.

If the amount appropriated for the pilot program is insufficient to pay 50% of the salaries of the peace officers or troopers of all law enforcement agencies to be paid in calendar year 2022, the amount paid to each agency must be reduced so that each agency is paid an equal percentage of its cost in 2022 for the training. No payment may be made under the pilot program after January 1, 2023. If a law enforcement agency does not use all of the money for the salaries it certified, it must return the unused money to the AG.

A law enforcement agency that receives payments under the pilot program will be responsible for paying the cost of training that exceeds the amount of the payment.

### **Sole state funding for the training**

The bill specifies that state funding for the training of peace officers or troopers that is required under R.C. 109.803 will be provided in calendar year 2022 only in accordance with the pilot program, notwithstanding any other provision of law that addresses any alternative method of state funding for such training. However, this limitation does not apply with respect to direct appropriations made to a state law enforcement agency.

### **Agency and AG reports**

Each law enforcement agency that receives money under the pilot program must submit to the AG, by the date the AG specifies, a report that states the amount of money the agency received, how and when that money was used, and any other information the AG requires with respect to the use of the money. The AG must prepare a report that compiles the information in the agency reports and submit it to the General Assembly and the Legislative Service Commission.

## **Law Enforcement Training Funding Study Commission**

(Section 701.70(B))

The bill creates the 12-member Law Enforcement Training Funding Study Commission. The members are: (1) the AG or a designee of the AG with experience in law enforcement funding issues, (2) the Director of Public Safety or a designee of the Director with experience in law enforcement funding issues, (3) three members of the House appointed by the Speaker, with not more than two from the same political party, (4) three members of the Senate appointed by the Senate President, with not more than two from the same political party, and (5) four members of the public appointed by the Governor, each having a law enforcement background. The Speaker, the President, and the Governor must make their initial appointments not later than 30 days after the effective date of this provision.

The Commission must study possible long-term methods for providing state funding to law enforcement agencies for training their peace officers and troopers as are required under R.C. 109.803. The Commission must evaluate as part of the study the plans for the pilot program described above. Upon completing the study, the Commission must prepare a report of its findings and recommendations for a long-term method for state funding. The Commission must submit the report by March 1, 2022, to the Governor, the General Assembly, the AG, and the Legislative Service Commission. The Commission ceases to exist when it submits the report.

The bill includes provisions regarding the Commission's initial and subsequent meetings, selection of officers, adoption of procedures for its proceedings, establishment of a quorum and making recommendations, disqualification of appointed members and appointment of replacements, and member serving without compensation. Commission meetings must be open to the public under the state's Open Meetings Law, and the Commission must keep minutes of its meetings as public records under the state's Public Records Law.

## **Federal Treasury Offset Program (TOP)**

(R.C. 131.025)

Continuing law requires the AG to participate in the federal Treasury Offset Program (TOP) for collecting past due state income taxes and covered unemployment compensation debts. The bill further requires the AG to participate in the TOP for delinquent municipal income taxes to the extent that such taxes qualify for the program.

The TOP assists in the collection of certain debts owed to federal agencies and states by deducting delinquent amounts from federal tax refunds and other payments by the federal government to the indebted person. Federal law permits collection of local income tax delinquencies through the TOP only if the taxes are "administered by the chief tax administration agency of the State."<sup>15</sup> The bill declares that the AG is the tax administrator with respect to past due municipal income taxes that are certified to the AG for collection. It expressly provides that the title is conferred only for the purpose of qualifying for the TOP.

Under continuing law, municipal income taxes are generally administered by a local tax administrator designated by the taxing municipality. Only municipal utility net profits taxes and taxes of certain businesses that opt for centralized collection and administration are administered by a state agency – in both cases, the Tax Commissioner.<sup>16</sup>

## **Foreclosure sale reports to the Attorney General**

(R.C. 2329.312)

Existing law, revised in part by the bill, requires sheriffs and private selling officers that conduct foreclosure sales of residential property to submit quarterly reports to the AG for the purpose of assessing the extent to which deadlines under the Foreclosure Law are met. The report must include data on each sale conducted by the officer. The bill adds a requirement that the reports contain the specific data that shows whether or not the appraisal, the buyers payment for the property sold at an auction, and the confirmation of sale deadlines were met. The reports must also include the information as to whether or not the statutory deadline was met for the sale of vacant and abandoned property.

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<sup>15</sup> 26 United States Code 6402(e)(5).

<sup>16</sup> R.C. Chapters 718 and 5745.

The bill maintains the requirement under existing law that the AG make the information submitted in the reports publicly available. However, the bill removes language requiring the AG to establish and maintain a database with the information submitted in the reports.

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## AUDITOR OF STATE

### Auditor of State authority

- Modifies the statutory description of the Auditor of State's authority to specify that the Auditor is the lead public official responsible for the examination, analysis, inspection, and audits of all public offices, as opposed to the chief inspector and supervisor of all public offices, under current law.

### AOS employees

- Eliminates certain statutory titles within the office of the Auditor of State.
- Eliminates the entitlement, of Auditor of State employees, to compensation when called to testify in legal proceedings.
- Renames the statutory office, Deputy Auditor of State, to Chief Deputy Auditor of State, and requires that the person appointed to that office be a certified public accountant with an active Ohio permit.

### State awards for economic development

- Requires the Auditor of State, rather than the Attorney General, to review state awards for economic development and determine if an entity is in compliance with the terms and conditions of an award it received, and publish a report of the reviews and determinations.
- Requires the Department of Development annually to send the Auditor a list of state awards for economic development.
- Authorizes, rather than requires, the Attorney General to pursue against and from an entity that is not in compliance with the terms and conditions of a state award for economic development remedies and recoveries available under law.

### Auditor of State authority

(R.C. 117.09, 117.13, and 117.22)

#### Auditor responsibilities

The bill modifies the authority of the Auditor of State to specify the Auditor is the lead public official responsible for the examination, analysis, inspection, and audits of all public offices. Current law, modified by the bill, specifies that the Auditor is the chief inspector and supervisor of public offices.

#### Employees

Further, the bill eliminates the statutory titles of assistant auditors of state, deputy inspector, and deputy supervisor and the qualifications necessary for appointment as an assistant auditor of state. Current law, modified by the bill, requires the Auditor of State to appoint not

more than six deputy inspectors and supervisors and a clerk. The bill also removes the requirement that not more than three deputy inspectors and supervisors may belong to the same political party. Finally, the bill eliminates the requirement that the Auditor appoint state examiners to be known as assistant auditors of state. Instead, the bill authorizes the Auditor generally to hire, appoint, and fix the compensation of auditors, investigators, and other staff necessary to carry out the statutory responsibilities of the office.

The bill eliminates the entitlement, of Auditor of State employees, to compensation when called to testify in legal proceedings. Under current law, any employee called to testify in any legal proceedings in regard to any official matter is entitled to compensation and expenses, including reimbursement for travel, including meals, hotels, and other actual and necessary expenses when traveling on official business, under order of the Auditor, away from the employee's headquarters or place of principal assignment.

### **Chief Deputy Auditor of State**

(R.C. 117.04, 117.05, 117.06, and 117.22)

The bill renames the statutory office, Deputy Auditor of State, to Chief Deputy Auditor of State. Continuing law requires that the Auditor of State appoint a person to that office. The bill additionally requires that the person appointed be a certified public accountant with an active Ohio permit.

Continuing law specifies that, during the absence or disability of the Auditor of State, or when so directed by the Auditor of State, the Deputy Auditor of State (Chief Deputy Auditor of State under the bill), may perform all the duties of Auditor of State.

### **State awards for economic development**

(R.C. 117.55 and 125.112)

The bill requires the Auditor of State, rather than the Attorney General as under current law, to determine if an entity is in compliance with the terms and conditions of a state award for economic development that the entity received. Under the bill, the Department of Development (DEV), no later than 30 days after the end of the state fiscal year, must send the Auditor a list of state awards for economic development. The Auditor then must review each award and determine if the entity is in compliance with the terms and conditions, including performance metrics, of a state award for economic development received by that entity.

Under the bill, the Auditor of State must publish a report of its reviews and determinations no later than 90 days after receipt of the list of state awards from DEV. Current law requires the Attorney General annually to submit a report regarding the level of compliance to the General Assembly.

The bill requires the Auditor, when the Auditor determines that an entity is not in compliance with a performance metric that is specified in the terms and conditions of an award, to report that information to the Attorney General. The Attorney General is authorized, but not required, to pursue against and from that entity remedies and recoveries available under law.

Currently, when the Attorney General determines appropriate, and to the extent the entity has not complied, the Attorney General must pursue remedies.

The bill also specifies that, if the Auditor is authorized to conduct an audit of an entity that receives or has received a state award for economic development, the audit be conducted in accordance with Auditor of State law.

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## OFFICE OF BUDGET AND MANAGEMENT

- Reduces the time by which the OBM Director must void any unredeemed income tax refund warrant from two years to 90 days, consistent with the time for voiding any other warrant drawn from the state treasury.
- Requires investment earnings of the Budget Stabilization Fund to be credited to the fund.
- Eliminates the OBM Director's oversight regarding internal agency fund assessments and allocations for certain funds.
- Allows the OBM Director to credit to the Ohio's Public Health Priorities Fund any financial gifts made to the state to support public health.

### Voided income tax refund warrants

(R.C. 126.37)

The bill reduces the amount of time by which the Director of Office of Budget and Management must void any unredeemed warrant that draws on the state treasury for income tax refunds from two years to 90 days after its issuance. This 90-day period is consistent with the time after which the Director must void any other warrant drawn from the state treasury.

A warrant is an order to pay issued by one official to another (in this case, the Director to the Treasurer of State) to give to a payee money from a specified account. Warrants are generally represented by checks or another instrument payable on the demand of the payee, which in this case is the income tax refund recipient.<sup>17</sup> A warrant that is not redeemed within a prescribed time period becomes aged or "stale" and may be voided by the official that issued the warrant.

### Budget Stabilization Fund investment earnings

(R.C. 131.43)

The bill requires investment earnings of the Budget Stabilization Fund (known as the Rainy Day Fund) to be credited to the fund. The fund is a reserve balance that is set aside during good economic periods to protect the state budget from cyclical changes in revenues and expenses that may occur during economic periods.

### Oversight over fund allocations

(R.C. 121.08, 121.084, 169.05, 901.91, 1121.30, 1181.06, 1321.21, 1707.37, 1733.321, 3701.831, 3737.71, 3745.014, 4735.211, and 4763.15)

The bill eliminates the Director of Budget and Management's oversight regarding internal agency fund assessments and allocations. In most cases, the funds modified by the bill are assessed an amount to be used by the affected agency for administration purposes. The bill permits the affected agency director or superintendent to determine the assessment amount

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<sup>17</sup> See R.C. 126.35, not in the bill.

without OBM Director approval. The funds and the entity administering the funds are listed in the table below.

Funds modified by the bill		
Fund name	Citation (R.C.)	Administering agency personnel
Division of Administration Fund	121.08	Director of Commerce
Unclaimed Funds Trust Fund	169.05	Director of Commerce
Division of Securities Fund	1707.37	Director of Commerce
Industrial Compliance Operating Fund	121.084	Director of Commerce
Division of Real Estate Operating Fund	4735.211	Director of Commerce
Real Estate Appraiser Operating Fund	4763.15	Director of Commerce
State Fire Marshal's Fund	3737.71	Director of Commerce
Department of Agriculture operating funds	901.91	Director of Agriculture
Banks Fund	1121.30	Superintendent of Financial Institutions
Consumer Finance Fund	1321.21	Superintendent of Financial Institutions
Credit Unions Fund	1733.321	Superintendent of Financial Institutions
Financial Institutions Fund	1181.06	Superintendent of Financial Institutions
Department of Health operating funds	3701.831	Director of Health
Central Support Indirect Fund	3745.014	Director of Environmental Protection

## Disposition of financial gifts to support public health

(R.C. 183.18)

The bill allows the OBM Director to credit to the Ohio's Public Health Priorities Fund any financial gifts, including grants and contributions, made to the state to support public health. The Director of Health uses this fund to conduct public health campaigns, address pressing public health issues, implement and administer public health programs, and to improve the population health of Ohio.

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## DEPARTMENT OF COMMERCE

### I. Division of Securities

- Creates the Ohio Investor Recovery Fund for victims of securities fraud that have not received restitution from the person that committed the violation.
- Allows a dealer or investment adviser to place a hold on a transaction when the dealer, investment adviser, or an employee believes the account holder is age 60 or older or eligible for adult protective services and may be the victim of financial exploitation.

### II Division of Industrial Compliance

#### Sale of second-hand bedding and toys

- Requires any person or entity wishing to sell second-hand bedding or used toys to register with the Superintendent of Industrial Compliance within the Department of Commerce.

#### Plumbing inspector certification

- Removes certification of plumbing inspectors from the Division of Industrial Compliance's responsibility and authority but retains the Board of Building Standard's plumbing inspector certification.
- Requires a board of health to employ a Board of Building Standards certified plumbing inspector, as opposed to a Division of Industrial Compliance certified plumbing inspector as under current law, or to contract with another health district or building department in order for a prohibition on Division inspections in the board's district to apply.
- Adds a requirement that a board of health notify the Division of Industrial Compliance of the board's intent to inspect plumbing in its district before the continuing prohibition against duplicative Division plumbing authority will apply.
- Eliminates prohibitions on boards of health that do not employ certified plumbing inspectors from inspecting plumbing, collecting fees for inspecting plumbing, and contracting with other boards of health to inspect plumbing on the other board's behalf.

#### Historical boiler license

- Re-establishes the Historical Boiler Licensing Board and the licensing requirements for operators of historical boilers as they existed prior to the April 12, 2021, effective date of H.B. 442 of the 133<sup>rd</sup> General Assembly.
- Transfers the duties that were transferred by H.B. 442 from the Historical Boiler Licensing Board to the Division of Industrial Compliance in the Department of Commerce back to the re-established Board.
- Requires the Board to issue a license to a person who held an active license to operate historical boilers in public when the requirement for a license ended pursuant to H.B. 442, April 12, 2021.

## **Building inspection fees**

- Transfers authority to establish fees for inspections carried out by the Division of Industrial Compliance from the Board of Building Standards to the Superintendent of Industrial Compliance.

## **Manufactured homes**

- Makes several technical changes to replace references to the former Manufactured Homes Commission with references to the Division of Industrial Compliance.

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

- Specifies that each licensed real estate broker and salesperson must notify the Superintendent of Real Estate and Professional Licensing of a change in personal residence address within 30 days after the change.
- Requires each licensee to maintain a valid email address on file with the Division and notify the Superintendent of any changes in email address within 30 days of the change.
- Expands the Superintendent's authority to recommend ancillary trustees for brokers.
- Authorizes the Division to adopt rules with respect to the regulation of manufactured home dealers, brokers, and salespersons.
- Reduces the portion of triennial real estate broker's and salesperson's license fees to be credited to the Real Estate Education and Research Fund from \$3 to \$1.50 per fee.

## **IV State Fire Marshal**

- Specifies that when the State Fire Marshal or another authorized fire investigator is investigating a fire that has caused more than \$5,000 of property damage, to determine whether or not arson was involved, they must do so to the extent practicable and in a manner consistent with accepted standards of investigation.
- Permits the OBM Director, after certification of the Director of Commerce, to transfer funds from the State Fire Marshal's Fund to the Small Government Fire Department Services Revolving Loan Fund, if additional resources are needed.
- Requires a self-service gas station to comply with the most recent version of National Fire Protection Association Standard Number 30A, as incorporated into the State Fire Code, instead of the outdated version 30A-1990, as required under current law.

## **V Division of Liquor Control**

### **Direct beer and wine sales**

#### **S-1 liquor permit eligibility changes**

- Renames the S liquor permit the S-1 permit.
- Revises the eligibility for the S-1 permit, including:

- Eliminating from eligibility a brand owner or U.S. importer of beer or wine and its designated agent; and
- Expanding eligibility to a person (inside or outside Ohio) that manufactures beer.

### **S-2 liquor permit**

- Creates the S-2 liquor permit to be issued to a person (inside or outside Ohio) that manufactures 250,000 gallons or more of wine annually.
- Authorizes an S-2 permit holder to sell and ship its wine directly to personal consumers.
- Establishes similar provisions as the S-1 permit regarding payment of wine taxes, shipment of wine, and keeping sales records.
- Establishes an initial permit fee of \$250 and renewal fee of \$100.

### **Fulfillment warehouse**

- Authorizes a fulfillment warehouse to send an S-2 permit holder's wine to a personal consumer under specified conditions, including when the warehouse is located outside Ohio and has entered into a written agreement with an S-2 permit holder to fulfill orders on behalf of the permit holder.

### **B-2a liquor permit changes**

- Revises the eligibility for the B-2a liquor permit, including eliminating from B-2a permit eligibility the brand owner or U.S. importer of wine and its designated agent.
- Prohibits a B-2a permit holder from selling wine to a retail permit holder that has been assigned an Ohio distribution territory.

### **Illegal shipment of beer or wine**

- Except for the delivery of a to-go serving of wine by a retail permit holder, prohibits a person from knowingly sending a shipment of wine to a personal consumer unless the person holds an S-1 or S-2 permit or is a fulfillment warehouse.
- Except for the delivery of a to-go serving of beer by a retail permit holder, prohibits a person from knowingly sending a shipment of beer to a personal consumer without an S-1 permit.
- Specifies that a violator may be fined between \$500 and \$5,000, depending on the number of violations.

### **Retail permit holder prohibition**

- Prohibits a person that is not a beer or wine manufacturer, including the holder of any retail permit inside or outside Ohio, from obtaining or attempting to obtain a B-2a, S-1, or S-2 permit.

## Other liquor provisions

- Eliminates the requirement that the following submissions required of a club applying for a D-4 liquor permit be done under oath:
  - A statement of the organization controlling the club certifying that the club is operated in the interests of a reputable organization; and
  - The roster of the club's membership.
- Allows sales, service, and consumption of beer or intoxicating liquor on a D-4 liquor permit premises while bingo is being conducted.

## VI. Division of Financial Institutions

- Increases initial registration, renewal, and late fees for mortgage brokers, lenders, and servicers, and increases original license, renewal, and late fees for mortgage loan originators.
- Authorizes the Superintendent of Financial Institutions to charge an additional assessment for renewal fees for mortgage brokers, lenders, servicers, and mortgage loan originators if the amount billed under the statute are less than the estimated expenditures for the following fiscal year.

## I Division of Securities

### Ohio Investor Recovery Fund

(R.C. 1707.47 and 1707.471)

The bill creates the Ohio Investor Recovery Fund (OIRF) for a victim of securities fraud (a purchaser identified in a final order that has suffered a pecuniary loss as the result of an Ohio Securities Law violation or the surviving spouse or dependent children of such a purchaser who is deceased) that has not received restitution from the person that committed the violation pursuant to a final order (a final administrative order issued by the Division of Securities or a final court order in a civil or criminal proceeding initiated by the Division).

#### Obtaining a restitution assistance award

Under the bill, the following victims are eligible for restitution assistance from the OIRF, with the maximum award limited to the lesser of \$25,000 or 25% of the monetary injury suffered by the victim in the final order:

- A natural person who is an Ohio resident;
- A person, other than a natural person, that domiciled in Ohio.

To receive a restitution assistance award, a claimant must submit an application to the Division on a form prescribed by the Division within 180 days after the date of the final order. The Division may grant an extension for good cause shown, but in no case may the Division accept an application received more than two years following the date of the final order.

The bill prohibits the Division from awarding restitution assistance as follows:

- To more than one claimant per victim;
- To a claimant on behalf of a victim that has received the full amount of restitution owed from the person ordered to pay restitution to the victim in the final order before the application for restitution assistance from the OIRF is filed;
- To a claimant if the final order identifies no pecuniary loss to the victim on whose behalf the application is made;
- To a claimant on behalf of a victim that assisted in the commission of the violation of the Securities Law;
- If the portion of the final order giving rise to a restitution order or otherwise establishing a pecuniary loss to the victim is overturned on appeal.

If, after the Division has made a restitution assistance award from the OIRF, the restitution award in the final order is overturned on appeal and all legal remedies have been exhausted, the claimant must forfeit the restitution assistance award.

## **Violations**

A claimant may not knowingly file or cause to be filed an application or documents supporting an application that contain false, incomplete, or misleading information in any material respect. A claimant that violates this prohibition forfeits all restitution assistance and will be fined not more than \$10,000 by the Division. The Division must commence a proceeding relating to a violation not later than two years after the Division discovered, or through reasonable diligence should have discovered, the violation, whichever is earlier.

## **Funding the OIRF**

The OIRF consists of all cash transfers from the Division of Securities Fund, which may not exceed \$2.5 million in any fiscal year. The OIRF may only be used for paying awards of restitution assistance and any expenses incurred in administering the OIRF.

If the OIRF is reduced below \$250,000 due to payment in full of awards that become final during a month, the Division must suspend payment of further claims that become final during that month and the following two months. At the end of this suspension period, the Division must pay the suspended claims. If the OIRF would be exhausted by payment in full, the Division must prorate the amount paid to each claimant according to the amount remaining in the OIRF at the end of the suspension period.

Under the bill, the state is liable for a determination made by the Division only to the extent that money is available in the OIRF on the date the award is calculated. The bill subrogates the state to the rights of the person awarded restitution assistance to the extent of the award. The subrogation rights are against the person that committed the securities violation or a person liable for the pecuniary loss. The bill also permits the state to obtain a lien on the award in a separation action brought by the state or through state intervention in an action brought by or on behalf of the victim.

## Rules

The Division must adopt rules as necessary to implement these provisions, including rules governing the processes for both:

- Reviewing applications for restitution assistance awards; and
- Suspending awards or making a prorated payment of awards when the OIRF balance approaches or reaches a balance below \$250,000.

## Elder financial exploitation

(R.C. 1707.49)

The bill lays out procedures for dealers, investment advisers, and their employees to follow when they believe that an account holder who is an eligible adult may be the victim of financial exploitation.

An “eligible adult” is a person aged 60 or older or a person who is eligible to receive adult protective services (a person aged 60 or older 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).

The term “financial exploitation” means either:

- The wrongful or unauthorized taking, withholding, directing, appropriation, or use of an eligible adult’s money, assets, or property (assets); or
- Any act or omission by a person, including through the use of a power of attorney or guardianship, to do either of the following:
  - Through deception, intimidation, or undue influence, obtain control of an eligible adult’s assets and thereby deprive the eligible adult of the ownership, use, benefit, or possession of the assets;
  - Convert (a civil tort) an eligible adult’s assets and thereby deprive the eligible adult of the ownership, use, benefit, or possession of the assets.

Under the bill, if an employee of a dealer or investment adviser has reasonable cause to believe that an eligible adult who is an account holder may be subject to past, current, or attempted financial exploitation, the employee must follow the employing dealer’s or investment advisor’s internal procedures for reporting past, current, or attempted financial exploitation.

In addition, the dealer or investment adviser may place a hold on any transaction impacted by the suspected exploitation for up to 15 business days. The dealer or investment advisor must report the transactional hold, along with a summary of the facts and circumstances leading up to the hold, in writing immediately to the Division of Securities and to the county department of job and family services for the county where the eligible adult resides. The dealer or investment advisor may continue the hold for up to another 15 business days (1) at the request of an investigating federal or state agency or (2) if the dealer or investment adviser has not heard from either the Division or the county department within the initial 15-day hold period.

The bill specifies that these provisions are not to be construed as limiting a dealer's or investment adviser's ability to seek injunctive relief from a court of competent jurisdiction at any time for any past, current, or attempted financial exploitation. It further provides that any person participating in good faith in making a report or placing a transactional hold is immune from any civil or administrative liability arising from the report or hold.

Any record made available to a state agency under these provisions is considered an investigative record and must therefore be retained by the Division and may not be available to inspection by persons other than those having a direct economic interest in the information or the transaction under investigation, or by law enforcement agencies, state agencies, federal agencies, and other entities as set forth by rules adopted by the Division. The dealer or investment adviser must maintain, for not less than five years, any record of a transactional hold, any report relating to the hold, and any notification of the hold.

## **II Division of Industrial Compliance**

### **Sale of second-hand bedding and toys**

(R.C. 3713.02)

The bill requires any person or entity wishing to sell or offer for sale second-hand bedding or used toys to register with the Superintendent of Industrial Compliance. Under current law, only persons or entities seeking to import, manufacture, renovate, wholesale, or reupholster stuffed toys or articles of bedding are required to register.

### **Plumbing inspector certification**

(R.C. 3703.01; conforming change in R.C. 3703.03)

Under current law, boards of health in city and general health districts are authorized to inspect plumbing in nonresidential buildings, provided they employ a plumbing inspector certified by the Division of Industrial Compliance. Health districts may also contract with other health districts or county building departments to inspect plumbing on their behalf, so long as the other health district or county building department employs a Division of Industrial Compliance certified inspector. If a board of health employs a plumbing inspector or contracts for plumbing inspections, the Division of Industrial Compliance is barred from conducting plumbing inspections in that board's territory.

The bill eliminates the Division of Industrial Compliance's authority and responsibility to certify plumbing inspectors. In its place, it relies on the existing plumbing inspector certification offered by the Board of Building Standards. The bill also eliminates previous prohibitions on health districts inspecting plumbing, collecting fees for inspecting plumbing, or contracting with other health districts to inspect plumbing on the other health district's behalf, without employing a Division of Industrial Compliance certified inspector. It does not put in place a similar requirement mandating a Board of Building Standards certified inspector.

The bill also changes the prohibition on the Division of Industrial Compliance inspecting plumbing in health districts where the board of health employs, or has contracted for the services of, a plumbing inspector. Under the bill, the board of health must notify the Division of its intent

to inspect plumbing in the district, in writing, and either employ a plumbing inspector or contract for the services of one. Under current law, the prohibition applies so long as the board of health employs, or contracts for the services of, a plumbing inspector.

## **Building inspection fees**

(R.C. 3791.07)

Under continuing law, the Division of Industrial Compliance completes various inspections of plans, industrialized units, and buildings. Current law allows the Board of Building Standards to adopt a fee schedule for those inspections. The bill transfers that authority to the Superintendent of Industrial Compliance. It also makes adoption of the fee schedule mandatory, rather than permissive, and requires it to be adopted in rules pursuant to the Administrative Procedure Act.

## **Manufactured homes**

(R.C. 4781.07, 4781.281, 4781.56, and 4781.57)

The bill makes several technical changes by replacing outdated references to the former Manufactured Homes Commission with the reference to the Division of Industrial Compliance, the agency currently holding the responsibility for manufactured homes (other than their sale). The Commission was abolished in 2018 by H.B. 49 of the 132<sup>nd</sup> General Assembly, the main budget act for the FY 2018-FY 2019 biennium.

## **Historical boiler license**

(R.C. 4104.32, 4104.33, 4104.34, 4104.35, 4104.36, and 4104.37; Sections 741.10 and 741.11)

The bill restores the requirement that a person obtain a license in order to operate an historical boiler (a steam boiler of riveted construction that is preserved, restored, or maintained for hobby or demonstration) in a place that is open to the public. This requirement had been eliminated by H.B. 442 of the 133<sup>rd</sup> General Assembly, effective April 12, 2021.

It also recreates the Historical Boilers Licensing Board and transfers nonlicensing duties related to historical boilers from the Division of Industrial Compliance in the Department of Commerce back to the new Board. Duties transferred to the Board include:

- Adopting rules concerning the following:
  - Historical boiler inspections, repairs, and alterations;
  - Standards for the revocation of a historic boiler license;
  - Standards and procedures for conducting and reporting hydrostatic tests; and
  - Standards for the public display and operation of historical boilers in Ohio by operators who reside outside Ohio.
- Issuing triennial certificates of operation for historical boilers that pass inspection;
- Conducting hearings for a person who appeals a denial of a certificate of operation;
- Establishing fees for inspection;

- Granting approval of historical boiler operator courses;
- Determining the smallest size of historical boilers that are subject to the historical boilers law;
- Establishing criteria for safe operation of historical boilers;
- Appointing safety committees to conduct hydrostatic tests; and
- Establishing a minimum amount of liability insurance an owner must carry, if it determines that a minimum amount should be established.

Finally, the bill requires the Board to issue a license to a person who held an active license to operate historical boilers in public when the requirement for a license ended pursuant to H.B. 442, April 12, 2021.

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

#### **Real estate broker and salesperson contact information**

(R.C. 4735.14)

The bill sets a deadline for a licensed real estate broker and salesperson to notify the Superintendent of Real Estate and Professional Licensing of a change in personal residence address: 30 days after the change. Existing law requires the notification, but does not specify a deadline.

The bill also requires each licensee to maintain a valid email address on file with the Division and to notify the Superintendent of any changes in email address within 30 days after the change.

#### **Ancillary trustees for brokers**

(R.C. 4735.05)

The bill expands the Superintendent's authority to recommend an ancillary trustee when there has been an incapacitation or incarceration of a licensed broker, if there is no other licensed broker within the brokerage, to continue the business transactions of the brokerage for a period of time not to exceed the period of incapacitation or incarceration. Under existing law, the Superintendent may recommend an ancillary trustee upon the death of a licensed broker or the revocation or suspension of the broker's license.

#### **Rulemaking relating to manufactured home sales**

(R.C. 4781.04)

The bill explicitly authorizes the Division of Real Estate and Professional Licensing to adopt rules pursuant to the Administrative Procedure Act (R.C. Chapter 119) necessary for the administration of its regulatory authority for the licensing of manufactured home dealers, brokers, and salespersons.

## **Disposition of license fees**

(R.C. 4735.15)

The bill reduces the portion of triennial real estate broker's and salesperson's license fees to be credited to the Real Estate Education and Research Fund from \$3 per fee to \$1.50 per fee.

## **IV State Fire Marshal**

### **Fire investigation**

(R.C. 3929.87)

Under existing law, 90 days after a fire that has caused a loss of more than \$5,000 of property damage, the State Fire Marshal or another authorized person must investigate the fire to determine whether the property loss was caused by arson. The bill specifies that the State Fire Marshal or the authorized person must investigate to the extent practicable and in a manner consistent with accepted standards of investigation.

### **Revolving loan program**

(R.C. 3737.17)

Under the bill, if the Director of Commerce determines that the balance in the Small Government Fire Department Services Revolving Loan Fund is insufficient to implement the Small Government Fire Department Services Revolving Loan Program, the Director may certify the amount needed to the OBM Director. This amount cannot exceed the amount appropriated to the program for the biennium. Once certified, the OBM Director may transfer from the State Fire Marshal's Fund to the Revolving Loan Fund any amount up to, but not exceeding, the amount certified by the Director of Commerce.

The State Fire Marshal administers the Revolving Loan Program and the fund to make loans to qualifying small governments to expedite major equipment purchases and the construction or renovation of fire department buildings.

### **Self-service gas stations**

(R.C. 3741.14)

The bill requires a self-service gas station to comply with the most recent version of National Fire Protection Association Standard Number 30A, as incorporated into the State Fire Code. Existing law requires a self-service gas station to comply with the National Fire Protection Association standard number 30A-1990, which is not the most recent edition.

## **V Division of Liquor Control**

### **Direct beer and wine sales**

Under current law, small in-state and out-of-state wineries that manufacture less than 250,000 gallons of wine annually are eligible for an S liquor permit. This permit allows these wineries to sell and ship their wine directly to consumers. Wineries that are not eligible for or that do not have an S permit must first sell their wine to a wholesale distributor. The distributor

then sells the wine to a retailer, who then sells to consumers. A brand owner and U.S. importer of beer or wine is also eligible for an S permit and may sell the beer or wine directly to consumers.

The bill changes the name of the S permit to the S-1 permit and changes the eligibility parameters for that permit. It also creates the S-2 permit that allows wineries that manufacture 250,000 gallons of wine or more annually to sell directly to consumers or to use a fulfillment warehouse to sell their wine directly to consumers. The bill also makes changes to the law governing the B-2a liquor permit (wine manufacturers that self-distribute) and makes other conforming changes.

### **S-1 liquor permit eligibility changes**

(R.C. 4301.10, 4301.12, 4301.30, 4301.42, 4301.62, 4303.03, 4303.031, 4303.2010, 4303.232, 4303.234 (renumbered 4303.235), 4303.33, and 4303.99)

The bill renames the S liquor permit the S-1 liquor permit and revises the eligibility for it as follows:

1. It eliminates from eligibility a brand owner or U.S. importer of beer or wine and its designated agent;
2. It expands eligibility to a person (inside or outside Ohio) that manufactures beer; and
3. It retains eligibility for the S-1 permit for a person (inside or outside Ohio) that manufactures less than 250,000 gallons of wine annually, but eliminates the requirement that the wine manufacturer must be eligible for a specified federal tax credit in order to qualify for the S-1 permit.

### **S-2 liquor permit**

(R.C. 4303.233)

As indicated above, the bill creates the S-2 liquor permit, which may be issued to a person (inside or outside Ohio) that manufactures 250,000 gallons or more of wine annually. An S-2 permit holder may sell and ship the wine it manufactures to a personal consumer or use a fulfillment warehouse (see below) to send a shipment of wine to a personal consumer. A fulfillment warehouse operates as an agent of an S-2 permit holder. An S-2 permit holder is liable for violations of the liquor control laws that are committed by the fulfillment warehouse regarding wine shipped on behalf of the S-2 permit holder.

The bill establishes similar provisions as the S-1 permit regarding payment of wine taxes, shipment of wine, and keeping of sales records. The initial S-2 permit fee is \$250 and the renewal fee is \$100 per year.

### **Wine fulfillment warehouse**

(R.C. 4303.234)

The bill authorizes a fulfillment warehouse to send a shipment of an S-2 permit holder's wine to a personal consumer via an H liquor permit holder (alcohol transporter). A fulfillment warehouse is a person that operates a warehouse that is located outside Ohio and has entered

into a written agreement with an S-2 permit holder to fulfill orders of the S-2 permit holder's wine to personal consumers.

A fulfillment warehouse must provide a report annually, by March 1, in electronic format by electronic means to the Division of Liquor Control that includes the following:

1. The name and address of the fulfillment warehouse, including satellite warehouses operated by the fulfillment warehouse that are used to ship wine to personal consumers in Ohio;
2. The name and address of each S-2 liquor permit holder with which the fulfillment warehouse has entered into an agreement;
3. The name and address of each personal consumer that the fulfillment warehouse sends wine to and the quantity of wine purchased by the personal consumer; and
4. The shipping tracking number provided by the H permit holder for each shipment of wine delivered to a personal consumer.

The Division must prescribe and provide an electronic form for the report and must determine the specific electronic means that the fulfillment warehouse must use to submit the report. Finally, the Division must adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119) that are necessary to administer and enforce these provisions.

### **B-2a liquor permit changes**

(R.C. 4303.071)

The bill revises the eligibility for the B-2a liquor permit as follows:

1. It eliminates from eligibility the brand owner or U.S. importer of wine and its designated agent;
2. It expands eligibility to a person that manufactures any amount of wine by eliminating both of the following:
  - a. A requirement that a manufacturer may only produce under 250,000 gallons annually; and
  - b. A requirement that a manufacturer must be eligible for a specified federal tax credit.

Finally, the bill prohibits a B-2a permit holder from selling wine that has been assigned an Ohio distribution territory. Current law establishes sales territories for wholesale distributors of specific brands of wine. Generally, a wholesale distributor cannot sell outside its sales territory.

Under current law, a B-2a permit allows a manufacturer to sell its wine directly to retailers without first selling to a wholesale distributor.

### **Illegal shipment of beer and wine**

(R.C. 4303.233 (renumbered 4303.236) and 4303.99)

The bill establishes both of the following prohibitions regarding the illegal shipment of beer or wine:

1. It prohibits a person from knowingly sending a shipment of wine to a personal consumer unless:

- a. The wine is a to-go serving of wine delivered by a retail liquor permit holder;
- b. The person holds an S-1 or S-2 permit; or
- c. The person is a fulfillment warehouse.

2. Except for the delivery of a to-go serving of beer by a retail permit holder, it prohibits a person from knowingly sending a shipment of beer to a personal consumer without an S-1 permit.

A violator may be fined between \$500 and \$5,000, depending on the number of violations.

### **Retail permit holder prohibition**

(R.C. 4303.236)

The bill prohibits a person that is not a beer or wine manufacturer, including the holder of any retail permit inside or outside Ohio, from obtaining or attempting to obtain a B-2a, S-1, or S-2 permit. The bill does not establish a penalty for violators of this prohibition.

### **D-4 liquor permit – club oaths**

(R.C. 4303.17)

The bill eliminates the requirement that the following submissions required of a club applying for a D-4 liquor permit be done under oath:

- A statement of the organization controlling the club certifying that the club is operated in the interests of a reputable organization; and
- The roster of the club's membership.

The D-4 permit allows a club to sell beer and intoxicating liquor to its members for on-premises consumption.

### **Serving alcohol during bingo**

(R.C. 4301.03 and 4303.17)

The bill allows sales, service, and consumption of beer or intoxicating liquor on a D-4 permit premises while bingo is being conducted. It does so by eliminating the current prohibition against these activities. The D-4 permit allows a club to sell beer and intoxicating liquor to its members for on-premises consumption.

## **VI Division of Financial Institutions**

### **Residential Mortgage Lending Act fee increase**

(R.C. 1322.09, 1322.10, 1322.20, and 1322.21)

The bill increases the licensing and registration fees under the Residential Mortgage Lending Act paid to the Superintendent of Financial Institutions as follows:

Type of fee	Current fee	New fee
Initial registration and renewal fee for mortgage brokers, lenders, and servicers for each office maintained by the registrant	\$500	\$700
Late fee for renewal for each registered office maintained by a mortgage broker, lender, and servicer	\$100	\$150
Initial license and renewal fee for mortgage loan originators	\$150	\$200
Late renewal fee for mortgage loan originators	\$100	\$150

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## **CONTROLLING BOARD**

- Effective January 1, 2022, increases the number of days that the Controlling Board President must publish the Board's meeting agenda before each meeting, from seven to 14.

### **Controlling Board agenda publication deadline**

(R.C. 127.13; Section 812.10)

The bill requires the Controlling Board President to publish the Board's meeting agenda at least 14 days before the scheduled meeting, instead of seven under current law. The bill delays the change until January 1, 2022.

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

- Provides a six-month registration extension for master's level counselor, social worker, and marriage and family therapist trainees who have graduated but not yet completed all requirements for licensure.

### **Registration for master's level trainee graduates**

(R.C. 4757.10)

Current law requires the Counselor, Social Worker, and Marriage and Family Therapist Board to adopt rules providing for voluntary registration of master's level counselor, social worker, and marriage and family therapist trainees. The bill provides a six-month registration extension for those registered trainees who have graduated but not yet completed all requirements for licensure.

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## DEPARTMENT OF DEVELOPMENT

### Rename agency as Department of Development

- Changes the name of the Development Services Agency and the Director of Development Services back to the Department of Development and Director of Development, respectively.

### Ohio Residential Broadband Expansion Grant Program

- Creates the Ohio Residential Broadband Expansion Grant Program (grant program) within the Department of Development (DOD).
- Requires DOD to receive and review applications for program grants and send completed applications to the Broadband Expansion Program Authority for review and award of program grant money for eligible projects under the grant program.
- Specifies that an eligible project may not proceed unless the Authority awards the project a program grant.
- Requires a broadband provider to construct last mile broadband infrastructure after receiving a program grant award.

### Broadband Expansion Program Authority

- Creates the Authority within DOD and exempts the Authority from Ohio's Agency Sunset Review Law.
- Names as Authority members the DOD Director and the Director of InnovateOhio or their designees, and three appointed members, with the Speaker of the House, the Senate President, and the Governor each making one appointment.
- Specifies that appointed Authority members must have broadband infrastructure and technology expertise, but may not be affiliated with or employed by the broadband industry or be in a position to benefit from a program grant.
- Provides the appointed members compensation in the form of reimbursement of necessary and actual expenses.
- Provides a monthly stipend for each appointed member, except that an appointed member that also serves as a state administrative department head will not receive the stipend.
- Requires the monthly stipend to be calculated such that it qualifies each appointed member for one year of service credit with the Ohio Public Employees Retirement System (OPERS) for each year of the appointed member's four-year term, but specifies that the service credit may not be considered for determining health care coverage if offered by OPERS.

- Provides for appointment of the chairperson and vice-chairperson, filling vacancies, conducting meetings, including conducting meetings electronically, and voting requirements.
- Requires the Authority to conduct hearings and to do several tasks, including for example, to monitor the grant program by tracking details for annual applications and annual program grants and to continually examine, and propose updates to, any broadband plan provided by law enacted by the General Assembly or by Executive Order issued by the Governor.
- Requires the Authority to make an annual report by December 1 to the Governor and General Assembly regarding its hearings, monitoring, examination, review, and various other duties regarding broadband service in Ohio and to make the report available on DOD's website.
- Prohibits the Authority from disclosing any proprietary or trade secrets in the report.

### **Application process for program grants**

- Permits a broadband provider to apply for a program grant for an eligible project.
- Requires the application form to include a statement informing the applicant that failure to comply with the grant program or to meet required tier two service proposed in the application may require the refund of all or a portion of the program grant.
- Permits applications to be submitted in person or by certified mail or email, or uploaded to a designated DOD website for applications.
- Requires applications to include several items including, for example, the location and a description of the project, a letter of intent that a broadband provider will provide access to the service, the amount of the broadband funding gap and the state funds amounts requested, and the broadband speeds planned for the project.
- Provides that an application is ineligible for a program grant if:
  - It proposes to provide tier two service where already available; or
  - In the proposed area, construction of tier two service is in progress and (1) is being constructed without program funding by the broadband provider that submitted the application or (2) is scheduled to be completed by another provider not later than two years after the date of a challenge to the application.
- Requires DOD to accept applications for program grants each fiscal year and to fund program grants until funds for the fiscal year are no longer available.
- Requires applications to be accepted during not more than two 60- to 90-day submission periods each fiscal year as specified by the Authority.
- After receiving notice from DOD that a broadband provider's application is incomplete, permits the provider to complete and refile the application before the end of the

submission period or not more than 14 days after the period ends, if DOD grants an extension for good cause shown.

### **Proprietary and trade secret information**

- Requires DOD to review information and documents submitted (in an application or project challenge) by a broadband provider to determine whether it is proprietary or a trade secret and to keep the information and documents confidential unless DOD finds that it is not proprietary or a trade secret and therefore is not confidential.

### **Financial assurance condition for receiving grants**

- Permits the Authority to require a broadband provider that is awarded a program grant to provide a performance bond, letter of credit, or other financial assurance acceptable to the Authority before construction begins.

### **DOD application website**

- Requires certain grant program and application information, except for denied applications, to be published on DOD's website, including, for example, the list of residential addresses included with completed program applications, all other information included with applications that is not confidential, and status updates of applications regarding Authority decisions regarding project challenges.

### **County-requested solicitations for broadband providers**

- Permits a board of county commissioners, by resolution, to request DOD to solicit applications from broadband providers for program grants for eligible projects in the municipal corporations and townships of the county.
- Requires a solicitation request to identify, to the extent possible, the residential addresses in unserved or tier one areas of the county, provide a point of contact for the county, municipal corporations, and townships where the addresses are located, and include any helpful relevant information, documents, or materials for the application.
- Requires DOD to solicit applications for program grants if a county makes a request and not later than seven days after receiving a request, to make it and the accompanying information available for review on DOD's website for up to two years.
- Specifies that an application for a program grant made in response to a county request must fully comply with all grant program requirements and that nothing in the county request provides relief from compliance with any grant program requirement.
- Specifies that DOD is not responsible for a broadband provider's failure to respond to a county-requested solicitation made by DOD or to submit an application.

### **Project challenge process**

- Permits a challenging provider to challenge, in writing, all or part of a completed application for a program grant not later than 65 days (or longer if an extension is granted) after the close of the submission period (or extension period).

- Specifies that a challenging provider is:
  - A broadband provider that provides tier two service within or directly adjacent to an eligible project; or
  - A municipal electric utility that provides tier two service to an area within the eligible project that is within the geographic area served by the utility.
- Requires the challenging provider to provide, by certified mail, a written copy of the challenge to the broadband provider that submitted the application (applicant provider) and the Authority.
- Specifies that for a challenge to succeed, a challenging provider must provide sufficient evidence to DOD demonstrating that all or part of a project under the application is ineligible for a grant by:
  - Disputing that the eligible project contains unserved or tier one areas; and
  - Attesting to the challenging provider's existing or planned offering of tier two service to all or part of the eligible project.
- Permit a challenging provider to demonstrate that all or part of a project under an application is ineligible for a program grant, by presenting shapefile data, residential addresses, maps, or similar geographic details, but not census block or census tract level data.
- Permits the Authority to suspend all or part of a challenged application or reject the challenge and approve the application, and requires the Authority to notify the applicant provider and the challenging provider of its decisions by providing a copy of the decision by certified mail or email.
- Requires the Authority to allow an applicant provider 14 days (unless an extension of another 14 days is granted for good cause shown) to revise and resubmit its application if the Authority upholds all or part of a challenge and to provide a copy of the revised application to the Authority and the challenging provider by certified mail or email or by uploading it to DOD's website.
- Specifies that an application is considered to be withdrawn if an applicant provider fails to respond to an Authority notification or to revise an application to the Authority's satisfaction.
- Requires the Authority to review a revised application and decide whether to accept the application or uphold the challenge within 14 days of receiving the revised application.

### **Scoring system for application review**

- Requires DOD, in consultation with the Authority, to establish a weighted scoring system to evaluate and select applications for program grants and make it available on DOD's website.

- Specifies that the scoring system must prioritize applications according to certain factors listed in order from highest to lowest and, as an example, lists the highest two factors as (1) eligible projects in unserved areas, rather than tier one areas and (2) eligible projects located in distressed areas.
- Allows the Authority to consider, after the weighted factors, any other factors it determines reasonable, appropriate, and consistent with facilitating the economic deployment of tier two service to unserved or tier one areas.
- Prohibits the Authority, when awarding program grants, from considering:
  - Proposed project conditions that require open access networks or that establish a specific rate, service, or other obligation not specified in the grant program; or
  - Factors that would constrain the broadband provider from offering or providing tier two service as is offered by other broadband providers in Ohio without grant program funding.

### **Program grant awards**

- Requires the Authority to award program grants after reviewing applications sent to it, considering all regulatory obligations under the law, and basing the awards on the scoring system and to notify the broadband providers that submitted applications upon making the awards.

### **Funding for program grants**

- Makes appropriations to DOD for grants under the Ohio Residential Broadband Expansion Grant Program.

### **Funding from video service providers (VSPs)**

- Permits a broadband provider to enter into an arrangement to designate video service provider (VSP) fees remitted by the provider for contribution towards an eligible project's broadband funding gap if:
  - The provider is a VSP that collects and remits VSP fees to one or more legislative authorities in which an eligible project is located; and
  - The arrangement is entered into by mutual consent with the legislative authorities.
- Specifies that, under the alternate payment term arrangements made with a VSP, unless otherwise negotiated, the participating legislative authorities in which the eligible project is located must assume all financial responsibility for all of the eligible project costs incurred by the broadband provider prior to completion of the project or award of a program grant.

### **Funding from special assessments**

- Permits a municipal corporation, county, or township to fund a portion of the broadband funding gap for an eligible project through a property tax assessment made by the municipal corporation, county, or township.

## **Distribution of grant funds**

- Requires up to 30% of the program grant to be disbursed before project construction begins, up to 60% of the program grant to be disbursed periodically over the course of the project construction according to DOD rules, and the remaining portion to be disbursed not later than 60 days after notification that construction is complete.

## **Speed verification**

- Permits DOD, through an independent third party, to conduct speed verification tests of an eligible project that receives a program grant.
- Requires speed verification tests to occur after project construction is complete but prior to the final grant disbursement and at any time during the reporting period (see “**Grant award reports,**” below), after receiving a complaint about a residence that is part of the eligible project.
- Requires the speed verification tests to be conducted on at least two days at two different times each day.
- Permits DOD to withhold payments for failure to meet at least the minimum broadband service speeds required under the bill until the speeds are achieved.

## **Program noncompliance**

- Requires DOD to (1) notify a broadband provider if the provider, after receiving a program grant, has not complied with program requirements and (2) provide the provider the opportunity to explain or cure the noncompliance.
- Permits DOD to require the broadband provider to refund (1) an amount of the program grant award as DOD determines and (2) to the appropriate municipal corporation, county, or township, the entire amount of general revenue funds or other discretionary funds they contributed toward the broadband funding gap.
- Requires the broadband provider to pay the refund for noncompliance, or failure to explain or cure the noncompliance, not more than 30 days after DOD determines that a refund must be paid.

## **Grant award reports**

- Requires each broadband provider that receives a program grant to submit:
  - An annual progress report on the status of the deployment of the broadband network for which the grant was awarded; and
  - An operational report with DOD not later than 60 days after the project’s completion and annually for another four years.
- Requires broadband provider reports to include an account of how program grant funds have been used, the progress toward fulfilling the objectives for which the grant was awarded and specifies minimum requirements for the report.

## **Authority grant program report**

- Requires the Authority to complete an annual report that evaluates the grant program's success, includes certain program information and the findings and recommendations agreed to by a majority of Authority members and to include the evaluation, findings, and recommendations in its annual report required by law of all state departments.
- Requires the Authority to publish the report on DOD's website and to provide the report to the Governor and the General Assembly by December 1 each year.

## **Broadband infrastructure ownership rights**

- Specifies that nothing in the bill:
  - Entitles the state, DOD, Authority, or any other governmental entity to any ownership or other rights to broadband infrastructure constructed by a broadband provider pursuant to a program grant for an eligible project; or
  - Prevents the assignment, sale, change in ownership, or similar transaction for that infrastructure and specifies that no such transaction relieves the successor of obligations under the bill.

## **Rules**

- Requires DOD to adopt rules for the grant program including rules for an application form and application procedures and procedures for periodic program grant disbursements.
- Permits DOD to adopt rules that include additional application requirements; procedures for, and circumstances under which, partial funding of applications is permitted; procedures for Authority meetings, extension periods, and application challenges, hearings, and public comment; and procedures for county-requested solicitations for broadband providers.
- Specifies that DOD rules are not subject to certain provisions of Ohio law governing review of agency rules regarding regulatory restrictions.

## **Electric cooperative easement use for broadband**

- Allows an easement granted to an electric cooperative for transmitting, delivering, or otherwise providing electric power (easement) to be used, apportioned, or subleased to provide broadband service without such use, apportionment, or sublease being considered an additional burden on the servient estate (which is the land burdened by the easement).

## **Easement action**

- Allows for servient estate owners to bring an action for damages regarding the use, apportionment, or sublease of the easement.
- Provides that an action for damages must be brought within one year of any alleged damages or else the claim is forfeited.

- Limits damages to the difference between the fair market value (as determined by a qualified real estate appraiser) of the owner's interest in the property of the servient estate immediately before and after the provision of broadband service and provides that any damages awarded cannot continue, accumulate, or accrue.
- Prohibits past, current, or future revenues or profits derived or to be derived from the use, apportionment, or sublease of an easement for broadband service from being admissible for any purpose in the action for damages.
- Provides that the court may not grant injunctive relief or any other equitable relief for the action for damages.

### **Court determination**

- Provides that any court determination regarding an easement subject to the action for damages, must be considered a finding that the provision of broadband service is an allowable use or purpose under the easement as if specifically stated in the terms of the easement.
- Requires a court determination in the action for damages to be filed by the defendant with the county recorder of the county in which the servient estate is located and requires the recorder to make a notation in the official record linking the determination to the servient estate and easement.

### **State power not expanded**

- Provides that the electric cooperative easement provisions of the bill do not expand the powers of the State, its agencies, or any political subdivision beyond the authority existing under federal or state law.

### **Appropriation of property laws not applicable**

- Provides that Ohio law governing the appropriation of property do not apply to the electric cooperative easement provisions of the bill.

### **Electric cooperative pole attachments**

- Requires that, on request from a broadband provider, telecommunications service provider, video service provider, or wireless service provider, an electric cooperative must grant the provider nondiscriminatory access to the cooperative's poles under just and reasonable rates, terms, and conditions in accordance with the bill.
- Establishes a process for a provider to request and for an electric cooperative to consider, and to grant or deny, the provider's attachments to the cooperative's poles, including decision-making standards and time frames established by the Federal Communications Commission (FCC) unless a court of common pleas determines a different time frame for granting or denying access.
- Requires a provider and electric cooperative to (1) comply with make-ready work processes under federal law and FCC orders and regulations, unless a court of common

pleas establishes a different process and (2) provide good-faith estimates for any make-ready work regarding provider attachments to cooperative poles.

- Requires an electric cooperative to establish fees for provider attachments in accordance with the federal law formula for cable pole attachment rates and FCC orders and regulations implementing the formula, unless a court of common pleas establishes a different process.
- Requires a provider's attachments to an electric cooperative's poles to meet: (1) the most recent, applicable, nondiscriminatory safety and reliability standards adopted by the cooperative and (2) the National Electric Safety Code in effect on the date of the attachment.
- Establishes provisions for pole modification and requirements for sharing costs for a modification.
- Establishes procedures, requirements, and remedies for an electric cooperative or provider to settle pole attachment disputes in a court of common.
- Designates a pole attachment complaint hearing as a special statutory procedure under the Rules of Civil Procedure.
- Requires pole attachment complaint venues to lie (1) in the county location of the cooperative's Ohio headquarters, if at least some portion of the attachment will occur in that county or (2) in the county where the largest physical portion of the attachment will occur, if no portion of the attachment is in the county location of the headquarters or more than one cooperative is a party to the complaint.
- Specifies that court orders relative to venue are final orders that may be reviewed, affirmed, modified, or reversed as specified in Ohio appeal procedure law and that orders not specifically related to venue are reviewable on appeal just as judgments in any civil action.
- Specifies that land acquisitions under Ohio law governing the appropriation of property are not affected by the bill and are heard in venue pursuant to that law or the Rules of Civil Procedure.

## **Transfer of minority business enterprise and related programs**

- Transfers the administration of the minority business enterprise program, the encouraging diversity, growth, and equity program, the women-owned business enterprise program, and the veteran-friendly business procurement program from the Department of Administrative Services (DAS) to DOD.
- Removes the Equal Opportunity Employment Coordinator from being the head of a division, who instead reports to a position determined by the DAS Director.

## Minority Development Financing Advisory Board

- Corrects erroneous cross-references to clarify that the Minority Development Financing Advisory Board is not responsible for administering certain tax credit and grant programs administered by the Department of Development.

## Job creation tax credit

- Allows any employer that receives the job creation tax credit (JCTC) to count work-from-home employees when computing the employer's credit amount and when verifying its compliance with the JCTC agreement.

## Rename agency as Department of Development

(R.C. 121.02, 121.03, 122.01, 122.011, 122.60, 122.601, 122.603, 122.86, 122.89, 123.01, 149.311, 166.01, 166.03, 174.01, 174.02, 184.01, 1551.01, 1551.33, 1551.35, 5119.34, 5703.21; Repealed R.C. 184.011, 3735.01, and 5701.15; R.C. 140.01, as amended in Section 130.10; Section 518.20)

The bill renames the Development Services Agency (DSA) as the Department of Development. Similarly, the Director of Development Services is renamed the Director of Development. The change reverses the name change in 2012 by [S.B. 314 of the 129<sup>th</sup> General Assembly](#). The bill does not make the change uniformly throughout the Revised Code. Instead, the change is reflected in several sections addressing the Department's operations, and the bill directs that references to DSA and its Director throughout the Revised Code mean the renamed Department and its Director.

Ongoing DSA operations are to be continued by the Department, including the following:

- All DSA rules, orders, and determinations are to continue as though made by the Department;
- DSA employees continue as employees of the Department;
- The Department must be substituted for DSA in any pending court or agency proceedings to which DSA is a party.

## Ohio Residential Broadband Expansion Grant Program

(R.C. 122.40 to 122.4077, 133.13, 303.251, 505.881, and 727.01; Sections 259.10, 259.30, and 513.10)

The bill creates the grant program within the Department of Development (DOD) and requires DOD to administer and provide staff assistance for the grant program.

## Definitions

Definitions for the grant program include the following:

Term	Definition
“Broadband funding gap”	The difference between the total amount of money a broadband provider calculates is necessary to construct the last mile of a specific broadband network and the total amount of money that the provider has determined is the maximum amount of money that is cost effective for the provider to invest in last mile construction for that network <i>(R.C. 122.40(B))</i> .
“Broadband provider”	A (1) video service provider or (2) provider that is capable of providing tier one or tier two service and is a telecommunications service provider, satellite broadcasting service provider, or a wireless service provider. A “broadband provider” does not include a governmental or quasi-governmental entity. <i>(R.C. 122.40(C); R.C. 1332.21 and 4927.01, not in the bill.)</i>
“Tier one broadband service” and “tier two broadband service”	Retail wireline or wireless broadband service capable of delivering internet access at speeds of at least: <ul style="list-style-type: none"> <li>▪ 10 but less than 25 megabits per second downstream and at least 1 but less than 3 megabits per second upstream for “tier one broadband service” (tier one service, as used in this analysis);</li> <li>▪ 25 megabits per second downstream and at least 3 megabits per second upstream for “tier two broadband service” (tier two service, as used in this analysis).</li> </ul> <i>(R.C. 122.40(J) and (K).)</i>
“Eligible project”	A project to provide tier two service access to residences in an unserved area or tier one area of a municipal corporation or township that is eligible for funding under the bill <i>(R.C. 122.40(D))</i> .
“Last mile”	The last portion of a physical broadband network that connects an eligible project to the broader network used to provide tier two service to which both of the following apply: <p style="margin-left: 40px;">It includes other network infrastructure in the last portion of the network that is needed to provide tier two service to residences as part of an eligible project, but does not include network infrastructure in any portion of the network that is outside of the last portion;</p> <ul style="list-style-type: none"> <li>▪ It is not required to be, or limited to, a specific distance measurement of one mile or any other specific distance.</li> </ul> <i>(R.C. 122.40(E).)</i>
“Program grant”	Money awarded under the grant program to assist in covering the broadband funding gap for an eligible project <i>(R.C. 122.40(G))</i> .

Term	Definition
“Tier one area”	An area that has access to tier one service but not tier two service, including an area where construction of a network to provide <i>tier one service</i> is in progress and scheduled to be completed within a two-year period. “Tier one area” excludes an area where construction of a network to provide <i>tier two service</i> is in progress and scheduled to be completed within a two-year period. (R.C. 122.40(L).)
“Unserved area”	An area without access to tier one service or tier two service, excluding an area where construction of a network to provide <i>tier one service or tier two service</i> is in progress and scheduled to be completed within a two-year period (R.C. 122.40(M)).

## Broadband Expansion Program Authority

The bill creates the Authority within DOD. DOD must receive and review applications for program grants and send them to the Authority for the final review and awarding of program grants. The Authority must consider each application that DOD has reviewed and sent to it, score each application based on the scoring system established under the bill, and award program grants based on that system. See “**Authority’s application review**” (below).

The bill excludes the Authority from those state agencies subject to review under the sunset review law.<sup>18</sup>

### Authority membership

As established under the bill, the Authority has five members: the DOD Director or designee, the Director of the Office of InnovateOhio or designee, one member appointed by the Speaker of the House, one member appointed by the Senate President, and one member appointed by the Governor. Vacancies must be filled in the same manner as original appointments, and any member appointed to fill a vacancy serves the remainder of the term being filled. If a designee is assigned to the Authority, the designation must be in writing by the applicable Director.

### *Appointed members*

Appointed members serve four-year terms and are eligible for reappointment. They must have expertise in broadband infrastructure and technology, but must not be affiliated with, or employed by, the broadband industry or in a position to benefit from a program grant.

Under the bill, they receive a monthly stipend as calculated under the Ohio Public Employees Retirement System (OPERS) law in an amount that will qualify each member for one year of OPERS retirement service credit for each year of the member’s term. However,

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<sup>18</sup> R.C. 101.82 to 101.87, not in the bill.

notwithstanding any OPERS requirement that eligibility for health care coverage be based on years and types of service credit according to OPERS Board rules, if the Board provides health care coverage, no service credit earned for service as a member of the authority may be considered for purposes of determining eligibility for such health care coverage.<sup>19</sup>

Members receive reimbursement for their necessary and actual expenses incurred in performing Authority business. An appointed member who is currently serving as the head of a state administrative department is not eligible to receive the monthly stipend for appointed Authority members.

DOD is responsible for paying all stipends and reimbursements. And reimbursements constitute administrative costs of the grant program.

### **Authority meetings**

Under the bill, the DOD Director or designee serves as the chairperson of the Authority. Authority members annually elect one of the members as the vice-chairperson. The bill sets attendance of three members as the quorum necessary to do business and requires an affirmative vote of three members to approve any business, including the election of the vice-chairperson. If the DOD Director assigns a designee to serve on the Authority, the designee must be a professional employee of DOD, who will serve as the Director's designee at Authority meetings. The bill requires the vice-chairperson to chair Authority meetings in the absence of both the Director and the Director's designee.

Members of the Authority may attend meetings electronically by electronic communication if: (1) at least three members attend the meeting in person at the place where the meeting is conducted, (2) the electronic communication for the meeting permits simultaneous communication among all Authority members, including those attending electronically, and all members of the public attending in person, and (3) all votes are taken by roll call vote.

If a member chooses to attend a meeting electronically, the member must notify the chairperson not less than 48 hours before the scheduled meeting time, except in the case of an emergency. The bill does not specify what constitutes an emergency or if remote attendance due to an emergency affects the three-person requirement for a meeting to take place.

### **Authority duties**

The Authority is responsible for performing specific duties regarding the grant program and other duties regarding the review of broadband-related topics. Under the bill, the Authority must conduct hearings to gather information necessary to accomplish the duties described below.

#### ***Grant specific duties***

The Authority must do the following, specific to the grant program:

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<sup>19</sup> R.C. 145.016 and 145.58, not in the bill.

- Monitor the grant program by:
  - Tracking the details for (1) annual applications and (2) program grants awarded annually, including:
    - ❖ The number of applications and program grants;
    - ❖ The geographic locations of eligible projects;
    - ❖ The broadband providers submitting applications and, for awards being tracked, the entities or companies that submitted the application;
    - ❖ A description of the tier two service infrastructure and technology proposed or deployed;
    - ❖ A description of any public right-of-way or public facilities to be utilized or actually utilized for the projects;
    - ❖ The speeds of the tier two service under the applied-for or enabled projects;
    - ❖ The amount of program grant funds requested or awarded for each project and the proportion of project funding to be provided, or share of funding provided, by the broadband provider and other entities;
    - ❖ The number of residential and nonresidential locations that will have access to tier two service under each project.
  - Listing the amount of any unencumbered program grant funds that remain available for award under the grant program;
  - Adding any additional factors deemed necessary by the authority to monitor the program.
- Review all project progress reports and operational reports submitted by broadband providers that receive a program grant;
- Review all pending county requests made for program grants.

### ***Other duties***

The bill also requires the Authority to:

- Continually examine, and propose updates to, any broadband plan provided by law enacted by the General Assembly or Executive Order issued by the Governor;
- Identify any best practices for, and impediments to, the continued expansion of tier two service infrastructure and technology in the state;
- Coordinate and promote the availability of publicly accessible digital literacy programs to increase fluency in the use and security of interactive digital tools and searchable networks, including the ability to use digital tools safely and effectively for learning, collaborating, and producing;

- Identify, examine, and report on any federal or state government grant or loan program that would promote the deployment of tier two service infrastructure and technology in Ohio;
- Track the availability, location, rates and speeds, and adoption of programs that offer tier one service and tier two service in an affordable manner to low income consumers in Ohio.

### ***Report***

The bill requires the Authority to submit a written public report of its findings and recommendations to the Governor and the General Assembly by December 1 each calendar year and make the report available on DOD's website. The report must receive approval from a majority of the Authority's members, and it may not disclose any proprietary information or trade secrets.

It appears this annual report is separate from the annual report that focuses entirely on the grant program, with the result that the Authority must make two annual reports. See "**Authority grant program report**" (below).

### **Application process for program grants**

A broadband provider may apply for a program grant under the grant program, and program grants may be awarded only for eligible projects.

#### **Ineligible projects**

The bill specifies that an application is ineligible for a program grant if either of the following apply:

- It proposes to provide tier two service to areas where such service is presently available;
- In the proposed area of service, construction of a network to provide tier two service currently is in progress and either (1) it is being constructed, without grant program funding, by the broadband provider that submitted the application or (2) it is scheduled to be completed by another broadband provider not later than two years after the date of a challenge to the application is submitted. See "**Project challenge process**" (below).

#### **Application process**

Under the bill, DOD must accept applications from broadband providers for program grants each fiscal year. Applications may be submitted in person, by certified mail or email, or uploaded to a designated DOD website for applications.

To apply, a broadband provider must submit an application to DOD on a form DOD prescribes. The form must include a statement informing the applicant that failure to comply with the grant program or to meet the required tier two service proposed in the application may require the refund of all or a portion of the program grant awarded for the project.

### ***Application requirements***

Grant program applications must include, at a minimum, the following information for an eligible project:

- The location and description of the project, including:
  - The residential addresses in the unserved or tier one areas where tier two service will be available upon project completion; and
  - A notarized letter of intent by the broadband provider that (1) the provider will provide access to tier two service to all of the residential addresses listed in the project and (2) none of the funds provided by the program grant will be used to extend or deploy facilities to any residences other than those in unserved or tier one areas that are part of the project.
- The amount of the broadband funding gap and the amount of state funds requested;
- The amount of any financial or in-kind contributions to be used towards the broadband funding gap and identification of the contribution sources, which, in any combination, may include:
  - Funds that the broadband provider is willing to contribute to the broadband funding gap;
  - Funds received or approved under any other federal or state government grant or loan program;
  - General revenue funds of a municipal corporation, township, or county comprising the area of the eligible project;
  - Other discretionary funds of the municipal corporation, township, or county comprising the area of the eligible project;
  - Any alternate payment terms permitted as described in “**Funding from video service providers (VSPs)**” (below) that the broadband provider and any legislative authority in which the project is located have negotiated and agreed to;
  - Contributions or grants from individuals, organizations, or companies;
  - Property tax assessments made by a municipal corporation, township, or county as described under “**Funding from special assessments**” (below).
- The source and amount of any financial or in-kind contributions received or approved for any part of the overall eligible project cost, but not applied to the broadband funding gap;
- A description of, or documentation demonstrating, the broadband provider’s managerial and technical expertise and experience with broadband service projects;
- Whether the provider plans to use wired, wireless, or satellite technology to complete the project;
- A description of the scalability of the project;

- The megabit-per-second broadband download and upload speeds planned for the project;
- A description of the broadband provider's customer service capabilities, including any locally based call centers or customer service offices;
- A copy of the broadband provider's general customer service policies, including any policy to credit customers for service outages or the provider's failure to keep scheduled appointments for service;
- The length of time that the broadband provider has been operating in Ohio;
- Proof that the broadband provider has the financial stability to complete the project, which, to meet this requirement, may be publicly available financial statements submitted with the application;
- A projected construction timetable, including the anticipated date of the provision of tier two service access within the project;
- A description of anticipated or preliminary government authorizations, permits, and other approvals required in connection with the project, and an estimated timetable for the acquisition of such approvals;
- A notification from the broadband provider informing DOD of any information contained in the application, or within related documents submitted with it, that the provider considers proprietary or a trade secret;
- A notarized statement that the broadband provider accepts the condition that noncompliance with the grant program requirements may require the provider to refund all or part of any program grant the provider receives;
- A brief description of any arrangements, including any subleases of infrastructure or joint ownership arrangements that the broadband provider that submitted the application has entered into, or plans to enter into, with another broadband provider, an electric cooperative, or an electric distribution utility (EDU), to enable the offering of tier two service under the project;
- Other relevant information that DOD determines is necessary and prescribes by rule;
- Any other information the broadband provider considers necessary.

### ***Application submission period***

Under the bill, applications must be accepted during a submission period specified by the Authority, each of which must be at least 60, but not more than 90 days. During each fiscal year, there may not be more than two submission periods.

### ***Incomplete applications***

The bill requires DOD to notify a broadband provider if its application is incomplete and to list in the notification what information is incomplete. The notification must also describe the procedure for refiling a completed application.

If an application is determined to be incomplete, DOD must review the application if it is completed and refiled before the end of the submission period. The bill allows the application to be refiled not later than 14 days after the end of the submission period, if DOD, for good cause shown, has granted the broadband provider an extension period of up to 14 days in which to file the completed application.

DOD must deny an incomplete application if the provider fails to complete and refile it within the applicable submission period or extension period.

### **Proprietary and trade secret information**

Under the bill, DOD, according to rules it adopts, must evaluate the information and documents submitted with a broadband provider's application or with a challenge to the application submitted by another broadband provider. The purpose of the evaluation is to determine whether the information or documents are proprietary or constitute a trade secret. When DOD receives the information and documents, it must keep them confidential and may not publish them on DOD's website. If DOD finds that any information or document is not proprietary or a trade secret, it is not considered confidential and must be published on the website according to the bill's requirements.

### **Financial assurance condition for receiving grants**

As a condition for receiving a program grant, the Authority may require a broadband provider awarded a program grant to provide a performance bond, letter of credit, or other financial assurance acceptable to the Authority before construction begins. The purpose of the performance bond, letter of credit, or other financial assurance is to assure completion of the project and is not required after the project is complete.

The bond, letter of credit, or assurance must be in the sum, and with the sureties, that the state prescribes and must be payable to the state, as applicable. The bond, letter of credit, or assurance may include the condition that the provider will faithfully execute and complete the project.

### **DOD application website**

Although DOD may not publish an application on DOD's website if it has been denied, certain application information must be published on the website. Under the bill, DOD must publish:

- The scoring system for reviewing applications at least 30 days before the application submission period described in "**Scoring system for application review**" (below);
- Requests to DOD from boards of county commissioners to solicit program grant applications, as described under "**County-requested solicitation for program grants**" (below);
- For each completed application:
  - The list of residential addresses included with the application, not later than five days after the close of the submission period in which the application is made; and

- All information DOD determines is not confidential not later than 35 days after the close of the submission period in which the application is made.
- Any updates to the status of an application following a challenge made as described in “**Project challenge process**” (below);
- The program grants awarded under the grant program;
- The Authority’s grant program annual report.

### **Notification process**

The bill requires DOD to establish an automatic notification process through which interested parties may receive email notifications when DOD publishes grant program application and other information on its website.

### **County-requested solicitation for broadband providers**

The bill permits a board of county commissioners, upon adoption of a resolution, to request DOD to solicit applications from broadband providers for program grants. The solicitations are to be for eligible projects in the municipal corporations and townships of the county. A county request must identify, to the extent possible, the residential addresses in unserved or tier one areas of the county and provide a point of contact at the county, municipal corporations, and townships in which the addresses are located. The request may include any relevant information, documents, or materials that may be helpful for an application.

If DOD receives a request from a board of county commissioners, it must, on behalf of the county, solicit applications for program grants. Not later than seven days after it receives the county’s request, DOD must make the request and accompanying information submitted with it, available on its website for a period not to exceed two years. Under the bill, DOD is not responsible for any failure by a broadband provider to respond to the request or to submit a program grant application.

If a provider applies for a program grant in response to a DOD solicitation, the application submitted by the provider must fully comply with all grant program requirements. And, as specified under the bill, nothing in the program grant solicitation process may be construed as providing relief from compliance with any program requirements.

### **Project challenge process**

Under the bill, a program grant application may be challenged by a “challenging provider.” A “challenging provider” is either of the following:

- A broadband provider that provides tier two service within or directly adjacent to an eligible project;
- A municipal electric utility that provides tier two service to an area within the eligible project that is within the geographic area served by the utility.

A challenge to all or part of a completed application for a project’s program grant must be in writing and must be made not later than 65 days after the close of the application submission period or the extension period, if one is granted by DOD.

The challenge deadline may be extended by DOD for up to 14 days, for good cause shown. However, no challenge may be accepted before the completed application is published in its entirety on the Department's website.

The bill requires a challenging provider to provide a written copy of the challenge by certified mail to DOD and the broadband provider that submitted the application (applicant provider). The copy sent to DOD may include any information that the challenging provider considers to be proprietary or a trade secret. Proprietary information or trade secrets may be redacted from the copy sent to the applicant provider.

### **Challenge evidence**

The bill specifies the requirements for successfully challenging an application. To do so, a challenging provider must provide sufficient evidence to DOD demonstrating that all or part of a project under the application is ineligible for a grant. The challenge must, at minimum, include the following information:

- Sufficient evidence disputing the notarized letter of intent submitted with the application that the eligible project contains unserved or tier one areas;
- Sufficient evidence attesting to the challenging provider's existing or planned offering of tier two service to all or part of the eligible project, which evidence must include the following:
  - With regard to existing tier two service, a signed, notarized statement submitted by the challenging provider that sufficiently identifies the part of the eligible project to which the challenging provider offers broadband service;
  - With regard to the planned provision of tier two service by a challenging provider being constructed or scheduled to be completed within two years of the challenge date (1) a signed, notarized statement submitted by the challenging provider that sufficiently identifies the part of the eligible project to which the challenging provider will offer broadband service and (2) a summary of the construction efforts that includes the dates when tier two service construction is expected to be completed and when tier two service will first be offered to the part of the eligible project being challenged.

To demonstrate that all or part of a project under an application is ineligible for a program grant under the bill, a challenging provider may present shapefile data, residential addresses, maps, or similar geographic details. But, the bill specifies that census block or census tract level data is not acceptable as evidence of the ineligibility of all or part of the project.

### **Challenge response**

The bill specifies that the Authority has a 30-day period after receipt of an application challenge in which to take action. The Authority may do either of the following:

- Suspend all or part of the application being challenged;
- Reject the challenge, approve the application, and proceed with the application process.

The Authority must notify the applicant provider and the challenging provider of any decision regarding the challenge by providing a copy of the decision by certified mail or email. The Authority also must update the status of the application on DOD's website.

### **Application revisions permitted**

The bill requires the Authority to allow the applicant provider to revise its application, if the Authority upholds a challenge to, or suspends, all or part of the application. The applicant provider may revise and resubmit the application not later than 14 days after receiving the Authority's suspension notification. For good cause shown, the Authority, upon request of the applicant provider, may grant an extension period of up to 14 days in which the applicant provider may resubmit the application. The bill specifies that the applicant provider cannot expand the scope or impact of the original application or add any new residential addresses to the eligible project in the application.

An applicant provider must provide a copy of the revised application to the Authority and challenging provider by certified mail or email, or by uploading it to DOD's designated website for applications. The bill requires DOD to publish the revised application on its public website provided that any information determined to be proprietary or a trade secret is redacted.

The bill specifies that any failure to respond to the notification or to properly revise the application to the Authority's satisfaction is considered to be a withdrawal of the application.

Within 14 days of receipt of a revised application, the Authority must review it and decide whether to accept it or uphold the challenge. The Authority must provide a copy of its decision to both the applicant provider and the challenging provider by certified mail or email and must update the status of the application on DOD's website. Under the bill, the Authority's decision is considered final, and further challenges to the revised application are prohibited.

### **Failure of challenging provider after challenge is upheld**

Under the bill, a challenging provider may be subject to payments and penalties in addition to other remedies available under the law if the challenging provider fails to provide tier two service as described in a challenge that has been upheld by the Authority. After a reasonable opportunity to be heard, the challenging provider may be required to (1) pay to DOD the amount of the original broadband funding gap for the application that was challenged, (2) comply with the requirements of any other penalties prescribed by DOD rule and imposed after consultation with the Authority, or (3) both.

### **Scoring system for application review**

The bill requires DOD in consultation with the Authority, to establish a weighted scoring system to evaluate and select applications for program grants. The scoring system must be available on DOD's website at least 30 days before the beginning of the application submission period. Under the scoring system, applications must be prioritized, from highest to lowest weight, in the following order, for those eligible projects that are:

- For unserved areas, rather than tier one areas;

- Located within distressed areas as defined under the Urban and Rural Initiative Grant Program;
- Receiving or approved to receive any financial or in-kind contributions towards the broadband funding gap identified in the application, including the amounts and proportions of the contributions;
- Proposing construction that will utilize state rights-of-way or otherwise require attachment to, or use of, public facilities or conduit to provide tier two service to an eligible project;
- Based on proposed upstream and downstream speeds and the scalability of the tier two service infrastructure proposed to be deployed to speeds higher than 25 megabits per second downstream and 3 megabits per second upstream;
- Based on each of the following, in equal measure, without favoring one broadband provider over another:
  - Demonstrated support, supported by evidence, for community and economic development efforts in, or adjacent to, the projects, including the provision of tier two service to commercial and nonresidential entities as a result of, but not funded directly by, the grant program;
  - The broadband provider's experience, technical ability, and financial capability in successfully deploying and providing tier two service;
  - The length of time the broadband provider has been providing tier two service in Ohio;
  - The extent to which funding is necessary to deploy tier two service infrastructure in an economically feasible manner to the eligible project;
  - The ability of the broadband provider to leverage nearby or adjacent tier one or tier two service infrastructure to facilitate the proposed deployment and provision of tier two service to the eligible project;
  - If existing tier one or tier two service infrastructure exists in the area of the eligible project, the extent to which the project utilizes or upgrades the existing tier one or tier two infrastructure, rather than duplicates it;
  - The eligible projects' location within Ohio opportunity zones.<sup>20</sup>

The bill allows DOD to include any other factors in the scoring system that it determines to be reasonable, appropriate, and consistent with the purpose of facilitating the economic deployment of tier two service to unserved or tier one areas. But, the additional factors must be considered after the weighted factors described above.

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<sup>20</sup> R.C. 122.19 and 122.84, not in the bill.

## **Program grant awards**

The Authority must award program grants after reviewing applications sent by DOD. Awards must be granted after the Authority scores them according to the scoring system described above. The bill requires the Authority to consider all regulatory obligations under applicable law before awarding grants, but it does not state to what regulatory obligations the requirement refers. The bill requires the Authority to notify the applicant providers of its award decisions and publish the grant awards on DOD's website.

When making grant awards, the Authority may not consider the following:

- Proposed project conditions that require open access networks or that establish a specific rate, service, or other obligation not specified for the grant program;
- Factors that would constrain a broadband provider that receives a program grant from offering or providing tier two service in the same manner as the service is offered in other areas of the state by providers that do not receive funding from the grant program.

The bill requires a broadband provider's eligible project under the grant program to be awarded a program grant by the Authority before the project may proceed. After receiving a program grant award, the provider must construct and install last mile broadband infrastructure to the eligible project.

## **Funding for program grants**

Program grants awarded by the Authority must be awarded using funds appropriated by the General Assembly for the grant program. Collections for noncompliance payments and penalties under the bill must be deposited in the General Revenue Fund,<sup>21</sup> but the bill does not specify how the money from these payments and penalties is to be used. The bill requires DOD to administer and provide staff assistance for the grant program,<sup>22</sup> but does not expressly provide funding for the administration of the grant program.

### **Appropriation**

The bill makes appropriations from the General Revenue Fund to DOD to be used to make program grants.

### **Funding process**

Under the bill, DOD must fund program grants each fiscal year until funds for that fiscal year are no longer available. If any applications are left pending at the end of the fiscal year, the bill specifies that they be deemed denied. But, the bill permits applications to be refiled in a subsequent fiscal year provided that all application information is still current or has been updated.

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<sup>21</sup> R.C. 122.4017 and 122.4037.

<sup>22</sup> R.C. 122.401.

## **Funding from video service providers (VSPs)**

The bill specifies that a broadband provider may designate VSP fees remitted by the provider towards an eligible project's broadband funding gap. To do this, a provider must enter into an arrangement to designate the contribution under the following circumstances:

- The broadband provider is a VSP that collects and remits VSP fees to one or more legislative authorities in which an eligible project is located;
- The arrangement is entered into by mutual consent with one or more of the legislative authorities in which the eligible project is located.

The Video Service Authorization law permits the quarterly collection of fees from VSPs for payment to each municipal corporation or township in which the VSP offers video service. VSPs may collect the fee from subscribers that have a service address within the municipal corporation or township.<sup>23</sup>

Under alternative payment term arrangements, unless otherwise negotiated, the participating legislative authorities in which the eligible project is located must assume all financial responsibility for all the eligible project costs incurred by the VSP prior to completion of the project or the award of a program grant.

## **Funding from special assessments**

The bill permits municipal corporations, townships, and counties to levy special assessments if a program grant is awarded for an eligible project under the grant program. Under the bill, a special assessment may be levied upon residential property within the municipal corporation, township, or county for the purpose of providing a contribution by the county towards the funding gap for the eligible project. Assessments may only be levied on the property that is subject to the eligible project. Municipal corporation, county, and township assessments must be at a rate that will produce a total assessment that is not more than the county's or township's contribution toward the funding gap for the eligible project.

Before adopting the resolution for such an assessment, the township or county must send written notice of the assessment to the affected property owner stating the estimated assessment. The bill provides a procedure for a property owner to file a written objection with the board of township trustees or the board of county commissioners as appropriate within two weeks after the assessment notice was mailed. The board must review the written objection and may revise the estimated assessment before adopting the resolution authorizing it. The property owner may go to court to appeal the final assessment for the property levied in the resolution.

The board of township trustees or the board of county commissioners as appropriate must certify the amounts to be levied upon each affected property to the county auditor, who must enter the amounts on the tax duplicate for collection by the county treasurer in the same manner as the collection of taxes on real property. The assessments, when collected from property owners, must be paid into a special fund in the county treasury or township treasury

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<sup>23</sup> R.C. 1332.32, not in the bill.

created for funding an eligible project that has received a program grant and is located in the county or township. The money from the fund may only be used for the purposes for which the assessments were levied.

Assessments to property in a municipal corporation that are permitted under the bill are likely subject to current law provisions such as those that provide for notices of estimated assessments to be sent to affected property owners, procedures for a property owner to object to an assessment, and for hearings regarding the objection.<sup>24</sup>

The bill permits the taxing authority of the municipal corporation, township, or county to issue securities in anticipation of its levy or collection of special assessments to pay the costs of the broadband funding gap portion for an eligible project under the bill.

### **Distribution of program grant funds**

As established by the bill, program grants awarded by the Authority must be disbursed by DOD as follows:

- Up to 30% of the grant must be disbursed before project construction begins;
- Up to 60% of the grant must be disbursed through periodic payments over the course of the eligible project's construction as determined by DOD rules;
- The remainder of the grant must be disbursed not later than 60 days after the broadband provider notifies the Authority that it has completed construction of the project.

### **Speed verification**

The bill permits DOD, through an independent third party, to conduct speed verification tests of an eligible project that receives a program grant. The tests must occur (1) after the construction is complete, but prior to the final disbursement of the program grant to verify that tier two service is being offered and (2) after receiving a complaint concerning a residence that is part of the eligible project, at any time during the reporting period for operational reports described in "**Grant award reports**" (below).

To evaluate compliance with tier two service standards, speed verification tests conducted under the bill must be conducted on at least two different days and at two different times on each of those days. DOD may withhold payments for a provider's failure to meet at least the minimum speeds stated in the project's application and may hold the payments until the speeds are achieved.

### **Program noncompliance**

If DOD determines that a broadband provider awarded a program grant under the grant program has not complied with the requirements, the bill requires DOD to notify the provider of the noncompliance and to give the provider an opportunity to explain or cure the noncompliance, in accordance with DOD rules. DOD, after reviewing the broadband provider's explanation or effort to cure the noncompliance, may require the provider to (1) refund an amount equal to all,

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<sup>24</sup> R.C. 727.13, 727.15, 727.16, 727.17, 727.30, and 727.301, not in the bill.

or a portion of, the provider's program grant award as determined by DOD or (2) refund to the appropriate municipal corporation, township, or county the entire amount of general revenue funds or other discretionary funds that it contributed toward the broadband funding gap.

Under the bill, a provider must pay the refund not more than 30 days after DOD's decision requiring the refund or a provider's failure to explain or cure the noncompliance. Payments must be made directly to the municipal corporation, township, or county that contributed funds toward the broadband funding gap. The bill does not specify to whom refunds of program grant awards would be made, but presumably they would be paid to DOD.

### **Grant award reports**

Under the bill, each broadband provider that receives a program grant must submit an annual progress report to DOD. The report must provide the status of the deployment of the broadband network described in the eligible project that was awarded the program grant. The broadband provider also must submit an operational report with DOD not later than 60 days after the project's completion and annually thereafter for a period of four years. DOD may set report due dates and, for good cause shown, may grant extensions of the report due dates.

The reports and all information and documents in them must be in a format that DOD specifies and publicly available on DOD's website. However, DOD must maintain the reports, and information and documents in them, on a confidential basis and may not publish them on the its website until it determines what information or documents are not confidential.

### **Report contents**

In the reports required by the bill, a broadband provider must include an account of how program grant funds have been used and the project's progress toward fulfilling the project's objectives for which the grant was awarded. Reports must include, at a minimum, the following:

- The number of residences that have access to tier two services as a result of the eligible project;
- The number of commercial and nonresidential entities, though not funded directly by the grant program, have access to tier two service as a result of the eligible project;
- The upstream and downstream speed of the broadband service provided;
- The average price of broadband service;
- The number of broadband service subscriptions attributable to the program grant.

### **Authority grant program report**

The bill requires the Authority to complete an annual report for the grant program and requires the report to evaluate the success of the program grants in making tier two service available to unserved and tier one areas. It must include the following information:

- The number of applications received and the number of them that received program grants;
- The amount of broadband infrastructure constructed for eligible projects;

- The number of residences receiving, for that year, tier two service for the first time under the program;
- Findings and recommendations that have been agreed to by a majority of Authority members.

The report must be published on DOD's website and included as part of DOD's annual report of transactions and proceedings required of all state departments under current law. The Authority must present the report annually to the Governor and the General Assembly not later than December 1 of each calendar year.

### **Broadband infrastructure ownership rights**

The bill specifies that nothing in the grant program entitles the state, DOD, the Authority, or any governmental entity to any ownership or other rights to broadband infrastructure that a broadband provider constructs with a program grant. The bill also specifies that nothing in the grant program prevents assignment, sale, change in ownership, or other similar transaction associated with broadband infrastructure constructed by a provider under the program. The bill also specifies that if such a transaction occurs, the transaction does not relieve the successor of any obligation established under the grant program.

### **Rules**

The bill requires DOD to adopt rules for the grant program that establish an application form and application procedures, and procedures for periodic program grant disbursements. The rules may include:

- Program application requirements in addition to those specified in the bill;
- Procedures for partial funding of applications and circumstances under which partial funding is permitted;
- Procedures for Authority meetings, extension periods for applications and application challenges, hearings, and opportunities for public comment.
- Procedures to implement the bill's provisions regarding county-requested solicitations for program grants.

The bill specifies that rules adopted under the bill are not subject to the requirements in current law governing agency review of rules to identify regulatory restrictions. In addition, DOD and the Authority are exempted from the requirements of that law governing the "remove two regulatory restrictions to adopt one regulatory restriction," with respect to the rules adopted under the bill.

### **Use of electric cooperative easements for broadband**

(R.C. 188.01 to 188.30)

The bill provides that an easement granted to an electric cooperative for the purpose of transmitting, delivering, or otherwise providing electric power (easement) may be used,

apportioned, or subleased to provide broadband service. The bill also provides such use, apportionment, or sublease is not to be considered an additional burden on the servient estate.

## Definitions

Definitions regarding the use of an electric cooperative easement for broadband under the bill include those listed in the table below:

Term	Definition
"Broadband service"	Any wholesale or retail service that consists of, or includes the provision of, connectivity to a high-speed, high-capacity transmission medium that can carry signals from or to multiple sources and that either provides access to the internet or provides computer processing, information storage, information content or protocol conversion, including any service applications or information service provided over such high-speed access service. "Broadband service" includes video service, voice-over-internet-protocol service, and internet protocol-enabled services. <i>(R.C. 188.01(A).)</i>
"Electric cooperative"	A not-for-profit electric light company, as defined under the competitive retail electric service law, that both is or has been funded under the federal Rural Electrification Act of 1936 and owns or operates facilities in Ohio to generate, transmit, or distribute electricity, or a not-for-profit successor of that company <i>(R.C. 188.01(B); R.C. 4928.01(A)(5), not in the bill).</i>
"Internet protocol-enabled services"	As defined in ongoing telecommunications law, any services, capabilities, functionalities, or applications that are provided using internet protocol or a successor protocol to enable an end user to send or receive communications in internet protocol format or a successor format, regardless of how any particular such service is classified by the Federal Communications Commission (FCC), and includes voice over internet protocol service <i>(R.C. 188.01(C); R.C. 4927.01(A)(6), not in the bill).</i>
"Servient estate"	The land burdened by an easement (this, simply, is the land over or through which the easement runs) <i>(R.C. 188.01(D)).</i>
"Video programming"	Any programming generally considered comparable to programming provided by a television broadcast station <i>(R.C. 188.01(E)).</i>
"Video service"	Video programming services without regard to delivery technology, including internet protocol technology and video programming provided as a part of a service that enables users to access content, information, email, or other services offered over the public internet <i>(R.C. 188.01(F)).</i>

Term	Definition
“Voice over internet protocol service”	A service, as defined in ongoing telecommunications law, that enables real-time, two-way, voice communications that originate or terminate from the user’s location using internet protocol or a successor protocol, including any such service that permits an end user to receive calls from and terminate calls to the public switched network ( <i>R.C. 188.01(C); R.C. 4927.01(A)(17), not in the bill</i> ).

## **Easement action**

The bill provides that if a servient estate owner brings an action regarding the use, apportionment, or sublease of the easement for broadband service (easement action), a court may award damages to the owner equal to not more than the difference between the following:

- The fair market value of the owner’s interest in the property of the estate immediately before the provision of broadband service;
- The fair market value of the owner’s interest in the property of the estate immediately after the provision of broadband service.

### **Establishment of fair market value**

The fair market values used in the calculation of damages must be established by the testimony of a qualified real estate appraiser. The bill does not indicate how the appraiser is to be chosen.

### **Fixed amount of damages**

The bill provides that any damages awarded under the easement action must be a fixed amount that cannot continue, accumulate, or accrue.

### **Evidence of revenue or profits not allowed**

The bill provides that past, current, or future revenues or profits derived or to be derived from the use, apportionment, or sublease of the easement for broadband service are not admissible for any purpose in the easement action.

### **Injunctive relief not allowed**

The bill prohibits a court from granting injunctive relief or any other equitable relief in the easement action.

### **Statute of limitations**

The bill requires that an easement action must be brought within one year of any alleged damages. Any action not brought within that time will result in forfeiture of the claim.

### **Other bars to bringing an action for damages**

The bill prohibits a servient estate owner from bringing an easement action in the following circumstances:

- When the owner directly, or through the owner’s membership in the electric cooperative or otherwise, authorized the electric cooperative’s electric delivery system for the provision of broadband services;
- The owner, or any of the previous owners of the property that makes up the servient estate, has agreed to, or granted permission for, the use of the easement to provide broadband services;
- The facilities providing broadband service are used or are capable of being used to assist in the transmission, delivery, or use of electric service.

### **Effect of court determination**

Any court determination regarding an easement subject to an easement action is considered a finding that the broadband service is an allowable use or purpose under the easement. The easement is treated as if the use or purpose was specifically stated in the terms of the easement.

### **Filing court determination with county recorder**

The bill requires the defendant in an easement action to file the court determination with the county recorder of the county in which the servient estate is located. The recorder must make a notation in the official record that links the determination to the servient estate and the easement subject to the determination.

### **State power not expanded**

The bill provides that it does not expand the powers of the State, its agencies, or any political subdivision beyond the authority existing under federal or state law.

### **Appropriation of property laws not applicable**

Ohio law regarding the appropriation of property does not apply regarding the application of the bill’s provisions.<sup>25</sup>

### **Electric cooperative pole attachments**

(R.C. 4926.01 to 4926.60)

The bill requires that, upon request from a provider, an electric cooperative must grant the provider nondiscriminatory access to the cooperative’s poles under just and reasonable rates, terms, and conditions in accordance with the bill’s provisions. Generally, the bill establishes procedures for requesting and determining access to poles, pole attachment and modification provisions, and procedures for resolving pole attachment disputes.

### **Definitions**

Definitions that apply to electric cooperative pole attachments under the bill include the following:

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<sup>25</sup> R.C. 163.01 to 163.22, not in the bill.

Term	Definition
“Attachment”	Any wire, wireless facility, cable, antennae facility, or apparatus for the transmission of text, signs, signals, pictures, sounds, or other forms of information installed by or on behalf of a provider upon any pole owned or controlled, in whole or in part, by one or more electric cooperatives.
“Broadband provider”	A video service provider or a provider that is capable of providing tier one or tier two broadband service and is a telecommunications provider, satellite broadcasting service provider, or a wireless service provider. A “broadband provider” does not include a governmental or quasi-governmental entity.
“Electric cooperative”	A not-for-profit electric light company, as defined under the competitive retail electric service law, that both is or has been financed under the federal Rural Electrification Act of 1936 and owns or operates facilities in Ohio to generate, transmit, or distribute electricity, or not-for-profit successor of that company. <sup>26</sup>
“Incremental cost”	Pole attachment costs incurred by an electric cooperative for providing long-run service.
“Make-ready work”	“Make-ready,” “complex make-ready,” or “simple make-ready” as determined by the nature of the work required and defined in federal pole attachment regulations. <sup>27</sup>
“Provider”	(1) A broadband provider, (2) telecommunications service provider (a provider of telecommunications service, which is the offering of telecommunications for a fee to the public, or effectively directly to the public, regardless of the facilities used), (3) video service provider (VSP) (a person granted a video service authorization under existing VSP law), or (4) wireless service provider (a facilities-based provider of wireless service to one or more end users in Ohio). <sup>28</sup>

<sup>26</sup> R.C. 4928.01(A)(5), not in the bill.

<sup>27</sup> 47 Code of Federal Regulations (C.F.R.) 1.1402.

<sup>28</sup> R.C. 1332.21(M) and 4927.01(A)(13) and (20), not in the bill. The definitions in the bill of “provider” and “broadband provider” overlap such that the requirement that the telecommunications service provider and wireless service provider be capable of providing tier one or tier two broadband service likely becomes irrelevant for the electric cooperative pole attachment provisions under the bill.

## **Requesting access and review**

Under the bill, a provider requesting access to an electric cooperative's poles must submit the request in writing. Upon receipt, the cooperative must review the request under a uniformly applied, efficient, and transparent process. The electric cooperative must grant or deny the access within the time frame established by the FCC, unless a court of common pleas determines a different time frame for granting or denying access.

Reasons for an electric cooperative to deny access may include: (1) insufficient capacity or (2) safety, reliability, or generally applicable engineering standards. These reasons must be applied on a nondiscriminatory basis.

The bill requires a cooperative to confirm a denial in writing. The denial must be specific and include all relevant evidence and information supporting the denial as well as an explanation of how that evidence and information relates to one or both of the factors described above on which the denial is based.

For an accepted request, the bill allows an electric cooperative to require a provider to execute an agreement for a pole attachment under nondiscriminatory, just, and reasonable rates, terms, and conditions under the bill's provisions if the cooperative requires all other attaching parties to also execute an agreement.

## **Make-ready work**

The bill requires a provider and electric cooperative to comply with the process for make-ready work under the federal law on pole attachment requirements and FCC orders and regulations implementing that law, unless a court of common pleas establishes a different process for make-ready work. Generally, under the Code of Federal Regulations, "make-ready" means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the pole.<sup>29</sup>

The cooperative must provide a good-faith estimate for any make-ready work, which must include pole replacement, if necessary. All make-ready costs must be based on the cooperative's actual costs not recovered through the annual recurring attachment rate. The cooperative must provide detailed information of the actual costs.

A cooperative that charges an annual recurring attachment fee must establish the fee in accordance with the cable pole attachment rate formula in federal law and FCC orders and regulations implementing that formula, unless a court of common pleas establishes a different attachment fee.

## **Attachment requirements**

The bill requires a provider's attachments on an electric cooperative's poles to comply with both of the following:

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<sup>29</sup> 47 C.F.R. 1.1402.

- The most recent, applicable, nondiscriminatory safety and reliability standards adopted by the cooperative;
- The National Electric Safety Code adopted by the Institute of Electrical and Electronics Engineers in effect on the date of the attachment.

The bill also specifies that nothing in the bill affects a provider or other attaching party's obligation to obtain any necessary authorization before occupying public ways or private rights-of-way with its attachment.

## **Pole modification**

The bill provides that if an electric cooperative's pole facility is modified, a party with a preexisting attachment to the modified facility is considered to directly benefit from a modification if, after receiving notification of the modification, the party adds to or modifies its attachment.

The bill requires all parties that obtain access to the facility as a result of a modification and all parties that directly benefit from the modification to share proportionately in the modification cost. Also, if a party makes an attachment to the facility after the completion of the modification, the party must share proportionately in the costs of the modification if that modification rendered the added attachment possible.

In contrast, a party with a preexisting attachment to a pole is not required to pay any costs for rearranging or replacing its attachment if the rearrangement or replacement is necessary because of another party's request for an additional attachment or modification of an existing attachment. This does not apply if a modification by an electric cooperative is necessary for an electric service that uses smart grid or other technology.

## **Pole attachment disputes**

### **Complaints**

The bill allows, subject to the bill's "**Venue requirements**" (see below), an electric cooperative or provider to file a complaint regarding pole attachment disputes with the court of common pleas of the county in which the cooperative's Ohio headquarters is located. The bill also gives those courts jurisdiction to hear complaints and grant remedies under the bill regarding attachment disputes for which a complaint is filed.

### **Venue requirements**

The bill specifies that any civil proceeding that is a pole attachment complaint is also considered a special statutory proceeding under Ohio's Rules of Civil Procedure (Civil Rules) and must be conducted in accordance with the Civil Rules for commencement of an action, but not the general venue provisions.<sup>30</sup>

The bill specifies that venue for pole attachment complaint proceedings is in the county in which the cooperative's Ohio headquarters is located, provided that at least some portion of

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<sup>30</sup> Civ.R. 1(C) and (C)(8), and Civ.R. 3, not in the bill.

the attachment will occur in that county. If no portion of the attachment is in the county in which the headquarters is located, or if more than one cooperative is a party to the complaint, then venue is in the county in which the largest physical portion of the attachment will occur.

Under the bill, court orders relative to venue are final orders that may be reviewed, affirmed, modified, or reversed as specified in Ohio law for procedure on appeal. And, orders not specifically related to venue are reviewable on appeal in the same manner as judgments in any civil action.<sup>31</sup>

Land acquisitions under Ohio law governing the appropriation of property are not affected by the bill. They must be heard in a venue as provided under that law for procedure on appeal or Civil Rule 3.<sup>32</sup>

### **Burden of proof and court determinations**

Before a common pleas court may grant any remedy under the bill regarding a pole attachment complaint, the complainant must establish, and the court must determine, by a preponderance of evidence, each of the following:

- That any rate, term, or condition complained of is not just and reasonable or a denial of access was unlawful;
- If the complaint concerns any rate, term, or condition, that is (1) contained in one of the following or (2) demanded by either party as a condition to entering into one of the following:
  - A new pole attachment agreement;
  - An amendment, renewal, or replacement of an existing agreement that may be terminated, amended, renewed, or replaced on or after the effective date of the bill.
- If the complaint concerns any rate, term, or condition, that the provider and the cooperative first attempted to negotiate regarding the terms of a new, amended, renewed, or replaced agreement for a period of at least 45 days prior to filing the complaint.

The complainant has the burden to establish a prima facie case that the rate, term, or condition complained of is not just and reasonable, or that the denial of access was unlawful. In a denial of access case, the electric cooperative has the burden of establishing, by a preponderance of the evidence, that the denial was lawful after the complainant establishes a prima facie case.

In a pole attachment complaint, if an electric cooperative claims that the proposed rate is lower than its incremental costs, the cooperative has the burden of establishing, by a

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<sup>31</sup> R.C. 2905.02(B)(2), not in the bill.

<sup>32</sup> Civ.R. 3, not in the bill.

preponderance of evidence, its incremental costs. There is a rebuttable presumption, in a pole attachment complaint, that each of the following are just and reasonable:

- The time frame to grant or deny access, if it is within the time frame established by FCC;
- The process for make-ready work, if it is in accordance with the process for make-ready work under federal law and FCC orders and regulations implementing that process;
- The charged rate, if the cooperative can show that its charged rate does not exceed an annual recurring attachment rate calculated under the cable pole attachment rate formula in federal law and the FCC orders and regulations implementing that formula.

### **Remedies**

Under the bill, if a court of common pleas determines that any rate, term, or condition described in the pole attachment complaint is not just and reasonable, it may do any of the following, although it is not limited to them:

- Terminate the rate, term, or condition and prescribe a just and reasonable rate, term, or condition;
- Require entry into a pole attachment agreement on just and reasonable rates, terms, and conditions;
- Require access to poles as provided under the bill;
- Substitute in the pole attachment agreement the just and reasonable rate, term, or condition established by the court;
- Order a refund or payment, as appropriate.

A court-ordered refund or payment may not exceed the difference between the actual amount paid under the unjust and unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the court for the period described in the complaint. However, the period during which refunds or payments are made cannot exceed two years.

Finally, the bill provides that a court of common pleas determination resolving a complaint must be issued in the form of a final appealable order.

### **Transfer of minority business enterprise and related programs**

(R.C. 121.07 and 122.92; with conforming changes in numerous other R.C. sections; Sections 518.10 to 518.16)

On July 1, 2021, the bill transfers the responsibility for the administration of certain programs currently under the Department of Administrative Services (DAS) and the Equal Opportunity Employment Coordinator to the Department of Development (DEV) (currently called the Development Services Agency). These programs are the minority business enterprise (MBE) program, the encouraging diversity, growth, and equity (EDGE) program, the women-owned business enterprise program, and the veteran-friendly business procurement program. These programs require state agencies to set aside a certain amount of their contracts each year to

award to business enterprises owned by certain eligible individuals and certified under the program. These individuals, respectively, are certain racial minorities, economically and socially disadvantaged individuals, women, and veteran-friendly businesses.

The bill also changes the role of the Equal Opportunity Employment Coordinator, an office created under DAS.<sup>33</sup> Under current law, each office created under this current law provision is the head of a division within the department in which it is created. The bill specifies that the Coordinator is no longer the head of a division, instead reporting to a position to be determined by the DAS Director.

The bill contains numerous general transfer of authority provisions. All records, documents, files, equipment, assets, and other materials of the programs are transferred from DAS to DEV. Business related to the programs begun but not completed by DAS on July 1, 2021, must be completed by DEV. No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer. The rules, orders, and determinations of DAS pertaining to the programs continue in effect under DEV until modified or rescinded. Further, no judicial or administrative action or proceeding pending on July 1, 2021, is affected by the transfer, and those actions must be prosecuted or defended in the name of the Director of DEV or DEV, as appropriate. When the Equal Employment Coordinator, the Director of DAS, or DAS is referred to in any rule, contract, grant, or other document related to the administration of these programs, the reference is deemed to refer to the DEV Director or DEV, as appropriate.

The bill exempts the transfer of employees from Ohio's public employees' collective bargaining law. And, subject to general layoff provisions, DAS employees are transferred to DEV. Between July 1, 2021, and June 30, 2022, the DEV Director may establish, change, and abolish positions of DEV and assign, reassign, classify, reclassify, transfer, reduce, promote, or demote DEV employees who are not subject to Ohio's 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.

The bill also provides that the DEV Director may enter into one or more contracts with private or government entities for staff training and development to facilitate the transfer, and that the contracts are not subject to competitive bidding thresholds.

The bill permits the Controlling Board, upon the request of the DEV Director, to increase appropriations for any fund, as necessary, to assist in paying for increases in compensation and salaries as a result of the transfer. The bill requires the OBM Director to make budget and accounting changes made necessary by the transfer.

The bill also requires DEV, on or before September 1, 2023, to submit a report to the General Assembly and the Governor regarding the effects of the transfer, including data comparing the efficiency of the program under DAS versus DEV. The report must include, to the extent the data is available, data on the number of businesses certified, the length of time

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<sup>33</sup> R.C. 121.04, not in the bill.

required to process certifications, and the number of complaints received from applicants regarding the process. DAS must cooperate with DEV to provide any data it might have, dating back to two years before the effective date of the transfer. The data from DEV must cover the period between July 1, 2021, and July 1, 2023. The data from DAS must cover the period from July 1, 2019, to July 1, 2021. The report also must include information regarding the number of employees transferred and the number of employees laid off pursuant to the transfer under the bill.

Finally, the bill requires the Director of the Legislative Service Commission to renumber related DAS rules to the appropriate Ohio Administrative Code Section for DEV. Any new rules or amendments to the rules implementing the transfer that are proposed before June 30, 2023, are not subject to the two-for-one requirement, which prohibits certain state agencies from adopting a new regulatory restriction unless it eliminates two or more restrictions.

## **Minority Development Financing Advisory Board**

(R.C. 122.72, 122.73, 122.74, 122.78, 122.79, and 122.82)

The bill clarifies that the responsibility for oversight of the diesel emissions reduction grant program and several tax credits, including the motion picture and theatre credit, the small business investment credit, and the opportunity zone fund investment credit, rests with the Department of Development, not the Minority Development Financing Advisory Board (MDFAB). These programs and credits, under continuing law, are administered by the Department of Development, but certain erroneous cross references in current law suggest that the MDFAB has that responsibility.

Under continuing law, the MDFAB assists the Department in the administration of several minority business financing programs primarily designed to encourage the establishment and expansion of minority business enterprises.

## **Job creation tax credit**

(R.C. 122.17)

The bill allows employers, even those currently in a job creation tax credit (JCTC) agreement, to count work-from-home employees in computing the JCTC credit amount and verifying its compliance with the agreement.

### **Background**

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. Each employer

must file an annual report in which it reports its number of employees and payroll, among other metrics.

### **Work-from-home employees**

Continuing law authorizes employers whose JCTC application was approved after September 28, 2017, to treat work-from-home employees the same as employees who work at the employer's project location, as long as the work-from-home employees reside in Ohio and are supervised from the project location. (This is the effective date of the provision in H.B. 49 of the 132<sup>nd</sup> General Assembly that authorized the inclusion of such employees.) Consequently, the payroll of such work-from-home employees is included in the computation of the credit, and such employees are counted towards any employment and payroll metrics required in the JCTC agreement.

The bill extends this authorization to employers whose application was approved before September 28, 2017, beginning with JCTC reporting periods ending in 2020, allowing those employers to also count those work-from-home employees when computing the employer's credit amount and when verifying its compliance with the JCTC agreement.

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## **DEPARTMENT OF DEVELOPMENTAL DISABILITIES**

### **Technology First Task Force and technology first policy**

- Declares that it is the policy of the state to provide individuals with developmental disabilities with access to innovative technology solutions.
- Requires the Department of Developmental Disabilities to coordinate with other state agencies to implement the policy.
- Requires the Director of Developmental Disabilities to establish, in coordination with other state agencies, the Technology First Task Force.

### **Medicaid rates for ICF/IID services**

- Eliminates a formula for determining an ICF/IID's Medicaid payment rate that expires on July 1, 2021.
- Provides that the mean FY 2022 and FY 2023 Medicaid rates for all ICFs/IID after certain modifications are made cannot exceed \$350.87.
- Requires the Department to reduce the FY 2022 and FY 2023 Medicaid rates for ICFs/IID if the federal government requires that the ICF/IID franchise permit fee be reduced or eliminated.

### **ICF/IID franchise permit fee**

- Requires the Department to adjust the franchise permit fee rate and associated ICF/IID invoices so as not to exceed the indirect guarantee percentage if that percentage is adjusted by the U.S. Secretary of Health and Human Services at any time during a fiscal year.

### **Transfer of residential facility license**

- Provides that a license that specifies the location of a residential facility that (1) was leased by the operator between July 1, 1995, and July 1, 1996, and (2) has been operating without a lease agreement for at least four years is not transferrable if the licensee is not the building owner.
- If the operator of such a facility no longer operates the residential facility at the location specified in the license, permits the building owner to request that the Director of Developmental Disabilities transfer the license to a different licensee or management contractor.

### **Developmental centers services and cost recovery**

- Permits a Department developmental center to provide services to (1) individuals with developmental disabilities who reside in the community and (2) providers who provide services to such individuals.

- Permits the Department to establish a method for recovering the costs associated with providing these services.

### **County DD board waiver allocation plan**

- Eliminates a requirement that each county DD board submit an annual plan to DD for approval.
- Instead, requires county DD boards to annually submit to the Department (1) a waiver allocation projection and (2) assurances that the board employs or contracts with both a business manager and a Medicaid services manager, or has an agreement with another county DD board that employs or contracts with those individuals.

### **County DD board business manager**

- Eliminates the ability of a county DD board to receive a subsidy from the Department for employing a business manager.

### **County DD boards annual cost reports**

- Permits, rather than requires, the Department, or an entity designated by DD, to audit annual cost reports submitted by a regional council or county DD board.
- Specifies that any audit conducted must utilize methodology approved by the U.S. Centers for Medicare and Medicaid Services.
- Eliminates a duplicative provision of law requiring county DD boards to submit annual cost reports to the Department.

### **Release of records and reports by county DD boards**

- Permits disclosure of a certificate, application, record, or report that identifies a resident of an institution for persons with intellectual disabilities when needed for a guardianship proceeding.
- Permits the release of a record or report maintained by a county DD board or an entity under contract with a board when requested by a probate court for a guardianship proceeding or by the Department for certain purposes.

### **County share of nonfederal Medicaid expenditures**

- Requires the Director of Developmental Disabilities to establish a methodology to estimate in FY 2022 and FY 2023 the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible.

### **County subsidies used in nonfederal share**

- Requires, under certain circumstances, that the Director pay the nonfederal share of a claim for ICF/IID services using subsidies otherwise allocated to county boards.

## **Medicaid rates for homemaker/personal care services**

- Provides for the Medicaid rate for each 15 minutes of routine homemaker/personal care services provided to a qualifying enrollee in the Individual Options Medicaid waiver program to be, for 12 months, 52¢ higher than the rate for services to an enrollee who is not a qualifying enrollee.

## **Innovative pilot projects**

- Permits the Director to authorize, in FY 2022 and FY 2023, innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county DD boards.

## **Ohio Developmental Disabilities Council**

- Updates citations to federal law regarding the creation and operation of the Ohio Developmental Disabilities Council.

## **Technology First Task Force and technology first policy**

(R.C. 5123.025 and 5123.026)

The bill declares that it is the policy of the state that individuals with developmental disabilities have access to innovative technology solutions. As part of the policy, it provides that technology can ensure that individuals with developmental disabilities have increased opportunities to live, work, and thrive in their homes, communities, and places of employment through the use of state of the art planning, innovative technology, and supports that focus on these individuals' talents, skills, and interests.

The bill requires the following entities to implement the technology first policy: the Departments of Developmental Disabilities, Education, Medicaid, Job and Family Services, Mental Health and Addiction Services, and Transportation, the Opportunities for Ohioans with Disabilities Agency, and any other state agency that provides technology services to individuals with developmental disabilities.

As the primary agency responsible for implementing this policy, the bill requires the Department of Developmental Disabilities to partner with the Office of InnovateOhio to coordinate the actions taken by other state agencies to implement the policy. The Department and other state agencies may adopt rules to implement this policy. The Department must ensure that other agencies fully implement the policy and, in coordination with the Technology First Task Force established under the bill, must compile and annually submit data to the Governor and Lieutenant Governor regarding the policy's implementation.

The bill requires the Director of Developmental Disabilities to establish the Technology First Task Force, which is tasked with (1) expanding innovative technology solutions within the operation and delivery of services to individuals with developmental disabilities, (2) using technology to reduce the barriers individuals with developmental disabilities experience, and (3) aligning policies for all state agencies that are members of the task force.

The Technology First Task Force consists of representatives from the Office of InnovateOhio, the Departments of Developmental Disabilities, Education, Medicaid, Job and Family Services, Mental Health and Addiction Services, and Transportation, and the Opportunities for Ohioans with Disabilities Agency. The bill permits the Department of Developmental Disabilities to enter into interagency agreements with any of the agencies that are members of the task force. These agreements may specify the roles and responsibilities of the members of the task force, including any financial contributions for which each member is responsible, and the projects and activities the task force will undertake.

### **Medicaid rates for ICF/IID services**

(Repealed R.C. 5124.171, 5124.195, 5124.196, 5125.197, 5124.198, 5124.199, 5124.211, 5124.231, and 5124.28; conforming changes in R.C. 5124.01, 5124.101, 5124.15, 5124.151, 5124.152, 5124.17, 5124.19, 5124.191, 5124.21, 5124.23, 5124.29, 5124.30, 5124.38, 5124.39, 5125.40, 5124.41, and 5124.46; Section 261.150)

Under current law, an ICF/IID's Medicaid payment rate is the higher of the two rates determined under two different formulas. The older formula predates H.B. 24 of the 132<sup>nd</sup> General Assembly, which enacted the newer one in 2018. The older formula expires beginning with FY 2022, at which time an ICF/IID's rate is to be determined under the newer formula. The bill eliminates language regarding the older formula which becomes obsolete on July 1, 2021, and makes corresponding changes to existing law to reflect the elimination.

The bill requires the Department of Developmental Disabilities to make certain modifications to the new formula. The first modification concerns the target amount and requires the Department to adjust the per Medicaid day rate for ICFs/IID if the mean total per Medicaid day rate for ICFs/IID exceeds \$350.87. If the mean total per Medicaid day rate is greater than \$350.87, the Department must adjust the rate by the percentage by which the mean total per Medicaid day rate exceeds \$350.87.

The second modification concerns the franchise permit fee that continuing law requires ICFs/IID to pay (see below). The bill provides that if the U.S. Centers for Medicare and Medicaid Services requires that the franchise permit fee be reduced or eliminated, the Department must reduce the Medicaid payment rate for ICFs/IID. The reduction must reflect the loss to the state of the revenue and federal Medicaid funds generated from the franchise permit fee.

### **ICF/IID franchise permit fee**

(R.C. 5168.60 and 5168.61)

Continuing law imposes a franchise permit fee on ICFs/IID, which is assessed quarterly. The franchise permit fee is a healthcare related tax imposed on ICFs/IID, which is used to help fund the state share of the Medicaid program for Medicaid services utilized by ICFs/IID. Any healthcare related tax must comply with federal requirements to be considered a permissible source of revenue to pay for a portion of the state share for Medicaid, including that it must (1) be broad-based, (2) be uniformly imposed throughout the state, and (3) not hold the taxpayer harmless.

Under federal law, a healthcare related tax is considered to hold a taxpayer harmless if the state provides for a payment, offset, or waiver that guarantees to hold taxpayers harmless for greater than 6% of the cost of the tax imposed. This 6% threshold is known as the indirect guarantee percentage.<sup>34</sup>

The bill provides that in the event that the U.S. Secretary of Health and Human Services adjusts the indirect guarantee percentage (to a percentage other than 6%) at any time during a fiscal year, the Department must adjust the franchise permit fee rate and any associated ICF/IID invoices so as not to exceed the new percentage.

## **Transfer of residential facility license**

(R.C. 5123.19)

The bill includes provisions for residential facilities that are both of the following:

1. Were leased by the residential facility operator between July 1, 1995, and July 1, 1996; and
2. Have been operating without a lease agreement for at least four years.

Under the bill, a license that specifies the location of a residential facility meeting the above criteria is not transferrable to a different location if the licensee is not the owner of the building where the residential facility is located. If the licensee no longer operates the residential facility at the location specified in the license, the owner of the building where the residential facility is located may request that the Director of Developmental Disabilities transfer the license to a different licensee or contractor that is willing to operate the residential facility at that location. The Director must grant the license to the residential facility owner upon the owner's request. The bill clarifies that these provisions do not require the Director to issue additional residential facility licenses.

## **Developmental centers services and cost recovery**

(R.C. 5123.034)

The bill permits a Department developmental center to provide services to individuals with developmental disabilities who reside in the community in which the center is located. Additionally, a developmental center may provide services to providers who provide services to these individuals in the community. The bill allows the Department to establish a method for recovering the costs associated with providing these services through a developmental center. There are eight developmental centers in Ohio, each of which is Medicaid-certified and licensed as an ICF/IID.

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<sup>34</sup> 42 U.S.C. 1396b(w)(4)(C).

## **County DD board waiver allocation plan**

(R.C. 5126.054, 5126.055, and 5126.056; repealed R.C. 5123.046)

The bill eliminates a requirement that each county DD board submit an annual plan to the Department for approval that includes, among other things, the number of individuals with developmental disabilities in the county the board serves who are on the board's waitlist, the service needs of each individual on the waitlist, and the projected annual cost for their services.

Instead, the bill requires each county DD board to submit to the Department an annual projection of the number of individuals to whom the board intends to provide home and community-based services based on available funding. Available funding must be based on the board's projected funding as indicated in its annual five-year projection report submitted to the Department.

Additionally, county DD boards are required to provide annual assurances to the Department that the board employs or contracts with a business manager, or has entered an agreement with another county board that employs or contracts with a business manager to have the business manager serve both county boards. The bill also requires county boards to assure the Department that the board employs or contracts with a Medicaid services manager, or has entered an agreement with another county board that employs or contracts with a Medicaid services manager to have the Medicaid services manager serve both. The bill prohibits the superintendent of a county DD board from serving as the board's business manager or Medicaid services manager.

## **County DD board business manager**

(R.C. 5126.121, repealed)

The bill eliminates law that allows county DD boards to receive a subsidy from the Department to employ a business manager. To be eligible for the subsidy under current law, a county board must employ a business manager who satisfies education and experience requirements specified in rules adopted by the Department.

## **County DD boards annual cost reports**

(R.C. 5126.05 and 5126.131; repealed R.C. 5126.12)

The bill makes it discretionary, instead of mandatory, for the Department to perform an audit of the annual cost report submitted by a county DD board or regional council. It adds that any audit that is performed must utilize methodology approved by the U.S. Centers for Medicare and Medicaid Services. Finally, it repeals a section containing a duplicative requirement that county DD boards submit annual cost reports to the Department.

## **Release of records and reports by county DD boards**

(R.C. 5123.89 and 5126.044)

Current law generally requires that all certificates, applications, records, and reports that directly or indirectly identify a resident or former resident of an institution for persons with intellectual disabilities be kept confidential, except under specified circumstances. The bill adds

an exception to this general requirement permitting disclosure if the certificate, application, record, or report is needed for a guardianship proceeding.

Current law also generally prohibits disclosure of the identity of an individual or a record or report regarding an eligible individual that is maintained by a county DD board or an entity under contract with a board, except under specified circumstances. The bill adds two exceptions to the general prohibition. The first permits a county DD board or an entity under contract with a board to release a record or report if requested by a probate court for a guardianship proceeding. Any record or report that is released may only be released to the parties of the proceeding. The second exception permits the release of a record or report if requested by the Department for the purpose of a proceeding for admission to an institution for persons with intellectual disabilities or to comply with a court order regarding a person's competence in a criminal case.

## **County share of nonfederal Medicaid expenditures**

(Section 261.100)

The bill requires the Director of Developmental Disabilities to establish a methodology to estimate in FY 2022 and FY 2023 the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible. With certain exceptions, current law requires the board to pay this share for waiver services provided to an individual whom it determines is eligible for its services. Each quarter, the Director must submit to the board written notice of the amount for which the board is responsible. The notice must specify when the payment is due.

## **County subsidies used in nonfederal share**

(Section 261.130)

The bill requires the Director of Developmental Disabilities to pay the nonfederal share of a claim for ICF/IID services using funds otherwise appropriated for subsidies to county DD 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 use 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 DD board, and (4) the provider of the services has a valid Medicaid provider agreement for the services for the time that they are provided.

## **Medicaid rates for homemaker/personal care services**

(Section 261.140)

The bill 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 are provided to an enrollee who is not a qualifying enrollee. The higher rate is to be paid only for the first 12 months, consecutive or otherwise, that the services are provided during the period beginning July 1, 2021, and ending July 1, 2023.

An Individual Options enrollee is a qualified enrollee if all of the following apply:

- The enrollee resided in a developmental center, converted ICF/IID,<sup>35</sup> or public hospital immediately before enrolling in the Individual Options Medicaid waiver program.
- The enrollee did not receive before July 1, 2011, routine homemaker/personal care services from the Medicaid provider that is to receive the higher Medicaid rate.
- The Director of Developmental Disabilities has determined that the enrollee's special circumstances (including diagnosis, services needed, or length of stay at the developmental center, converted ICF/IID, or public hospital) warrant paying the higher Medicaid rate.

## **Innovative pilot projects**

(Section 261.120)

For FY 2022 and FY 2023, the bill permits the Director of Developmental Disabilities to authorize the continuation or implementation of innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county DD boards. Under the bill, a pilot project may be implemented in a manner inconsistent with the laws or rules governing the Department and county DD 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.

## **Ohio Developmental Disabilities Council**

(R.C. 5123.35)

The bill updates the federal law citations in existing law regarding the creation and the operation of the Ohio Developmental Disabilities Council, which is tasked with serving as an advocate for all persons with developmental disabilities.

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<sup>35</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.

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## DEPARTMENT OF EDUCATION

### I. School finance

#### New school financing system

- Creates a new school financing system for school districts and other public entities that provide primary and secondary education to be implemented beginning in FY 2022.
- Requires state operating funding to be paid directly to school districts, community schools, and STEM schools, and requires direct payment of state scholarships.
- Calculates a unique base cost and a unique “per-pupil local capacity amount” for each city, local, and exempted village school district, and calculates a unique base cost for each joint vocational school district (JVSD), community school, and STEM school.
- Subtracts a district’s per-pupil local capacity amount from the district’s per-pupil amount of its base cost to determine its per-pupil state share of the base cost.
- Calculates a city, local, or exempted village school district’s state core foundation funding as the sum of the district’s aggregate state share of the base cost plus targeted assistance, special education funds, disadvantaged pupil impact aid, English learner funds, gifted funds, and career-technical education funds, and associated services funds.
- Applies spending requirements to disadvantaged pupil impact aid that are similar to the spending requirements for student wellness and success funds and enhancement funds under current law.
- Specifies a phase-in for most components of a city, local, or exempted village school district’s state core foundation funding of 16.67% for FY 2022 and 33.33% for FY 2023, but subjects disadvantaged pupil impact aid to a phase-in of 0% for FY 2022 and 14% for FY 2023.
- Guarantees, for FY 2022 and each fiscal year thereafter, a city, local, and exempted school district’s state core foundation funding (including disadvantaged pupil impact aid).
- Eliminates the term “formula amount” and instead, where the bill’s system relies on a static base cost amount, uses the “statewide average base cost per pupil” or the “statewide average base cost per pupil,” as applicable.
- Pays transportation funding and supplemental targeted assistance to city, local, and exempted village school districts, and specifies these payments are not subject to the phase-in.
- Guarantees transportation funding for city, local, and exempted village school districts for FY 2022 and FY 2023.
- Provides a substantially similar formula for JVSDs, including a phase-in over the same period of time specified for city, local, and exempted village school districts and a

guarantee, but makes some JVSD-specific changes to the base cost computation, uses a charge-off, and does not provide targeted assistance, gifted funding, or transportation.

- Calculates a community school's or STEM school's funding for each student as the sum of its base cost per pupil and the per-pupil amounts of special education funds, disadvantaged pupil impact aid, English learner funds, career-technical education funds, and career-technical associated services funds.
- Specifies a phase-in of community school and STEM funding that is the same as the phase-in for school districts, except that disadvantaged pupil impact aid is subject to the same phase-in as all other components.
- Provides a transportation payment to community schools, and specifies that this payment is not subject to the phase-in.
- Pays career awareness and exploration funds to school districts, community schools, and STEM schools, and specifies that this payment is not subject to the phase-in.
- Pays a formula transition supplement for FYs 2022 and 2023 to guarantee each school district's state core foundation funding, transportation funding (if any), and supplemental targeted assistance equal its FY 2021 foundation funding, enrollment growth supplement, and student wellness and success funds and enhancement funds.
- Pays a formula transition supplement for FYs 2022 and 2023 to each community school and STEM school similar to that paid to school districts, except the supplement guarantees a per-pupil amount of funding rather than an aggregate amount of funding.
- Establishes a new funding formula for educational service centers (ESCs) that is phased-in over the same period of time specified by the General Assembly for city, local, and exempted village school districts.
- Requires the Department of Education to (1) implement a program to distribute bus purchasing grants of not less than \$45,000 to city, local, and exempted village school districts and (2) award transportation collaboration grants.
- Makes several changes related to student transportation policy.
- Adds additional topics to the required content of the studies of economically disadvantaged students and preschool education that must be submitted by December 31, 2022, under current law.
- Creates the School Funding Oversight Commission to monitor and make recommendations regarding the implementation of the new financing system.

## **Repeal of student wellness and success funding**

- Repeals the requirement for the Department of Education to pay student wellness and success funds and enhancement funds to school districts, community schools, and STEM schools.

## **Payment for districts with decreases in utility TPP value**

- Requires the Department to make a payment, for FY 2022 and FY 2023, to each city, local, exempted village, or joint vocational school district with more than a 10% decrease in the taxable value of utility tangible personal property (TPP) that has at least one power plant located within its territory.

## **Payments for districts with nuclear plant in territory – repealed**

- Repeals the requirement that the Department, for each of FYs 2019, 2020, and 2021, make an additional payment to a city, local, or exempted village school district with (1) a nuclear power plant in its territory and (2) a total taxable value of public utility personal property for tax year 2017 that is at least 50% less than that value for tax year 2016.

## **Recommendations for compensating valuation losses – repealed**

- Eliminates the requirement that the Department annually 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 state funding.

## **Auxiliary Services funds**

- Permits a religiously affiliated chartered nonpublic school to receive Auxiliary Services funds directly in the same manner as offered to nonreligious chartered nonpublic schools under continuing law.

## **II. Graduation requirements and assessment**

### **High school graduation requirements**

- Requires the Superintendent of Public Instruction's industry-recognized credentials and licenses committee to assign a point value for each credential and to establish the total number of points necessary to satisfy certain high school graduation requirements.
- Permits a student who obtains a state-issued license for practice in a vocation that requires an exam to use that license as a "foundational option" when using an alternative demonstration of competency and to qualify for an industry-recognized credential diploma seal.
- Exempts students enrolled in chartered nonpublic schools from certain graduation requirements if, instead of the end-of-course exams, their schools administer a nationally standardized assessment (ACT or SAT) or an alternative assessment to meet state testing requirements.
- Specifies how a public or chartered nonpublic school must address a locally defined diploma seal earned by a transfer student, or any progress the student made toward earning one, at another public or chartered nonpublic school in Ohio.
- Requires transfer students who, in the prior school year, were homeschooled or attended an out-of-state or nonchartered, nonpublic school to generally comply with the high

school graduation requirements prescribed under continuing law, but prescribes certain exemptions for them.

- Exempts a student with an individualized education program (IEP) from the requirement to demonstrate competency in math and English language arts if the student’s IEP expressly exempts them from that requirement and the student satisfies certain additional conditions.
- Permits a student to use a remediation-free score on a nationally standardized assessment (ACT or SAT) as an alternative demonstration of competency.
- Clarifies and modifies the “foundational” options a student may use as part of an alternative demonstration of competency.
- Expands the number of conditions a student may satisfy to earn a Citizenship diploma seal or a science diploma seal.

### **Nationally standardized college admission assessments**

- Permits the parent or guardian of a student beginning with the class of 2026 to choose not to have the nationally standardized assessment administered to that student.

### **Dyslexia diagnostic assessments**

- Except for the kindergarten readiness assessment, requires that diagnostic assessments for grades K-3 and any comparable reading skills assessment for the Third Grade Reading Guarantee include items related to the identification of students with dyslexia.
- Requires test vendors to share student performance data on comparable tools with public schools, chartered nonpublic schools, and the Department.
- Specifies that any assessment that incorporates comparable tools may be used to meet current law requirements related to the administration of a tier one dyslexia screening.

### **Kindergarten Readiness and reading skills assessments**

- Adjusts the period of time in which a school must administer the Kindergarten Readiness Assessment and the kindergarten reading skills assessment to July 1 through the 20<sup>th</sup> day of instruction.

## **III. Educator licensure**

### **Disciplinary actions for educator licenses**

- Eliminates a provision prohibiting the State Board of Education from refusing to issue a license because of a criminal record unless the refusal is in accord with the limits and requirements that were recently enacted by H.B. 263 of the 133<sup>rd</sup> General Assembly.
- Specifies that the amendments to teacher licensure disciplinary actions are remedial in nature and apply to any proceeding, investigation, or citation involving an applicant for an initial license, that, as of the bill’s effective date, has not reached final disposition, including all available appeals.

- Specifies that a judicial finding of eligibility for intervention in lieu of conviction for specified criminal offenses are grounds for automatic denial or revocation of a license issued by the State Board.
- Specifies that conspiracy to commit, attempt to commit, or complicity in committing specified criminal offenses are also grounds for automatic denial or revocation of a license.
- Prohibits a court, when issuing a certificate of qualification for employment, from granting an individual relief from collateral sanctions for licensure action taken by the State Board for specified criminal offenses.
- Permits the State Board to deny, suspend, revoke, or limit a license if the applicant engages in an immoral act, incompetence, negligence, or conduct that is unbecoming to the “teaching profession” (rather than to the applicant’s “position” as under current law).
- Specifies that a judicial finding of eligibility for intervention in lieu of conviction for the criminal offenses that are *not* grounds for automatic revocation or denial of licenses (rather than all criminal offenses) may be a reason for the State Board to deny, suspend, revoke, or limit a license.
- Removes a requirement that information received under an investigation about a person against whom no action was taken must be expunged within two years of completing the investigation.
- Permits a school district or school located in Ohio or another state to request that the Department provide any report of misconduct that it has received regarding an individual who is under consideration for employment, and requires the Department to provide the contents of the report to the district or school.
- Specifies that unlicensed teachers and pupil services personnel licensed by other licensing boards who are permitted under current law to work in public schools by registering with the Department are subject to the same disciplinary actions and related reporting and enforcement requirements licensed teachers.

### **Assisting individuals in obtaining school employment**

- Generally prohibits a school representative from knowingly engaging in any activity intended to assist another individual in obtaining school employment if the representative knows or has reasonable cause to believe that the individual has committed a sex offense involving a student.

### **Cheating on assessments**

- Prohibits a person from obtaining prior knowledge of a state achievement assessment, using prior knowledge of the contents of an assessment to assist students in preparing for the assessment, and failing to comply with any rule adopted by the Department regarding security protocols for an assessment.

## **Teach for America licenses**

- Requires the state Superintendent (rather than the State Board) to inactivate (rather than revoke) a resident educator license issued to a participant in the Teach for American (TFA) Program if the participant resigns or is dismissed from TFA prior to completion of TFA's two-year support program.
- Provides that (1) the inactivation of a resident educator license issued to a TFA participant does not constitute a suspension or revocation of the license by the State Board and (2) the State Board and the state Superintendent need not provide the person with an opportunity for a hearing with respect to the inactivation.

## **Employment of contractors**

- Requires that any contractor that is providing services to a public school, chartered nonpublic school, or county board of developmental disabilities must hold a license that the individual would be required to hold if employed directly.

## **Pre-employment applications and screening process**

- Requires each public and chartered nonpublic school to include a written notice on all employment applications explaining that any person knowingly making a false statement on the application is guilty of falsification, which is a first degree misdemeanor.
- Requires each public and chartered nonpublic school to consult the Department's "educator profile" database before making hiring decisions.
- Permits each public or nonpublic school to require an applicant or volunteer to undergo additional criminal records checks.

## **Review of personnel files**

- Requires each public and chartered nonpublic school to review the personnel file of an employee against whom a complaint of misconduct is filed to determine if related instances are contained in the file.
- Requires each public and chartered nonpublic school to send the personnel file of a current or former employee to a different public or chartered nonpublic school regarding that person's application, with exceptions.

## **Career-technical educator licensure**

- Qualifies an individual holding a certificate of high school equivalence for a two-year initial career-technical workforce development educator license or a five-year advanced career-technical workforce development educator license.

## **School counselor standards**

- Requires the Educator Standards Board to include knowledge of the "Career-Technical Assurance Guide" (CTAG) in the Board's standards for school counselors.

## **IV. Community schools**

### **Automatic closure of community schools**

- Prohibits the automatic closure of community schools and dropout prevention and recovery schools on the basis of any report card rating issued prior to the 2022-2023 school year.

### **Automatic withdrawal of community school students**

- Waives the requirement that a community school automatically withdraw any student who, without legitimate excuse, fails to participate in 72 consecutive hours of learning opportunities, for the 2021-2022 school year only.

### **Community school sponsor evaluations**

- Specifies that a sponsor rated “exemplary” for the two most recent years the sponsor was evaluated may take advantage of certain sponsor incentives.
- Specifies that a sponsor rated “exemplary” or “effective” for the three most recent years the sponsor was evaluated must be evaluated only once every three years.

### **JCARR review of Department of Education changes**

- Subjects to Joint Committee on Agency Rule Review-approval any proposed changes to the Education Management Information System (EMIS) or the Department of Education’s business rules and policies that may affect community schools.

### **Montessori preschool payments**

- Specifies that a Montessori preschool operated by a community school will no longer receive community school funds for students under age five.

### **Community School Revolving Loan Fund**

- Eliminates the Community School Revolving Loan Fund.

### **Pilot funding for dropout recovery e-schools**

- Extends to FY 2022 and FY 2023 the pilot program established for FY 2021 to provide additional funding for certain internet- or computer-based community schools (e-schools) operating dropout prevention and recovery programs on a per-pupil basis for students in grades 8-12.
- Specifies that an e-school must have participated in the program for FY 2021 to participate in FY 2022 and FY 2023.
- Delays the deadline for the Department to issue a report upon completion of the pilot program to December 31, 2022 (rather than December 31, 2021, as under current law).

## **V. STEM schools**

### **STEM and STEAM schools and equivalents**

- Permits the Superintendent of Public Instruction, the Chancellor of Higher Education, and the Director of Development to appoint designees to participate in STEM Committee business on their behalf.
- Permits a STEM or STEAM school to submit an amended proposal to the STEM Committee to offer additional grade levels.
- Eliminates the authority for a joint vocational school district (JVSD) or an educational service center (ESC) to apply for designation as a STEM or STEAM school.
- Eliminates the authority for a career center to receive a STEM or STEAM school equivalent designation.
- Revises the required content of the proposal for designation as a STEM or STEAM school or equivalent.
- Repeals the authority for city, local, and exempted village school districts, community schools, and chartered nonpublic schools to apply for grants to support the operation of STEM programs of excellence.
- Specifies that a JVSD or ESC may apply for distinction as a STEM program of excellence.
- Specifies that STEM and STEAM school designations, STEM and STEAM school equivalent designations, and distinctions as STEM programs of excellence are effective for five years unless revoked and may be renewed upon reapplication.
- Specifies that, if the STEM Committee finds that a school is not in compliance as part of the reapplication process or as part of a review during the five-year effective period, it must require the school to develop a corrective action plan, implement the plan, and demonstrate exemplary STEM pedagogy and practices within one year.
- Makes other changes regarding STEM and STEAM school or equivalent oversight and operations.

## **VI. College Credit Plus**

### **Students in state-operated schools**

- Permits students enrolled in the State School for the Deaf, State School for the Blind, or in a school operated by the Department of Youth Services (DYS) to participate in the College Credit Plus (CCP) program in the same manner as students in other public schools.
- Subjects those schools to all CCP program requirements that apply to other public schools.
- Requires payments made to an institution of higher education for courses taken by a student enrolled in those schools to be deducted from the operating funds appropriated to the schools.

## **Academic eligibility for all students**

- Requires a student, as a condition of eligibility for CCP, to (1) be “remediation-free” by meeting established standards, (2) meet an alternative remediation-free eligibility option, or (3) have qualified for and participated in the program prior to the bill’s effective date.

## **Nonpublic school participation**

- Specifically prohibits any requirement of the CCP program to apply to a nonpublic school that chooses not to participate in the program.

## **Course subject matter disclaimer**

- Requires the Departments of Education and Higher Education jointly to develop a permission slip regarding the potential for mature subject matter in courses taken through the CCP program and to post it on their CCP websites.
- Requires each student and each student’s parent, as a condition of participating in the CCP program, to sign the permission slip and include it in the student’s application to participating institutions of higher education.
- Requires the Departments and each participating institution to post on their CCP websites a disclaimer about the potential for mature subject matter in courses taken under CCP.

## **VII. Other**

### **Transportation for community school and chartered nonpublic school students**

- Requires each school district with fewer than 20 community schools and chartered nonpublic schools located in the district to develop transportation plans for students enrolled in those schools based on the schools’ start and end times.
- Requires an educational service center to develop transportation plans for community schools and chartered nonpublic schools located in a school district with 20 or more such schools located in the district.
- Prohibits a school district from transporting community or chartered nonpublic school students in grades K-8 using vehicles operated by a mass transit system, unless the district enters into an agreement with the students’ school to do so.
- Requires a school district that transports community or chartered nonpublic school students in grades 9-12 using vehicles operated by a mass transit system to ensure that a student’s route does not require more than one transfer.
- Adjusts the deadline for an existing community school to unilaterally accept responsibility to provide transportation for its students to August 1, rather than January 1 of the prior school year as under current law.
- Requires the Department to deduct a prescribed portion of a school district’s state transportation funding if the Department determines the district has consistently, or for

a prolonged period, been noncompliant with its obligations regarding student transportation.

## **Payment in lieu of transportation**

- Requires school districts, and community schools that accept responsibility to transport students, to make a determination regarding providing payment in lieu of transportation not later than 30 calendar days prior to the first day of instruction, or within 14 calendar days if the student is enrolled subsequent to that deadline.
- Authorizes a district superintendent (or the equivalent of a community school) to make a payment in lieu determination, but requires it to be formalized by the district board of education or the community school governing authority.
- Requires a district or school to issue to a student's parent or guardian and the State Board a detailed letter explaining why a payment in lieu determination was made.

## **FAFSA data system**

- Requires each public and chartered nonpublic high school to enter into a data sharing agreement with the Chancellor to operate the data system to track the FAFSA completion rate of state public and chartered nonpublic school students.

## **Computer science education**

### **State plan for computer science education**

- Requires the Department, in consultation with the Chancellor, to establish a committee to develop a state plan for primary and secondary computer science education in Ohio.
- Requires the committee to consider a series of topics and include several prescribed items in the state plan.
- Requires the committee to complete the state plan within one year of the bill's effective date and the Department to post it in a prominent location on its website.

### **Public school students**

- Requires that, generally, students enrolled in school districts, community schools, and STEM schools must have the option to enroll in computer science courses or general education courses that include computer science principles.
- Authorizes districts and schools to apply for, and receive, a renewable waiver from the state Superintendent that exempts them from offering computer science or general education courses in a particular school building for up to five years.
- Requires the Department, in consultation with computer science stakeholders, to establish a program to review and approve proposals from educational providers to offer online computer science courses to high school courses.

- Requires the Department to determine a method to calculate and make payments to educational providers that uses deductions from the foundation payments to the student's district or school, in a manner similar to CCP payments.

### **Other computer science education provisions**

- Requires the Department, in consultation with the Chancellor, to issue an annual report on computer science education in the state.
- Extends through the 2022-2023 school year an exemption that generally permits school districts, community schools, and STEM schools to have an individual who does not hold a license or endorsement to teach computer science, to teach computer science courses, so long as that individual meets other prescribed requirements.
- Specifies that, for computer science licensure or endorsements purposes, "computer science course" means any course that is reported in EMIS as a computer science course and aligned with standards adopted by the State Board.
- Requires the State Board to update its standards and curriculum for computer science education within one year of the bill's effective date.

### **Effects of vaping – school district health curriculum**

- Requires school districts to include instruction on the harmful effects and legal restrictions against the use of electronic smoking devices (vaping) in its health education curriculum.

### **Victim counseling**

- Permits public and chartered nonpublic schools to provide counseling to victims of sexual harassment or sexually related conduct.

### **Academic distress commissions – moratorium**

- Prohibits the state Superintendent from establishing any new academic distress commissions for the 2021-2022 and 2022-2023 school years.

### **Adult Diploma Program minimum age**

- Expands eligibility to participate in the Adult Diploma Program by lowering the minimum age from 22 to 20 years old.

### **Ohio Code-Scholar Pilot Program**

- Requires Southern State Community College to establish and maintain the Ohio Code-Scholar Pilot Program and appoint a program coordinator.
- Establishes responsibilities for the program coordinator as well as program requirements.
- Requires Southern State Community College, in collaboration with the program coordinator, to submit a report to the General Assembly at the end of the five-year pilot program.

## **Career Promise Academy Pilot Program**

- Requires the Department of Education to establish the Career Promise Academy Summer Demonstration Pilot Program and operate it in the 2021-2022 and 2022-2023 school years.
- Requires the Department to solicit proposals from eligible school districts to operate a Career Promise Academy during the summer to provide students entering 9<sup>th</sup> grade with prescribed instruction and internship or mentoring experiences.
- Requires the Department to approve one proposal based on prescribed criteria and to award a grant to the district with an approved proposal.

## **Autism Scholarship Program**

- Subjects registered private providers approved for the Autism Scholarship Program and any of its employees to certain criminal records check requirements.
- Requires the Department of Education to use the submitted information to enroll individuals in the Retained Applicant Fingerprint Database in the same manner as licensed educators.
- Includes “registered behavior technician” and “certified Ohio behavior analyst” in the list of qualified, credentialed providers that may offer intervention services under the program.

## **Interscholastic athletics**

- Reinstates the limit (lifted in 2019) on participation of international students with F-1 visas in K-12 interscholastic athletics to only those who attend a school that began operating a dormitory on its campus prior to 2014.
- Repeals the requirement enacted in 2019 that school districts, interscholastic conferences, and interscholastic athletic regulating organizations have uniform transfer rules for public and nonpublic schools.

## **Nonpublic school administration of drugs**

- Requires chartered nonpublic schools to adopt a policy addressing the administration of prescription drugs to students.

## **Advanced standing programs for secondary students**

- Requires school districts, other public schools, and chartered nonpublic high schools to inform students in grades 6 through 11 at least annually about advanced standing programs offered by the district or school.

## **Obsolete reports, plans, or recommendations**

- Eliminates various education-related reports, plans, and recommendations that are out-of-date, expired, or no longer have data available.

## **I. School finance**

### **School financing – overview**

(R.C. 3301.0714, 3302.20, 3310.08, 3310.41, 3310.51, 3310.54, 3310.56, 3313.64, 3313.979, 3313.98, 3313.981, 3314.08, 3314.084, 3314.085, 3314.087, 3314.089, 3314.0810, 3314.091, 3314.11, 3314.20, 3315.18, 3317.011, 3317.012, 3317.013, 3317.014, 3317.016, 3317.017, 3317.018, 3317.019, 3317.02, 3317.021, 3317.022, 3317.023, 3317.024, 3317.028, 3317.0212, 3317.0213, 3317.0214, 3317.0215, 3317.0217, 3317.0218, 3317.028, 3317.03, 3317.051, 3317.071, 3317.072, 3317.11, 3317.16, 3317.162, 3317.20, 3317.25, 3317.60, 3319.57, 3324.05, 3324.09, 3326.31, 3326.32, 3326.33, 3326.39, 3326.40, 3326.43, 3326.44, 3326.51, 3327.01, 3327.018, 3328.32, 3328.34, 3365.01; repealed R.C. 3310.55, 3314.088, 3314.53, 3317.0216, 3317.0219, 3317.163, 3317.26, 3326.41, 3326.42, and 3328.33; Section 610.12 and 610.13 amending, Sections 4, 5, 6, and 7 of S.B. 310 of the 133<sup>rd</sup> General Assembly; Sections 265.215, 265.220, and 265.225)

#### **Overview of existing law**

The school financing system in existing law 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, also 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.

H.B. 166 of the 133<sup>rd</sup> General Assembly (the main operating budget act for FY 2020 and FY 2021) retained the school financing system in existing law, but it suspended use of that formula for school districts for FY 2020 and FY 2021. Instead, it provided for payments to be made based on FY 2019 funding. It also provided for deductions and transfers for community school and STEM school students as prescribed under continuing law.

#### **Overview of the school financing system proposed by the bill**

The bill creates a new financing system for school districts and other public entities that provide primary and secondary education to be implemented beginning in FY 2022. It requires state operating funding to be paid directly to school districts, community schools, and STEM schools for the students they are educating. This direct funding concept differs from current law where community and STEM school students and students who open enroll are included in the student count of their resident school districts, and the funds attributable to those students are deducted from their resident districts and then paid to the schools in which they are enrolled. Similarly, it requires direct payment of state scholarships, rather than deducting the amounts of those scholarships from students' resident districts.

This system also uses a unique base cost and a unique "per-pupil local capacity amount" for each city, local, and exempted village school district. Generally, a district's per-pupil local capacity amount is subtracted from the district's per-pupil amount of its base cost to determine the district's per-pupil state share of the base cost. Each district's state core foundation funding

is equal to the district's aggregate state share of the base cost plus targeted assistance, special education funds, disadvantaged pupil impact aid, English learner funds, gifted funds, career-technical education funds, and career-technical associated services funds. These components are to be phased-in over a period of time specified by the General Assembly and are subject to a guarantee for FY 2022 and for each fiscal year thereafter. For this biennium, all of the components except for disadvantaged pupil impact aid are subject to a phase-in of 16.67% for FY 2022 and 33.33% for FY 2023, and disadvantaged pupil impact aid is subject to a phase-in of 0% for FY 2022 and 14% for FY 2023.

In contrast to the bill, current law prescribes a fixed "formula amount" for use in computing a base cost and categorical payments for all school districts and other public schools. The bill eliminates this term. Where the bill's system relies on a static base cost amount, it uses the "statewide average base cost per pupil" or, in the case of career-technical education funds, the "statewide average career-technical base cost per pupil."

City, local, and exempted village school districts also receive transportation funding, supplemental targeted assistance, and career awareness and exploration funds. These payments are not subject to the phase-in. However, the bill does guarantee transportation funding for FY 2022 and FY 2023.

The bill provides a substantially similar formula for joint vocational school districts (JVSDs) (including a phase-in over the same period of time specified by the General Assembly for city, local, and exempted village school districts and a guarantee), but, as under current law, it does not provide targeted assistance, gifted funding, or transportation funding to JVSDs. It does make some JVSD-specific changes to the base cost computation and uses a charge-off rather than a "per-pupil local capacity amount" to determine the district's per-pupil state share of the base cost. JVSDs also receive career awareness and exploration funds, which are not subject to the phase-in.

For each community and STEM school, the system also specifies a unique base cost per pupil. These schools receive a payment for each student of the school's base cost per pupil plus per-pupil amounts of special education funds, disadvantaged pupil impact aid, English learner funds, career-technical education funds, and career-technical associated services funds. This funding is also subject to a phase-in over the same period of time to be specified by the General Assembly, except that disadvantaged pupil impact aid is subject to the same phase-in percentage as all other components of the formula. Community schools also receive a transportation payment and community schools and STEM schools receive career awareness and exploration funds, neither of which are subject to the phase-in.

For FY 2022 and FY 2023, the bill requires payment of a formula transition supplement to each city, local, and exempted village school district and JVSD to ensure that each district receives an amount of state core foundation funding, transportation funding, and supplemental targeted assistance equal to the sum of the district's FY 2021 payments for foundation funding (before any state budget reductions ordered by the Governor, in the case of a city, local, or exempted village school district, and after adjusting for student transfers in accordance with the new student counting system), the district's FY 2021 enrollment growth supplement (in the case of a city, local, or exempted village school district), and the district's student wellness and success

funds and enhancement funds for FY 2021. The bill also requires payment of a formula transition supplement to community schools and STEM schools similar to that paid to school districts, except the supplement guarantees a per-pupil amount of funding rather than an aggregate amount of funding.

Additionally, the bill (1) establishes a new funding formula for educational service centers (ESCs) that is phased-in over the same period of time specified by the General Assembly for city, local, and exempted village school districts, (2) requires the Department of Education to implement a program to distribute bus purchasing grants of not less than \$45,000 to city, local, and exempted village school districts for the purpose of replacing the oldest and highest mileage buses in the state assigned to routes, (3) requires the Department to award transportation collaboration grants, (4) makes several changes related to student transportation policy, (5) adds additional topics to the required content of the studies of economically disadvantaged students and preschool education that must be submitted by December 31, 2022, under current law, and (6) creates the School Funding Oversight Commission to monitor and make recommendations regarding the implementation of the new financing system and requires the Commission to receive those studies and several other studies that must be submitted by December 31, 2022.

Finally, the bill repeals the requirement for the Department to pay student wellness and success funds and enhancement funds to school districts, community schools, and STEM schools and the spending requirements for those funds (but it applies similar spending requirements to disadvantaged pupil impact aid).

For a more detailed description of the bill's school financing provisions, see the LSC Comparison Document for the bill. From the LSC home page, [www.lsc.ohio.gov](http://www.lsc.ohio.gov), click on "Budget Central," then on "Main Operating – H.B. 110," and then on "EDU" under "Comparison Document."

## **New school financing system**

### **State operating funding for city, local, and exempted village school districts**

#### **Enrolled ADM and base cost enrolled ADM**

(R.C. 3317.02; conforming changes in numerous R.C. sections)

- Specifies that a city, local, or exempted village school district's "enrolled ADM" is the count of the students that are being educated by the district, minus 80% of the district's students receiving services at a joint vocational school district pursuant to a compact, cooperative education agreement, or a contract, plus 20% of the district's students who are enrolled in another district under a career-technical education compact.

(Currently, a district's "formula ADM" counts students in the district in which they reside rather than the district in which they are being educated.)

- Specifies that a city, local, or exempted village school district's "base cost enrolled ADM" is equal to the greater of (1) the district's enrolled ADM for the prior fiscal year or (2) the average of the district's enrolled ADM for the three prior fiscal years.

## **Base cost calculation**

(R.C. 3317.011)

- Specifies that a city, local, or exempted village school district's base cost consists of the following five components:

### ***1. Teacher base cost***

- ❖ Specifies that the teacher base cost includes all of the following components:
  - The district's classroom teacher cost, which is calculated using (a) an average teacher cost (the sum of the average statewide salary of teachers with salaries between \$30,000 and \$95,000, an amount for benefits equal to 16% of the salary amount, and district-paid insurance costs equal to the statewide weighted average employer-paid monthly premium times 12), and (b) specified student to teacher ratios for kindergarten (20 to 1), grades 1 through 3 (23 to 1), grades 4 through 8 (25 to 1), grades 9 through 12 (27 to 1), and career-technical education programs or classes (18 to 1);
  - The district's special teacher cost, which is calculated using the average teacher cost and a student to teacher ratio of 150 to 1, with a minimum of six teachers funded;
  - The district's substitute teacher cost, which is calculated using a daily rate of \$90 plus benefits for five substitute teacher days for every classroom and special teacher;
  - The district's professional development cost, which is calculated using the average teacher cost (less insurance) per day (based on 180 contract days) for four professional development days for every classroom and special teacher.

### ***2. Student support base cost***

- ❖ Specifies that the student support base cost includes all of the following components:
  - The district's guidance counselor cost, which is calculated using the average statewide salary of guidance counselors with salaries between \$30,000 and \$95,000 and a high school student to counselor ratio of 360 to 1, with a minimum of one counselor funded;
  - The district's librarian and media staff cost, which is calculated using the average statewide salary of librarian and media staff with salaries between \$30,000 and \$95,000 and a student to librarian and media staff ratio of 1,000 to 1;
  - The district's staffing cost for student wellness and success, which is calculated using the average statewide salary of counselors with salaries between \$30,000 and \$95,000 and a student to staff ratio of 250 to 1, with a minimum of five staff members funded;

- The district's academic co-curricular activities cost, which is calculated using the average per-pupil spending reported statewide by districts for academic co-curricular activities;
- The district's building safety and security cost, which is calculated using the average per-pupil spending reported statewide by districts for building safety and security;
- The district's supplies and academic content cost, which is calculated using the average per-pupil spending reported statewide by districts for supplies and academic content (excluding supplies for transportation and maintenance);
- The district's technology cost, which is calculated using a per-pupil amount of \$37.50.

### ***3. District leadership and accountability base cost***

- ❖ Specifies that the district leadership and accountability base cost includes all of the following components:
  - The district's superintendent cost, which is calculated as a scaled amount of salary (using a salary range of \$80,000 to \$160,000) plus benefits, with an additional amount added for insurance;
  - The district's treasurer cost, which is calculated as a scaled amount of salary (using a salary range of \$60,000 to \$130,000) plus benefits, with an additional amount added for insurance;
  - The district's other district administrator cost, which is calculated using (a) the district's superintendent cost, (b) the ratio of the average salary of all assistant superintendents and directors statewide with salaries between \$50,000 and \$135,000 to the average salary of superintendents with salaries between \$60,000 and \$180,000, and (c) a student to staff ratio of 750 to 1, with a minimum of two administrators funded;
  - The district's fiscal support cost, which is calculated based on the average statewide salary of bookkeeping and accounting employees with salaries between \$20,000 and \$80,000 and a student to staff ratio of 850 to 1, with a minimum of two positions funded and a maximum of 35 positions funded;
  - The district's education management information system (EMIS) support cost, which is calculated based on the average statewide salary of EMIS support employees with salaries between \$30,000 and \$90,000 and a student to staff ratio of 5,000 to 1, with a minimum of one position funded;
  - The district's leadership support cost, which is calculated based on the average statewide salary of administrative assistants with salaries between \$20,000 and \$65,000 and an administrator to staff ratio of 3 to 1, with a minimum of one position funded;

- The district's information technology center support cost, which is calculated using a per-pupil amount of \$31.

#### **4. Building leadership and operations base cost**

- ❖ Specifies that the building leadership and operations base cost includes all of the following components:
  - The district's building leadership cost, which is calculated using (a) the district's superintendent cost, (b) the ratio of the average statewide salary of principals with salaries between \$50,000 and \$120,000 to the average salary of superintendents statewide with salaries between \$60,000 and \$180,000, and (c) a student to staff ratio of 450 to 1;
  - The district's building leadership support cost, which is based on the average statewide salary of clerical employees with salaries between \$15,000 and \$50,000 and a student to staff ratio of 400 to 1, with a minimum number of positions funded that is equal to the number of buildings in the district and a maximum of three positions per building funded;
  - The district's building operations cost, which is calculated using the product of the six-year average of the statewide average building square feet per pupil and the six-year statewide average cost per square foot for those buildings, less the district's building safety and security cost.

#### **5. Athletic co-curricular activities base cost**

- ❖ Provides this component if the district either (1) is a member of an organization that regulates interscholastic athletics or (2) has teams in at least three different sports that participate in an interscholastic league.
- ❖ Specifies that the district's athletic co-curricular activities base cost is calculated using the average per-pupil spending reported statewide for athletic co-curricular activities.
- Uses a district's "base cost enrolled ADM" for those factors of the base cost computation which are paid on a per-pupil basis.
- Specifies that all of the average salaries and costs within the base cost computation are to be calculated using data from FY 2018.

### **Base cost per pupil and statewide average base cost per pupil**

(R.C. 3317.018(A) and 3317.02)

- Prescribes a unique "base cost per pupil" for each city, local, and exempted village school district that is equal to the district's base cost divided by the district's "base cost enrolled ADM."
- Specifies that the "statewide average base cost per pupil" is equal to the following:
  - ❖ For FY 2022, the sum of the aggregate base cost calculated for all city, local, and exempted village school districts in the state for that fiscal year divided by the sum

of the “base cost enrolled ADMs” of all of the city, local, and exempted village school districts in the state for that fiscal year;

- ❖ For FYs 2023, 2024, 2025, 2026, and 2027, the amount calculated for FY 2022; and
- ❖ For FY 2028 and for each fiscal year thereafter, the sum of the aggregate base cost calculated for all city, local, and exempted village school districts in the state for that fiscal year divided by the sum of the “base cost enrolled ADMs” of all of the city, local, and exempted village school districts in the state for that fiscal year.

### **Statewide average career-technical base cost per pupil**

(R.C. 3317.018(B))

- Specifies that the “statewide average career-technical base cost per pupil” is equal to the following:
  - ❖ For FY 2022, the sum of the aggregate base cost calculated for all joint vocational school districts in the state for that fiscal year (see below) divided by the sum of the “base cost enrolled ADMs” of all of the joint vocational school districts in the state for that fiscal year;
  - ❖ For FYs 2023, 2024, 2025, 2026, and 2027, the amount calculated for FY 2022; and
  - ❖ For FY 2028 and for each fiscal year thereafter, the sum of the aggregate base cost calculated for all joint vocational school districts in the state for that fiscal year divided by the sum of the “base cost enrolled ADMs” of all of the joint vocational school districts in the state for that fiscal year.

### **Per-pupil local capacity percentage**

(R.C. 3317.017(A)(4))

- Determines a city, local, or exempted village school district’s “per-pupil local capacity percentage,” which is used to calculate a district’s per-pupil local capacity amount, by doing the following:
  - ❖ Ranking all districts using each district’s quotient of the district’s median federal adjusted gross income for the most recent tax year for which data is available and the median of the median federal adjusted gross incomes for all districts statewide for the most recent tax year for which data is available, from the highest quotient to the lowest quotient;
  - ❖ If the district’s quotient is less than the quotient of the district with the 40<sup>th</sup> highest quotient but greater than 1.0, specifying that the district’s “per-pupil local capacity percentage” is equal to a percentage between 2.25% and 2.5% that is calculated based on a sliding scale;
  - ❖ If the district’s quotient is less than or equal to 1.0, specifying that the district’s “per-pupil local capacity percentage” is equal to the district’s quotient times 2.25%;

- ❖ If the district's quotient is greater than or equal to the quotient of the district with the 40<sup>th</sup> highest quotient, specifying that the district's "per-pupil local capacity percentage" is equal to 2.5%.

### **Per-pupil local capacity amount**

(R.C. 3317.017(A))

- Specifies that a city, local, or exempted village school district's per-pupil local capacity amount is equal to the sum of the following three factors, which are calculated using a city, local, or exempted village school district's "base cost enrolled ADM":

#### ***1. Valuation per pupil***

- ❖ Calculated as 60% of the district's "per-pupil local capacity percentage" times the per-pupil amount of the minimum of (a) the average valuation for the three most recent tax years for which data is available and (b) the district's taxable value for the most recent tax year for which data is available.

#### ***2. Adjusted federal gross income per pupil***

- ❖ Calculated as 20% of the district's "per-pupil local capacity percentage" times the per-pupil amount of the minimum of (a) the average of the total federal adjusted gross income of the district's residents for the three most recent tax years for which data is available and (b) the total federal adjusted gross income of the district's residents for the most recent tax year for which data is available.

#### ***3. Adjusted local share federal adjusted gross income per pupil***

- ❖ Calculated as 20% of the district's "per-pupil local capacity percentage" times the per-pupil amount of the product of (a) the median federal adjusted gross income of the district's residents for the most recent tax year for which data is available and (b) the number of state tax returns filed by taxpayers residing in the district for the most recent tax year for which data is available.

### **State core foundation funding**

(R.C. 3317.013, 3317.014(C) and (D), 3317.016, 3317.017(B) and (C), 3317.02, 3317.022, 3317.0217, and 3317.051)

- Requires the Department of Education to compute and distribute to each city, local, and exempted village school district the sum of the following in state core foundation funding:

#### ***1. State share of the base cost***

- ❖ Specifies that a district's state share of the base cost is equal to the following:
  - If the district's per-pupil local capacity amount divided by the district's base cost per pupil is greater than 95%, the district's base cost per pupil times 5% times the district's enrolled ADM;
  - Otherwise, the district's enrolled ADM times the difference between the district's base cost per pupil and the district's per-pupil local capacity amount.

- ❖ Specifies that the district's "state share percentage" is equal to the district's state share divided by the district's aggregate base cost.

## ***2. Targeted assistance***

- ❖ Specifies that targeted assistance includes both of the following:
  - A capacity amount if the district's enrolled ADM is greater than or equal to 200 and its capacity index is greater than one (where a district's capacity index is calculated by first computing the district's weighted wealth (60% of the aggregate amount used to calculate its valuation per pupil and 40% of the aggregate amount used to calculate its adjusted federal gross income per pupil) and then dividing the statewide median weighted wealth by the district's weighted wealth), calculated based on the difference between the statewide median wealth times eight mills and the district's weighted wealth times eight mills. 100% of the calculated amount is paid if the district's enrolled ADM is greater than or equal to 600, a percentage of the calculated amount between 5% and 100% (determined on a sliding scale) is paid if the district's enrolled ADM is between 400 and 600, and 5% of the calculated amount is paid if the district's enrolled ADM is greater than or equal to 200 but less than or equal to 400. (A capacity index greater than one indicates that a district's capacity is lower than the statewide median capacity.)
  - A wealth amount if the district's wealth index (the statewide median weighted wealth per pupil divided by the district's weighted wealth per pupil) is greater than or equal to 0.8, calculated based on the difference between the statewide median wealth per pupil times 14 mills and the district's weighted wealth per pupil times 11.2 mills and then multiplied by the district's enrolled ADM. (When calculating a district's wealth per pupil, a district's enrolled ADM is adjusted by subtracting the number of students enrolled in the district under an open enrollment policy and adding the number of students entitled to attend school in the district who open enroll in another district.)

## ***3. Special education funds***

- ❖ Calculates special education funds for each of the six categories of special education students specified in current law using multiples instead of dollar amounts.
- ❖ Specifies that, for each category, a district's special education funds are equal to the product of the category's multiple, the statewide average base cost per pupil, the number of students in the district's enrolled ADM in that category, and the district's state share percentage.
- ❖ Sets aside 10% of a district's aggregate special education funds for catastrophic costs.

#### ***4. Disadvantaged pupil impact aid***

- ❖ Specifies that a district's disadvantaged pupil impact aid equals \$422 times the district's "economically disadvantaged index" times the number of students in the district's enrolled ADM who are economically disadvantaged.
- ❖ Specifies that the district's "economically disadvantaged index" is equal to the square of the quotient of the percentage of the district's enrolled students who are economically disadvantaged divided by the statewide percentage of economically disadvantaged students in all public schools.
- ❖ Specifies that the initiatives for which economically disadvantaged funds must be spent under current law are also the initiatives for which disadvantaged pupil impact aid must be spent under the bill, and adds the following initiatives to that list:
  - Reduced class size;
  - One year of quality preschool for every child who is four years of age and identified as economically disadvantaged;
  - Student mentoring programs;
  - Family engagement pertinent to enhanced student educational success;
  - District-wide professional development to provide greater insight into the needs, culture, and perspective of disadvantaged populations and enhanced ability to recognize and address those needs;
  - Mental health services;
  - Services for homeless youth;
  - Services for child welfare involving youth;
  - Community liaisons;
  - Physical health care services;
  - Mentoring programs;
  - Family engagement and support services;
  - City connects programming;
  - Professional development regarding the provision of trauma informed care;
  - Professional development regarding cultural competence;
  - Student services provided prior to or after the regularly scheduled school day or any time school is not in session; and
  - A federally qualified health center or federally qualified health center look-alike.

- ❖ Requires that a district must develop a plan for utilizing its disadvantaged pupil impact aid in coordination with both of the following:
  - A board of alcohol, drug, and mental health services;
  - One of the following: an educational service center (ESC), a county board of developmental disabilities, a community-based mental health treatment provider, a board of health of a city or general health district, a county department of job and family services, a nonprofit organization with experience serving children, or a public hospital agency.
- ❖ Requires a district's annual report of the initiatives on which its disadvantaged pupil impact aid was spent to include the amount of money that was spent on each initiative, and specifies that this report must be submitted to the Department of Education through the Education Management Information System (EMIS).

### ***5. English learner funds***

- ❖ Calculates English learner funds for each of the three categories of English learner students, with Category 1 including the same students as under current law (those who have been enrolled in schools in the United States for no more than 180 days and were not previously exempted from taking the spring administration of either of the state's English language arts assessments (reading or writing)), Category 2 including those students who have been enrolled for more than 180 days until they successfully achieve proficiency on the assessments, and Category 3 including those students who have achieved proficiency for two successive school years.
- ❖ Uses multiples rather than dollar amounts to calculate English learner funds.
- ❖ Specifies that, for each category, a district's English learner funds are equal to the product of the category's multiple, the statewide average base cost per pupil, the number of students in the district's enrolled ADM in that category, and the district's state share percentage.
- ❖ Specifies that English learner funds must be spent only for services for English learners.

### ***6. Gifted funds***

- ❖ Specifies that a district's gifted student funding includes all of the following:
  - Gifted identification funds equal to \$24 times the district's enrolled ADM for grades kindergarten through 6 times the district's state share percentage;
  - Gifted referral funds equal to \$2.50 times the district's enrolled ADM times the district's state share percentage;
  - Gifted professional development funds equal to the greater of the number of gifted students enrolled in the district and 10% of the district's enrolled ADM times the district's state share percentage times \$7 for FY 2022, \$14 for

FY 2023, \$21 for FY 2024, or \$28 for FY 2025 (gifted professional development funds are not paid after FY 2025);

- Gifted coordinator unit funds equal to \$85,776 for every unit (with a unit equaling 3,300 students in the district's enrolled ADM, with a minimum of 0.5 units and a maximum of eight units allocated) times the district's state share percentage;
  - Gifted intervention specialist units for grades kindergarten through 8 equal to \$89,378 for every unit (with a unit equaling 140 gifted students enrolled in grades kindergarten through 8 in the district, with a minimum of 0.3 units allocated) times the district's state share percentage;
  - Gifted intervention specialist units for grades 9 through 12 equal to \$80,974 for every unit (with a unit equaling 140 gifted students enrolled in grades 9 through 12 in the district, with a minimum of 0.3 units allocated) times the district's state share percentage.
- ❖ Requires a district to spend the gifted funds it receives only for the identification of gifted students, gifted coordinator services, gifted intervention specialist services, other service providers approved by the Department, and gifted professional development.
  - ❖ Requires the Department, if it determines that a district is not in compliance with this spending requirement for any fiscal year, to reduce the district's foundation funding payments for that fiscal year by an amount equal to the amount of gifted funding paid to the district for that fiscal year that was not spent in accordance with the above spending requirement.

### ***7. Career-technical education funds***

- ❖ Calculates career-technical education funds for each of the five categories of career-technical education students specified in current law using multiples instead of dollar amounts.
- ❖ Specifies that, for each category, a district's career-technical categorical funds are equal to the product of the category's multiple, the statewide average career-technical base cost per pupil, the number of students in the district's enrolled ADM in that category, and the district's state share percentage.

### ***8. Career-technical associated services funds***

- ❖ Uses a multiple rather than a dollar amount for the calculation of career-technical associated services funds.
- ❖ Specifies that a district's career-technical associated services funds are equal to the product of (1) the district's career-technical education students, (2) the statewide average career-technical base cost per pupil, (3) the associated services multiple, and (4) the district's state share percentage.

## **State core foundation funding after application of the phase-in and the guarantee**

(R.C. 3317.019, 3317.02, and 3317.022; Sections 265.215 and 265.220)

- Provides a phase-in of a city, local, or exempted village school district's state core foundation funding payments over a period of time to be determined by the General Assembly.
- Specifies a "general phase-in percentage" of 16.67% for FY 2022 and 33.33% for FY 2023 and a "phase-in percentage for disadvantaged pupil impact aid" of 0% for FY 2022 and 14% for FY 2023.
- Specifies that it is the intent of the General Assembly that the general phase-in occurs over the course of no more than six fiscal years.
- Specifies that the phase-in percentage for disadvantaged pupil impact aid equals the general phase-in percentage for FY 2024 and each fiscal year thereafter.
- Calculates the phase-in of a district's state core foundation funding (before application of the guarantee) as follows:
  - ❖ Determine the district's "funding base," which equals the district's FY 2020 foundation funding under current law (excluding base and "other" transportation funding and the current law transportation supplement) prior to any state budget reductions ordered by the Governor, after adjusting for transfers for (1) students attending community and STEM schools (other than those for career-technical education and transportation), (2) students receiving state scholarships, and (3) students open enrolling (other than those open enrolling for career-technical education);
  - ❖ Determine the district's "general funding base," which is equal to the district's "phase-in funding base" minus the district's FY 2020 economically disadvantaged funds adjusted for transfers as described above;
  - ❖ Determine the sum of the district's state core foundation funding components that are subject to the general phase-in (the district's state share of the base cost, targeted assistance, special education funds, English learner funds, gifted funds, career-technical education funds, and career-technical associated services funds under the formula);
  - ❖ Compute the difference between the district's "general funding base" and the sum of the district's state core foundation funding components that are subject to the general phase-in;
  - ❖ Multiply that difference by the district's general phase-in percentage to determine the general phase-in amount;
  - ❖ Determine the district's "disadvantaged pupil impact aid funding base," which is equal to the district's FY 2020 economically disadvantaged funds adjusted for transfers as described above;

- ❖ Compute the difference between the district’s “disadvantaged pupil impact aid funding base” and the district’s disadvantaged pupil impact aid;
  - ❖ Multiply that difference by the district’s phase-in percentage for disadvantaged pupil impact aid to determine the disadvantaged pupil impact aid phase-in amount;
  - ❖ Add the district’s general phase-in amount, disadvantaged pupil impact aid phase-in amount, and “funding base” to determine the district’s state core foundation funding after application of the phase-in (but before application of the guarantee).
- For FYs 2022 and 2023, guarantees each district a total amount of state core foundation funding equal to its “funding base.”
  - For FY 2024 and for each fiscal year thereafter, guarantees each district a per-pupil amount of state core foundation funding equal to the district’s “guaranteed funding” for the third preceding fiscal year divided by the average of the district’s enrolled ADM for the third, fourth, and fifth preceding fiscal years. (For this purpose, a district’s “guaranteed funding” is, for FY 2021, the district’s “funding base” and, for each fiscal year thereafter, the state core foundation funding guaranteed under the bill’s provisions.)
  - During the general phase-in, requires that, if a city, local, or exempted village school district has a decrease in incoming open enrollment students between one fiscal year and the next that equals the greater of 20 students or a 10% decrease in open enrollment students, its guaranteed funding must be reduced by an amount equal to the statewide average base cost per pupil times the reduction in the number of students in excess of that prescribed minimum decrease.

### **Transportation funding**

(R.C. 3301.0714(B)(5), (6), and (7), 3317.024(C), 3317.019(A)(2), and 3317.0212)

- Requires the Department to pay each city, local, and exempted village school district the sum of the following in transportation funding:
  - ❖ Base transportation funding calculated in the same manner as current law, except that (1) the state share is increased to the greater of the district’s state share percentage or 29.17% for FY 2022, 33.33% for FY 2023, 37.5% for FY 2024, 41.66% for FY 2025, 45.83% for FY 2026, and 50% for FY 2027 and for each fiscal year thereafter, (2) students who live less than one mile away from school are included in the district’s qualifying rider count, (3) preschool students are included in the district’s qualifying rider count, (4) a district’s qualifying ridership count is the greater of the average number of qualifying riders counted in the morning or counted in the afternoon who are provided school bus service by the district during the first full week of October, and (5) a weight of 1.5 for community and STEM school students and a weight of 2.0 for nonpublic school students is applied when calculating a district’s cost for the number of students transported;

- ❖ An efficiency adjustment based on the district’s demonstration of efficiency by transporting more than a target number of students per bus, calculated based on the district’s base transportation funding times a percentage that increases from 0% to 15% as the district’s efficiency increases;
  - ❖ Payments for other types of pupil transportation as prescribed in rule in accordance with current law;
  - ❖ A density supplement for districts with low rider density calculated in the same manner as current law, except that (1) “rider density” is defined as a district’s total number of qualifying riders divided by the number of square miles in the district (rather than the district’s total ADM per square mile as under current law) and (2) eligibility for the supplement is limited to those districts with a rider density less than 28 (rather than those districts with a rider density less than 50 as under current law).
- For FYs 2022 and 2023, specifies that each district is guaranteed an amount of transportation funding equal to the sum of the district’s base transportation funding, transportation supplement, and “other” transportation funding for FY 2020 prior to any state budget reductions ordered by the Governor.
  - Requires that a district’s payment for the approved cost of transporting eligible students with disabilities whom it is impossible or impractical to transport by regular school bus is equal to the actual costs incurred when transporting those students multiplied by the greater of the district’s state share percentage or 29.17% for FY 2022, 33.33% for FY 2023, 37.5% for FY 2024, 41.66% for FY 2025, 45.83% for FY 2026, and 50% for FY 2027 and for each fiscal year thereafter (rather than the approved cost of such transportation as under current law).
  - Requires the State Board of Education to establish the deadline for each district to report its actual costs for transporting eligible students with disabilities whom it is impossible or impractical to transport by regular school bus, and specifies that costs reported by each district or ESC must be subject to periodic, random audits by the Department.
  - Requires each district’s annual report to the Department of its qualifying ridership and any other information requested by the Department to be submitted no later than November 1, rather than October 15 as under current law.
  - Requires each district to report the average number of students riding on school buses routed to community schools, STEM schools, and nonpublic schools to the Department of Education through the Education Management Information System (EMIS).

### **Supplemental targeted assistance**

(R.C. 3317.0218)

- Requires the Department to pay supplemental targeted assistance if a city, local, or exempted village school district has both (1) a targeted assistance wealth index for

FY 2019 greater than 1.6 and (2) an enrolled ADM for FY 2019 that is less than 88% of the district's total ADM for FY 2019, calculated based on the district's wealth index for FY 2019 in comparison to the maximum wealth index for FY 2019 of those districts eligible for the supplemental amount and equal to a scaled amount between \$75 and \$750 per pupil times the district's enrolled ADM.

### **Career awareness and exploration funds**

(R.C. 3317.014(E) and 3317.023)

- Specifies that a district's career awareness and exploration funds are equal to a district's enrolled ADM times \$2.50 for FY 2022, \$5 for FY 2023, \$7.50 for FY 2024, or \$10 for FY 2025 and each fiscal year thereafter.
- Requires a district's career awareness and exploration funds to be transferred to the lead district of the career-technical planning district (CTPD) to which the district belongs.
- Requires each lead district of a CTPD to disperse career awareness and exploration funds to school districts receiving services from the CTPD that provide plans for the use of those funds that are consistent with the CTPD's plan that is on file with the Department.
- Specifies that career awareness and exploration funds must be spent only for the following purposes:
  - ❖ Delivery of career awareness programs to students enrolled in grades kindergarten through 12;
  - ❖ Provision of a common, consistent curriculum to students throughout their primary and secondary education;
  - ❖ Assistance to teachers in providing a career development curriculum to students;
  - ❖ Developments of a career development plan for each student that stays with that student for the duration of the student's primary and secondary education;
  - ❖ Provision of opportunities for students to engage in activities, such as career fairs, hands-on experiences, and job shadowing, across all career pathways at each grade level.
- Permits the Department to deny payment of these funds to any district that the Department determines is using the funds for other purposes.

### **State operating funding for joint vocational school districts**

(R.C. 3317.012, 3317.014, 3317.16, and 3317.162)

- Provides a substantially similar funding formula for joint vocational school districts (JVSDs) as that for city, local, and exempted village school districts (including the phase-in and guarantee), with the following changes:

- Replaces the “special teacher” cost in the base cost computation with the “cost for teachers providing health and physical education, instruction regarding employability and soft skills, development and coordination and internships and job placements, career-technical student organization activities, pre-apprenticeship and apprenticeship coordination, and any assessment related to career-technical education, including any nationally recognized job skills or end-of-course assessment,” but calculates the cost in the same manner;
- Does not specify a minimum for the number of staff members for the staffing cost for student wellness and success for the district in the base cost computation;
- Replaces the cost computations for academic and athletic co-curricular activities in the base cost computation, combines them into one cost computation for “career-technical curriculum specialists and coordinators, career assessment and program placement, recruitment and orientation, student success coordination, analysis of test results, development of intervention and remediation plans and monitoring of those plans, and satellite program coordination,” and calculates this cost as the district’s “base cost enrolled ADM” multiplied by the sum of the per-pupil academic co-curricular costs and the per-pupil athletic co-curricular costs for city, local, and exempted village school districts;
- Calculates a JVSD’s state share using a  $\frac{1}{2}$  mill charge-off times the lesser of the district’s three-year average valuation or most recent valuation; and
- As under current law, does not provide targeted assistance, gifted funding, or transportation funding to JVSDs.

### **Community school and STEM school funding**

(R.C. 3314.08, 3314.085, 3314.088, 3314.091(D)(1)(b), 3317.023, 3326.33, 3326.39, and 3326.43)

- Requires the Department to compute and distribute state core foundation funding to each community school and science, technology, engineering, and mathematics (STEM) school in an amount equal to the sum of the following for each student enrolled in the school on a full-time equivalency basis:
  - The school’s unique base cost per pupil, which is computed using a unique “aggregate” base cost that is divided by the school’s enrollment for that fiscal year. Calculates the unique aggregate base cost using the same five components for the base cost that are calculated for city, local, and exempted village school districts (with all of the average salaries and costs within the base cost computation calculated using data from FY 2018), but with the following changes:
    - ❖ For purposes of the school’s teacher cost component, does not require a minimum of special teachers funded, but otherwise calculates this component in the same manner as it is calculated for city, local, and exempted village school districts;

- ❖ Calculates the school's student support base cost as the product of (1) the school's enrollment and (2) the per-pupil statewide average student support base cost for all city, local, and exempted village school districts;
  - ❖ Calculates the school's leadership and accountability base cost as the product of (1) the school's enrollment and (2) the per-pupil statewide average leadership and accountability base cost for all city, local, and exempted village school districts;
  - ❖ Calculates the school's building leadership and operations base cost as the product of (1) the school's enrollment and (2) the per-pupil statewide average building leadership and operations base cost for all city, local, and exempted village school districts; and
  - ❖ Provides the athletic co-curricular activities base cost component to the school if it is either a member of an organization that regulates interscholastic athletics or has teams in at least three different sports that participate in an interscholastic league, and calculates this component as the product of (1) the school's enrollment and (2) the per-pupil statewide average athletic co-curricular activities base cost for all city, local, and exempted village school districts.
- Special education funds equal to the product of the student's special education category's multiple and the statewide average base cost per pupil;
  - Disadvantaged pupil impact aid equal to \$422 times the school's "economically disadvantaged index" (the school's "economically disadvantaged index" is equal to the square of the quotient of the percentage of the school's students who are economically disadvantaged divided by the statewide percentage of economically disadvantaged students in all public schools);
  - English learner funds equal to the product of the category's multiple and the statewide average base cost per pupil;
  - Career-technical categorical funds equal to the product of the student's career-technical education category's multiple and the statewide average career-technical base cost per pupil (see above); and
  - For each student enrolled in career-technical education, career-technical associated services funds equal to the product of the statewide average career-technical base cost per pupil, and the associated services multiple.
- Provides a phase-in of a community school's or STEM school's state core foundation funding that is substantially similar to the phase-in of a school district's state core foundation funding, except all components are subject to the general phase-in percentage for school districts.
  - Maintains current law regarding the payments for internet- and computer-based community schools (e-schools) (requires payment of the base cost per pupil, special education funds, and career-technical education funds).

- Specifies that a community school's transportation payment is equal to either (1) 1.0 times the statewide transportation cost per student, for a student whose school district of residence would have used a method of transportation for the student for which payments would have been computed and paid using the base transportation payment calculation described above, or (2) the amount that otherwise would have been computed and paid to the student's school district of residence, if the district would have used any other method of transportation for the student.

(Under continuing law, a community school receives this payment only if it takes over from a school district the responsibility to provide transportation to the district's students that are enrolled in the school, and the payment amount equals the amount calculated on a per-rider basis that otherwise would have been paid to the student's school district of residence regardless of the method of transportation that the district would have used.)

- Requires the Department to pay each community school and STEM school career awareness and exploration funds in an amount equal to \$2.50 for FY 2022, \$5 for FY 2023, \$7.50 for FY 2024, or \$10 for FY 2025 and each fiscal year thereafter for each student enrolled in the school on a full-time equivalency basis. (These funds are transferred to a school's CTPD and paid to the school in the same manner described above for school districts. The schools are also subject to the same spending restrictions for these funds as specified above for school districts.)

## **Formula transition supplement**

(Section 265.225)

- Requires the Department to pay a formula transition supplement to each city, local, and exempted village school district for FY 2022 and FY 2023 calculated as follows:
  - Determine the district's funding base for FY 2021, which equals (1) the district's FY 2021 foundation funding before any state budget reductions ordered by the Governor, after adjusting for transfers for (a) students attending community and STEM schools, (b) students receiving state scholarships, and (c) students open enrolling, (2) the district's FY 2021 enrollment growth supplement, and (3) the district's student wellness and success funds and enhancement funds for FY 2021;
  - Subtract from that amount the sum of the district's state core foundation funding, transportation funding, and supplemental targeted assistance for the fiscal year for which the supplement is calculated to determine the district's formula transition supplement (if this difference is less than zero, the district's supplement equals zero).
- Requires the Department to pay a formula transition supplement to each joint vocational school district for FY 2022 and FY 2023 calculated as follows:
  - Determine the district's funding base for FY 2021, which equals (1) the district's FY 2021 foundation funding after adjusting for transfers for students open enrolling and (2) the district's student wellness and success funds and enhancement funds for FY 2021;

- Subtract from that amount the sum of the district's state core foundation funding for the fiscal year for which the supplement is calculated to determine the district's formula transition supplement (if this difference is less than zero, the district's supplement equals zero).
- Requires the Department to pay a formula transition supplement to each community school and STEM school for FY 2022 and FY 2023 calculated as follows:
  - Determine the school's funding base for FY 2021, which equals (1) the school's FY 2021 funding before any state budget reductions ordered by the Governor, (2) the school's student wellness and success funds and enhancement funds for FY 2021, and (3) in the case of a community school, its transportation payments for FY 2021;
  - Divide the school's funding base for FY 2021 by the number of students enrolled in the school for FY 2021 to determine the school's per-pupil funding for FY 2021;
  - Determine the sum of the school's state core foundation funding and, in the case of a community school, transportation funding for the fiscal year for which the supplement is calculated, and divide that amount by the number of students enrolled in the school for the fiscal year for which the supplement is calculated;
  - Subtract that amount from the school's per-pupil funding for FY 2021, then multiply that difference by the number of students enrolled in the school for the fiscal year for which the supplement is calculated to determine the school's formula transition supplement (if this amount is less than zero, the school's supplement equals zero).

## **Educational service center funding**

(R.C. 3317.11)

- Provides a phase-in of an ESC's funding over a period of time to be determined by the General Assembly, and specifies that an ESC's general phase-in percentage equals the same general phase-in percentage for FY 2022 and FY 2023 as for school districts (16.67% for FY 2022 and 33.33% for FY 2023).
- Calculates the phase-in of each ESC's funding for a fiscal year as follows:
  - Determine the ESC's "funding base," which equals the amount paid to the ESC for FY 2020;
  - Compute an amount for the ESC for that fiscal year as follows:
    - ❖ If the ESC has a student count of 5,000 or less, a lump sum of \$356,250;
    - ❖ If the ESC has a student count greater than 5,000 but less than or equal to 35,000, the lump sum amount specified above, plus a per-pupil payment of \$24.72 for each student above 5,000 in the ESC's student count;
    - ❖ If the ESC has a student count greater than 35,000, the lump sum amount specified above, plus a per pupil payment of \$24.72 for each student above 5,000 in the ESC's student count, plus an additional per pupil payment for each student above 35,000 in the ESC's student count.

- Compute the difference between the ESC’s “funding base” and the amount computed for the ESC for that fiscal year;
- Multiply that difference by the general phase-in percentage for that fiscal year;
- Add that product to an ESC’s “funding base” to determine its funding for that fiscal year.

### **State scholarship programs**

(R.C. 3310.08, 3310.41, 3310.51, 3310.54, 3310.56, and 3313.979)

- Requires the Department to compute and distribute scholarships under the Educational Choice Scholarship Pilot Program, the Autism Scholarship Program, and the Jon Peterson Special Needs Scholarship Program using state core foundation funding, rather than deducting the amounts of those scholarships from students’ districts of residence.

### **Subsidy for school bus purchases**

(R.C. 3317.071)

- For FY 2022 and for each fiscal year thereafter, requires the Department to implement a program to distribute bus purchasing grants of not less than \$45,000 to city, local, and exempted village school districts for the purpose of replacing the oldest and highest mileage buses in the state assigned to routes.
- Requires the Department to annually collect age, mileage, and vehicle condition data from districts through its transportation data collection system.

### **Transportation collaboration grants**

(R.C. 3317.072)

- Requires the Department of Education to award transportation collaboration grants of no more than \$10,000 each fiscal year to city, local, and exempted village school districts for efforts that lead to shared resource management, routing consolidation, regional collaboration, or other activities that have the potential to reduce transportation operating costs. Establishes the transportation collaboration fund to be used for this purpose.

### **Student transportation policy**

(R.C. 3327.01 and 3327.018)

- Requires school districts, ESCs, and private school transportation contractors to make a good faith effort to “deliver” students enrolled in preschool through twelfth grades to their respective public and nonpublic schools no sooner than 30 minutes prior to the beginning of school and to be available to pick them up no later than thirty minutes after the close of their respective schools each day.
- Authorizes a school district to contract, in writing, with a public or private not-for-profit agency, group, or organization, with a municipal corporation or other political subdivision or agency of the state, or with an agency of the federal government to assist the agency,

group, organization, or political subdivision in the fulfillment of its legitimate activities and in times of emergency, subject to the following conditions:

- These contracts must be entered into under the authority of the school district as a political subdivision;
- These contracts are not considered commerce;
- The buses must be operated by individuals holding certificates issued by either the ESC governing board that has entered into an agreement with the district or the district's superintendent that certify that the individuals satisfy specified requirements for bus drivers;
- All State Board of Education regulations governing the operation of school buses when transporting students apply when buses are used under this provision;
- Any district that makes one or more of its vehicles available under this provision must procure liability and property damage insurance covering all vehicle used and passengers transported; and
- The board of education may recover expenses from contracting entities, not to exceed the costs of operation and insurance coverage.

## Studies

(Sections 610.12 and 610.13, amending Sections 4, 5, 6, and 7 of S.B. 310 of the 133<sup>rd</sup> General Assembly)

- Makes the following changes regarding several education studies that must be submitted by December 31, 2022, under current law:
  - Adds to the existing study of economically disadvantaged students new requirements to (1) evaluate and determine the essential types and amounts of resources needed to provide economically disadvantaged students the emotional, social, and academic services necessary to ensure for success and (2) evaluate and revise the current definition of "economically disadvantaged student."

(Law not changed by the bill requires this study to review the criteria used in the current school funding formula to define "economically disadvantaged students" in order to determine the effectiveness of the criteria and research how other states define "economically disadvantaged students" and how those students are addressed in other states' school funding formulas.)

- Adds to the existing study of preschool education new requirements to include (1) the cost effectiveness of continuing the existing multiple provider system, (2) ways in which the existing system may be better coordinated and cost effective, and (3) alternative ways in which the state can supply high quality preschool, especially for economically disadvantaged students.

- (Law not changed by the bill requires this study to include a review of early childhood initiatives in Ohio and information regarding how other states support early learning opportunities for young children.)
- Changes the existing study of incentives for rural districts serving identified gifted children as follows:
    - ❖ Requires development of recommendations for such a program for school districts in all areas where minority and economically disadvantaged students are underrepresented in gifted identification and performance;
    - ❖ Requires the recommendations to be for an incentive program for the applicable school districts to identify and provide services to students identified as gifted (rather than an incentive program for districts in rural areas of the state that provide services to students identified as gifted as under current law); and
    - ❖ Requires the study's findings to include recommendations for funding and staffing needs, professional development, parental education, and use of community resources.
  - Adds the newly created School Funding Oversight Commission (see below) to the list of recipients of all of the following studies:
    - ❖ The studies of economically disadvantaged students, preschool education, special education, gifted services, incentives for rural districts serving identified gifted children, ESCs, English learners, the cost to educate e-school students, and the cost to operate community schools that must be submitted by the Department;
    - ❖ The inventory of all state budget line items that, in the Office of Budget and Management's (OBM's) determination, provide funding services to children that must be submitted by OBM; and
    - ❖ The study of the transportation of community school and nonpublic school students and to determine methods to create greater efficiency and minimize costs in transporting those students that must be submitted by a joint legislative task force established under current law.

(Under continuing law, the Department's and OBM's studies also must be submitted to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House, and the members of the standing committees of the Senate and House that consider legislation regarding primary and secondary education. The task force must submit its study to the Senate President and the Speaker.)

### **School Funding Oversight Commission**

(R.C. 3317.60)

- Creates the School Funding Oversight Commission to do all of the following:
  - Evaluate and analyze the manner in which the funding requirements of the bill are being implemented and make recommendations to the General Assembly to ensure

- that, if at all possible, the funding priorities specified in the bill are implemented as directed and that all other provisions are funded as equitably and evenly as possible as additional funding becomes available;
- Analyze and make recommendations to the General Assembly regarding any appropriate adjustments to the provisions of the bill for inflation, technology developments, changes in instructional methodology, or the use of databases;
  - Review and analyze the findings or implications of any of the studies described above, as those studies become available, or any other school funding studies authorized in related legislation and make appropriate recommendations to the General Assembly;
  - Upon the implementation of the provisions of the bill, assess the impact of its calculations and other basic concepts and make recommendations to the General Assembly regarding appropriate modifications to those calculations and other basic concepts; and
  - Generally monitor the implementation of the provisions of the bill to ensure that they are implemented in a timely and effective manner that is consistent with the intent of the General Assembly at the time those provisions were enacted and make recommendations to the General Assembly regarding its implementation.
- Specifies that the Commission consist of the following members:
- Two members of the House, one from each party, appointed by the Speaker, and two members of the Senate, one from each party, appointed by the President;
  - Three school district superintendents, appointed by the state Superintendent with advice from those statewide organizations that represent school district superintendents, and three school district treasurers, appointed by the state Superintendent with advice from those statewide organizations that represent school district treasurers (the state Superintendent must attempt to ensure that these superintendents and treasurers represent a combination of urban, suburban, and rural school districts and a combination of school districts with different per-pupil local capacity amounts as calculated under the bill's provisions);
  - Three parents, not more than two of whom may be from the same political party, appointed by the Governor (the Governor must attempt to ensure that the parents appointed are a combination of parents of students who are enrolled in, will enroll in, or were enrolled in public schools);
  - Three teachers appointed by the state Superintendent (the state Superintendent must attempt to ensure that these superintendents and treasurers represent a combination of urban, suburban, and rural school districts and a combination of school districts with different per-pupil local capacity amounts as calculated under the bill's provisions); and
  - Three school board members appointed by the state Superintendent (the state Superintendent must attempt to ensure that these superintendents and treasurers represent a combination of urban, suburban, and rural school districts and a

combination of school districts with different per-pupil local capacity amounts as calculated under the bill's provisions).

- Specifies that not more than one of the members of the Commission (other than the legislative members) may represent the same school district.
- Requires the members of the Commission to be appointed prior to the Commission's first meeting.
- Specifies that half of the members appointed under each of the categories described above must be appointed for two-year terms and the other half must be appointed for four-year terms, and specifies that all members subsequently appointed must be appointed for four-year terms.
- Specifies that no member is eligible for reappointment except for those members appointed to initial two-year terms.
- Requires the Superintendent of Public Instruction, no more than one year after the bill's effective date, to call the first meeting of the Commission.
- Requires the members of the Commission to select a chair and vice-chair at the Commission's first meeting.
- Requires the Commission to meet at least once every six months at the call of the chair.

### **Gifted reporting requirements**

(R.C. 3324.05 and 3324.09)

- Requires the Department's annual report of each district's expenditures of gifted funding to also include the amount of gifted funding received by each district.
- Requires each district to submit, as part of its annual report to the Department regarding the identification of gifted students that is required under current law, the number of students receiving gifted services in each category of gifted students.
- Requires the Department to publish, by October 31 of each year, both of the following using the data submitted by school districts under the Education Management Information System (EMIS):
  - Services offered by districts to students identified as gifted in each of the following grade bands: kindergarten through third grade, fourth through eighth grade, and ninth through twelfth grade; and
  - The number of licensed gifted intervention specialists and coordinators employed or contracted by each district.
- Requires the Department to audit each district's gifted service numbers in the same manner that it audits each district's gifted identification numbers under current law.
- Requires (rather than permits as under current law) the Department to reduce a district's foundation funding if the district is not in compliance with existing requirements

regarding identification of gifted students (including the reporting requirement described above) and the bill's reporting requirement regarding the provision of services to gifted students.

## **Repeal of student wellness and success funds**

(Repealed R.C. 3314.088, 3317.0219, 3317.163, 3317.26, and 3326.42)

- Repeals the requirement for the Department to pay student wellness and success funds and enhancement funds to school districts, community schools, and STEM schools and the spending requirements for those funds (but applies similar spending requirements to disadvantaged pupil impact aid).

## **Payment for districts with decreases in utility TPP value**

(Section 265.237)

The act requires the Department to make a payment, for FY 2022 and FY 2023, to each city, local, exempted village, or joint vocational school district with more than a 10% decrease in the taxable value of utility tangible personal property (TPP) that has at least one power plant located within its territory. To qualify for the FY 2022 payment, a district must have experienced this decrease between tax years 2017 and 2021 or tax years 2020 and 2021. To qualify for the FY 2023 payment, a district must have experienced this decrease between tax years 2017 and 2022 or tax years 2021 and 2022.

### **Eligibility determination**

The Tax Commissioner must determine which districts are eligible for this payment no later than May 15, 2022 (for the FY 2022 payment) or May 15, 2023 (for the FY 2023 payment). For each eligible district, the Commissioner must certify the following information to the Department:

1. If the district is eligible for the FY 2022 payment, its total taxable value for tax year 2021 and the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2021; and
2. If the district is eligible for the FY 2023 payment, its total taxable value for tax year 2022 and the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2022; and
3. If the district is eligible for either payment, the taxable value of the utility TPP decrease and the change in taxes charged and payable on the change in taxable value.

### **Payment amount**

The act requires the Department, for purposes of computing the payment, to replace the three-year average valuations used in computing a district's state education aid for FY 2019 with the district's total taxable value for tax year 2021 (for the FY 2022 payment) or tax year 2022 (for the FY 2023 payment). It then must recompute the state education aid for FY 2019 without applying any funding limitations enacted by the General Assembly.

The amount of a district's payment is equal to the *greater* of 1 or 2 as described below:

1. The lesser of either:

a. The positive difference between the district's state education aid for FY 2019 prior to the recomputation and the district's recomputed state education aid for FY 2019; or

b. The absolute value of the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2021 (for the FY 2022 payment) or for tax years 2017 and 2022 (for the FY 2023 payment).

2. 0.50 times the absolute value of the change in taxes charged and payable on the district's total taxable value for tax years 2017 and 2021 (for the FY 2022 payment) or for tax years 2017 and 2022 (for the FY 2023 payment).

### **Payment deadline**

The Department must make FY 2022 payments between June 1 and June 30, 2022, and must make FY 2023 payments between June 1 and June 30, 2023.

### **Payment for districts with nuclear plants in territory – repealed**

(R.C. 3317.029, repealed)

The bill repeals the requirement that the Department, for each of FYs 2019, 2020, and 2021, make an additional payment to a city, local, or exempted village school district with (1) a nuclear power plant in its territory and (2) a total taxable value of public utility personal property for tax year 2017 that is at least 50% less than that value for tax year 2016.

### **Recommendations for compensating valuation losses – repealed**

(R.C. 3317.27, repealed)

The bill eliminates the requirement that the Department annually 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.

### **Auxiliary Services funds**

(R.C. 3317.024; Section 265.170)

The bill permits all chartered nonpublic schools, instead of only nonreligious affiliated schools as under current law, to choose whether to (1) receive Auxiliary Services funds directly from the Department or (2) receive those funds through the school districts in which they are located. For any year in which a religious chartered nonpublic school chooses direct payment, the bill requires submission of an affidavit to the Department certifying that funds will be spent in a lawful manner and for a permissible purpose under continuing law.

Currently, a chartered nonpublic school that is not religiously affiliated must notify the Department by April 1 of each odd-numbered year to receive Auxiliary Services funding directly for the biennium that begins the following July 1. However, the bill temporarily permits any chartered nonpublic school (regardless of religious affiliation) to choose direct payment for the

2021-2022 and 2022-2023 school years by notifying the Department by July 31, 2021, rather than April 1.

Auxiliary Services funds are used to purchase goods and services for students who attend chartered nonpublic schools, such as textbooks, digital texts, workbooks, instructional equipment, library materials, or tutoring and other special services.<sup>36</sup>

## **II. Graduation requirements and assessments**

### **High school graduation requirements**

(R.C. 3313.61, 3313.618, 3313.619, 3313.6113, and 3313.6114; conforming in R.C. 3301.0714)

The bill makes a series of changes to the high school graduations requirements that a student who entered ninth grade for the first time on or after July 1, 2019 (the Classes of 2023 and on) generally must meet to qualify for a high school diploma.

#### **Background**

In addition to meeting the state's minimum curriculum requirements, continuing law generally requires these students to demonstrate competency in math and English language arts and earn at least two diploma seals to qualify for a high school diploma.

Continuing law also permits students who entered ninth grade for the first time on or after July 1, 2014, but prior to July 1, 2019, (the Classes of 2018 through 2022) to meet those requirements to qualify for a high school diploma.

A student must demonstrate competency by attaining a "competency score" on each of the Algebra I and English Language Arts II end-of-course exams. However, if a student does not attain a competency score on one or both of those exams after two administrations of them, the student may use an alternative demonstration of competency. There are several alternative demonstrations of competency: (1) earning credit through the College Credit Plus Program in the failed subject area, (2) providing evidence of military enlistment, or (3) completing one "foundational" option and either another "foundational" option or a "supporting" option.

Continuing law prescribes a system of 12 diploma seals for which a student may qualify. There are two categories of diploma seals: state-defined diploma seals and locally defined diploma seals. Both types of diploma seals have requirements prescribed in statute, but a state actor, usually the Department, is often involved in implementing the requirements for state-defined seals, while the requirements for locally defined seals are solely implemented by the student's school. There are nine state-defined seals and three locally defined seals; a district or school must adopt guidelines for at least one locally defined seal. A student must earn at least two diploma seals, and at least one of them must be a state-defined seal.<sup>37</sup>

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<sup>36</sup> See R.C. 3317.06 and 3317.062, neither in bill.

<sup>37</sup> For more information, the Department of Education's guidance about graduation requirements is available [here](#).

## **Industry-recognized credentials**

The bill requires the Superintendent of Public Instruction's industry-recognized credentials and licenses committee to assign a point value for each credential and establish the total number of points that a student must earn to satisfy certain high school graduation criteria prescribed under continuing law. Specifically, the bill requires a student to earn the total number of points to qualify for an industry-recognized credential diploma seal or to use industry-recognized credentials as a "foundational" option when using an alternative demonstration of competency. Current law specifies only that a student must earn an industry-recognized credential for either of those purposes.

In addition, the bill requires the Department, when calculating the number of students who earned an industry-recognized credential in the state report card's Prepared for Success Component, to include only students who earned a credential, or group of credentials, at least equal to that total number of points.

## **State-issued licenses**

The bill permits students who obtain a state-issued license for practice in a vocation that requires an exam to use that license to qualify for an industry-recognized credential diploma seal or as a "foundational" option when using an alternative demonstration of competency. Under current law, the only way a student may qualify for an industry-recognized credential diploma seal is by earning an industry-recognized credential.

## **Chartered nonpublic schools**

The bill changes how students enrolled in chartered nonpublic schools that do not administer the end-of-course exams meet the requirements to demonstrate competency and earn diploma seals. First, it specifies that students who are enrolled in chartered nonpublic schools that administer only the nationally standardized assessment (ACT or SAT) must be considered to have demonstrated competency if they score a remediation-free score on that assessment. If so, they are exempt from having to take the Algebra I or English Language Arts II end-of-course exams.

Similarly, students enrolled in chartered nonpublic schools that administer only an alternative assessment approved by the Department are exempt from demonstrating competency or earning diploma seals. However, the bill clarifies that those students are exempt only from the assessment requirements.

In addition to those changes, the bill also generally requires chartered nonpublic schools to offer remedial support to any student who fails to attain a competency score on one or both of the Algebra I or English Language Arts II end-of-course exams. Public schools already have to offer such support.

## **Transfer students and graduation requirements**

The bill addresses how transfer students must comply with the state's high school graduation requirements in several ways. It addresses two types of transfer students:

1. Students who transfer between public and chartered nonpublic schools; and

2. Students who transfer into a public or chartered nonpublic school after, in the prior school year, being homeschooled, attending an out-of-state school, or attending a nonchartered, nonpublic school in Ohio.

### **Students who transfer between public and chartered nonpublic schools**

The bill changes how public and chartered nonpublic schools must address any progress a transfer student made toward completing a locally defined diploma seal at the student's prior public or chartered nonpublic school. It requires a student's new school to recognize a locally defined diploma seal that the student earned at the prior school, regardless of whether the new school has adopted guidelines for that diploma seal. In addition, it requires each school to include in its adopted guidelines for a locally defined seal a method to give, to the extent feasible, a proportional amount of credit for any progress a student made toward earning that diploma seal at the student's prior school.

### **Students who transfer into public and chartered nonpublic schools**

The bill generally requires transfer students who, in the prior school year, were homeschooled or attended an out-of-state or nonchartered, nonpublic school to generally comply with continuing law's requirements to demonstrate competency and earn diploma seals. However, the bill exempts such students who transfer in 12<sup>th</sup> grade and fail to attain a competency score on the Algebra I or English language arts II end-of-course exam from having to retake that exam prior to using an alternative demonstration of competency.

For diploma seals, the bill permits such students to use a final course grade equivalent to a "B" or higher in courses completed prior to enrolling in their new school to meet diploma seal requirements, as follows:

1. A student may use a grade from courses that correspond to the American history and American government end-of-course exams to earn a Citizenship diploma seal;
2. A student may use a grade from a course that corresponds to the science end-of-course exam to earn a science diploma seal; and
3. A student may use a grade in an "appropriate" course, as determined by the student's new school, to earn the Technology diploma seal.

It also prohibits those students from using a grade for an American history, American government, or science course complete prior to enrolling in their new school if, subsequent to that enrollment, those students take a course associated with the American history, American government, or science end-of-course exam.

## **Other demonstration of competency changes**

### **Exemption for certain students with IEPs**

The bill exempts a student with a disability who has an individualized education program (IEP) from demonstrating competency in math and English language arts if the student's IEP expressly exempts the student from that requirement and the student satisfies certain conditions regarding state testing.

Specifically, the student must take the Algebra I and English language arts II end-of-course exams or, if the student qualifies for alternate assessments, the alternate assessments in math and English language arts. If the student does not attain a competency score on an end-of-course exam or a score established by the State Board of Education on the alternate assessment, the student must be offered and receive remedial support from the student's district or school and retake the exam or assessment. If the student still does not attain a competency score or an established score, the student is then exempt from the requirement to demonstrate competency.

### **ACT or SAT score as alternative demonstration of competency**

The bill specifies that a student may use a remediation-free score on a nationally standardized assessment (ACT or SAT) as an alternative demonstration of competency in a subject area in which a student did not attain a competency score. For English language arts, the student must be remediation-free on both English and reading on the assessment.

### **“Foundational” options**

The bill requires a student to earn *cumulative* score of proficient or higher on three or more state technical assessments in order to use those assessments as a “foundational” option when using alternative demonstrations of competency. Under current law, a student must earn a score of proficient or higher on three state technical assessments.

In addition, the bill clarifies that an apprenticeship used as a “foundational” option must be registered with the Ohio State Apprenticeship Council. It further clarifies that a pre-apprenticeship used as a “foundational” option must align with standards established by the Departments of Education and Job and Family Services, in consultation with the Governor's Office of Workforce Transformation, under continuing law.

## **Diploma seal requirement changes**

### **Citizenship diploma seal**

The bill expands the ways in which a student may earn a Citizenship diploma seal in two ways. First, it permits any student to earn that diploma seal by attaining a final course grade of a “B” or higher in an American history and American government course offered by the student's high school. In addition, the bill qualifies a student with significant cognitive disabilities for that diploma seal if that student attains a score established by the State Board on the alternate assessment in social studies.

Under current law, a student may only qualify for the Citizenship diploma seal by attaining:

1. A score of proficient or higher on both the American history and American government end-of-course exams;
2. A score equivalent to a proficient on appropriate advanced placement (AP) or international baccalaureate (IB) exams; or
3. A final course grade of a “B” or higher in appropriate CCP courses.

## **Science diploma seal**

The bill expands the ways in which a student may qualify for a science diploma seal. Under the bill, a student with significant cognitive disabilities may earn it by attaining a score set by the State Board on the alternate assessment in science. In addition, the bill permits any student to earn the seal by attaining a final course grade equivalent of a “B” or higher in a prescribed science course offered by the student’s high school. Specifically, a student may complete:

1. A chemistry, physics, or other physical science course;
2. An advanced biology or other life science course; or
3. An astronomy, physical geology, or other earth or space science course.

Under current law, a student may only qualify for the science diploma seal by attaining a score of proficient or higher on the science end-of-course exam, a score equivalent to a proficient on an appropriate AP or IB exam, or a final course grade of a “B” or higher in an appropriate CCP course.

## **Nationally standardized college admission assessments**

(R.C. 3301.0712)

Beginning with students who enter the 9<sup>th</sup> grade for the first time in the next school year that starts immediately after the provision’s effective date (i.e., the class of 2026), the bill permits the parent or guardian of a student to choose not to have a nationally standardized assessment administered to that student. In that case, the student’s school district, other public school, or chartered nonpublic school must not administer that assessment to that student.

A nationally standardized assessment, as jointly selected by the Superintendent of Public Instruction and the Chancellor of Higher Education under continuing law, is either the ACT or SAT. Under current law, each district or school must administer a nationally standardized assessment to all 11<sup>th</sup> grade students in the spring of each school year.

## **Dyslexia diagnostic assessments**

(R.C. 3301.079 and 3313.608)

Except for the kindergarten readiness assessment, the bill requires that the diagnostic assessments for grades K-3 in reading and comparable reading skill assessment tools for the Third Grade Reading Guarantee include items related to dyslexia identification. Those assessments and comparable tools must include a sufficient number of items to test phonological awareness, phonemic awareness, rapid naming skills, nonsense word fluency, and correspondence between sounds and letters to identify students who may need further measures to determine if the student has dyslexia.

The bill additionally requires the test vendors to share student performance data on comparable tools related to dyslexia as described above with each district and community, STEM, and chartered nonpublic school and the Department.

Finally, it specifies that any diagnostic assessment adopted by the State Board or any comparable reading tool approved by the Department, as described above, may be used to meet

the current law requirement to administer a tier one dyslexia screening. Beginning in the 2022-2023 school year school districts and other public schools are required to administer annual dyslexia screenings.<sup>38</sup>

## **Kindergarten Readiness and reading skills assessments**

(R.C. 3301.0715 and 3313.608)

The bill adjusts the period of time in which a school must administer the Kindergarten Readiness Assessment and the kindergarten reading skills assessment (for the Third Grade Reading Guarantee), from the first day of the school year (July 1) through November 1 as under current law, to July 1 through the 20<sup>th</sup> day of instruction of the school year.

## **III. Educator licensure**

### **Disciplinary actions for educators**

(R.C. 2953.25, 3314.101, 3319.221, 3319.31, 3319.311, 3319.313, 3319.319, 3319.39, 3319.40, 3326.081, 3328.18, 4117.103, and 5153.176; Section 803.10)

#### **Effect on H.B. 263**

The bill eliminates a prohibition against the State Board refusing to issue an educator license because of a criminal record unless the refusal is in accordance with the limits and requirements that were recently enacted by H.B. 263 of the 133<sup>rd</sup> General Assembly, which apply to all licensing agencies and take effect October 9, 2021. Instead, it maintains and amends a procedure for determining licensure eligibility that is specific to teachers and school employees. With respect to issuing an initial license, the State Board must determine whether to issue an initial license to an applicant by following the requirements set forth in H.B. 263, except as described below.

The bill also specifies that its amendments to teacher licensure disciplinary actions are remedial in nature and apply to any proceeding, investigation, or citation involving an applicant for an initial license, that, as of the bill's effective date, has not reached final disposition, including all available appeals.<sup>39</sup>

#### **Automatic revocation or denial of license**

The State Board is required under current law to revoke an individual's educator license or deny issuance or renewal of a license, without an administrative hearing, if the individual has pled guilty to, been found guilty of, or been convicted of specified criminal offenses.

The bill broadens this provision by specifying that both of the following also are grounds for automatic license revocation or denial:

1. A judicial finding of eligibility for intervention in lieu of conviction for any of the criminal offenses already listed in current law. (Under current law, the State Board is permitted, but not

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<sup>38</sup> R.C. 3323.251, not in the bill.

<sup>39</sup> See R.C. 9.78, not in the bill.

required, to deny, limit, suspend, or revoke a license for a judicial finding of eligibility in lieu of conviction for those offenses.)

2. A plea of guilty to, a finding of guilt, or a conviction of, or a judicial finding of eligibility for intervention in lieu of conviction for *conspiracy to commit, attempt to commit, or complicity in committing* any of the criminal offenses listed under current law or under the bill's provisions.

The criminal offenses listed in current law and the criminal offenses specified in the bill's provisions are listed in the table below (see "**Comparison of criminal offenses**").

### **Collateral sanctions for certain criminal offenses**

The bill prohibits a court, when issuing a certificate of qualification for employment, from granting an individual relief from "collateral sanctions" for a licensure action by the State Board for a violation of criminal offenses specified in the bill. In other words, a certificate of qualification for employment cannot exempt an individual from the disciplinary consequences for teacher licensure of a conviction, guilty plea, or finding of guilt or a judicial finding of eligibility for intervention in lieu of conviction for those specified offenses.

A "collateral sanction" is a penalty, disability, or disadvantage that is related to employment or occupational licensing as a result of the individual's conviction of or plea of guilty to an offense. A certificate of qualification for employment is a document that provides relief from certain bars on employment or occupational licensing for an individual who has been released from incarceration and all supervision for a specified period of time.

The bill's list of criminal offenses for which an individual cannot be granted relief from collateral sanctions on a certificate of qualification for employment is a subset of those criminal offenses that are grounds for automatic revocation or denial of a license. These offenses are listed in the table below (see "**Comparison of criminal offenses**").

### **Comparison of criminal offenses**

The following table compares the specific criminal offenses listed in current law and the bill that result in automatic revocation or denial of licenses and the specific criminal offenses listed in the bill for which an individual cannot be granted relief from collateral sanctions on a certificate of qualification for employment.

	Criminal offenses for which a guilty plea, finding of guilt, conviction (under current law), or judicial finding of eligibility for intervention in lieu of conviction (under the bill) results in automatic revocation or denial of license <sup>40</sup>	Criminal offenses for which an individual cannot be granted relief from collateral sanctions on a certificate of qualification for employment <sup>41</sup>
Endangering children through abuse, torture, or cruelty (R.C. 2919.22(B)(1) or (2))	✓	✓
Endangering children through corporal or other punishment that is excessive and creates substantial risk of serious physical harm (R.C. 2919.22(B)(3))	✓	✓
Endangering children through repeated, unwarranted discipline that poses substantial risk of seriously impairing the child's mental health or development (R.C. 2919.22(B)(4))	✓	✓
Aggravated murder (R.C. 2903.01)	✓	✓
Murder (R.C. 2903.02)	✓	✓
Voluntary manslaughter (R.C. 2903.03)	✓	✓
Involuntary manslaughter (R.C. 2903.04)	✓	✓
Reckless homicide (R.C. 2903.041)	✓	

<sup>40</sup> R.C. 3319.31(C)(1).

<sup>41</sup> R.C. 2953.25(C)(5)(h).

	Criminal offenses for which a guilty plea, finding of guilt, conviction (under current law), or judicial finding of eligibility for intervention in lieu of conviction (under the bill) results in automatic revocation or denial of license <sup>40</sup>	Criminal offenses for which an individual cannot be granted relief from collateral sanctions on a certificate of qualification for employment <sup>41</sup>
Felonious assault (R.C. 2903.11)	✓	✓
Aggravated assault (R.C. 2903.12)	✓	✓
Permitting child abuse (R.C. 2903.15)	✓	✓
Kidnapping (R.C. 2905.01)	✓	✓
Abduction (R.C. 2905.02)	✓	✓
Child stealing before July 1, 1996 (former R.C. 2905.04)	✓	✓
Criminal child enticement (R.C. 2905.05)	✓	✓
Extortion (R.C. 2905.11)	✓	
Trafficking in persons (R.C. 2905.32) <b>(added by the bill for both licensure actions and collateral sanctions employment certificates)</b>	✓	✓
Rape (R.C. 2907.02)	✓	✓
Sexual battery (R.C. 2907.03)	✓	✓
Unlawful sexual conduct with a minor (R.C. 2907.04)	✓	✓
Gross sexual imposition (R.C. 2907.05)	✓	✓
Sexual imposition (R.C. 2907.06)	✓	✓
Importuning (R.C. 2907.07)	✓	✓

	Criminal offenses for which a guilty plea, finding of guilt, conviction (under current law), or judicial finding of eligibility for intervention in lieu of conviction (under the bill) results in automatic revocation or denial of license <sup>40</sup>	Criminal offenses for which an individual cannot be granted relief from collateral sanctions on a certificate of qualification for employment <sup>41</sup>
Felonious sexual penetration in violation of former R.C. 2907.12	✓	✓
Compelling prostitution (R.C. 2907.21)	✓	✓
Promoting prostitution (R.C. 2907.22)	✓	✓
Procuring (R.C. 2907.23)	✓	
Soliciting (R.C. 2907.24)	✓	
Loitering to engage in solicitation (R.C. 2907.241)	✓	
Prostitution (R.C. 2907.25)	✓	
Disseminating matter harmful to juveniles (R.C. 2907.31)	✓	✓
Displaying matter harmful to juveniles (R.C. 2907.311)	✓	✓
Pandering obscenity (R.C. 2907.32)	✓	✓
Pandering obscenity involving a minor (R.C. 2907.321)	✓	✓
Pandering sexually oriented matter involving a minor (R.C. 2907.322)	✓	✓

	Criminal offenses for which a guilty plea, finding of guilt, conviction (under current law), or judicial finding of eligibility for intervention in lieu of conviction (under the bill) results in automatic revocation or denial of license <sup>40</sup>	Criminal offenses for which an individual cannot be granted relief from collateral sanctions on a certificate of qualification for employment <sup>41</sup>
Illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323)	✓	✓
Deception to obtain matter harmful to juveniles (R.C. 2907.33)	✓	✓
Compelling acceptance of objectionable materials (R.C. 2907.34)	✓	✓
Aggravated arson (R.C. 2909.02)	✓	✓
Soliciting or providing support for an act of terrorism (R.C. 2909.22)	✓	✓
Making a terroristic threat (R.C. 2909.23)	✓	✓
Terrorism (R.C. 2909.24)	✓	✓
Aggravated robbery (R.C. 2911.01)	✓	✓
Robbery (R.C. 2911.02)	✓	
Aggravated burglary (R.C. 2911.11)	✓	✓
Burglary (R.C. 2911.12)	✓	
Personating an officer (R.C. 2913.44)	✓	
Inciting to violence (R.C. 2917.01)	✓	

	Criminal offenses for which a guilty plea, finding of guilt, conviction (under current law), or judicial finding of eligibility for intervention in lieu of conviction (under the bill) results in automatic revocation or denial of license <sup>40</sup>	Criminal offenses for which an individual cannot be granted relief from collateral sanctions on a certificate of qualification for employment <sup>41</sup>
Aggravated riot (R.C. 2917.02)	✓	
Riot (R.C. 2917.03)	✓	
Inducing panic (R.C. 2917.31)	✓	
Unlawful possession or use of a hoax weapon of mass destruction (R.C. 2917.33)	✓	
Unlawful abortion (R.C. 2919.12)	✓	
Unlawful abortion upon a minor (R.C. 2919.121)	✓	
Abortion manslaughter (R.C. 2919.13)	✓	
Interference with custody that would have been child stealing had it occurred before July 1, 1996 (R.C. 2919.23)	✓	✓
Bribery (R.C. 2921.02)	✓	✓
Intimidation (R.C. 2921.03)	✓	✓
Intimidation of attorney, victim, or witness in a criminal case (R.C. 2921.04)	✓	✓
Retaliation (R.C. 2921.05)	✓	
Perjury (R.C. 2921.11)	✓	
Escape (R.C. 2921.34)	✓	

	Criminal offenses for which a guilty plea, finding of guilt, conviction (under current law), or judicial finding of eligibility for intervention in lieu of conviction (under the bill) results in automatic revocation or denial of license <sup>40</sup>	Criminal offenses for which an individual cannot be granted relief from collateral sanctions on a certificate of qualification for employment <sup>41</sup>
Theft in office (R.C. 2921.41)	✓	✓
Illegal conveyance or possession of a deadly weapon, dangerous ordnance, or object indistinguishable from a firearm in a school safety zone (R.C. 2923.122)	✓	
Illegal conveyance or possession of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123)	✓	
Improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function (R.C. 2923.161)	✓	
Unlawful possession of dangerous ordnance or illegally manufacturing or processing explosives (R.C. 2923.17)	✓	
Improperly furnishing firearms to a minor (R.C. 2923.21)	✓	✓

	Criminal offenses for which a guilty plea, finding of guilt, conviction (under current law), or judicial finding of eligibility for intervention in lieu of conviction (under the bill) results in automatic revocation or denial of license <sup>40</sup>	Criminal offenses for which an individual cannot be granted relief from collateral sanctions on a certificate of qualification for employment <sup>41</sup>
Corrupting another with drugs (R.C. 2925.02)	✓	✓
Aggravated trafficking or trafficking in drugs, including marihuana (R.C. 2925.03)	✓	
Illegal manufacture of drugs or illegal cultivate of marihuana (R.C. 2925.04)	✓	
Illegal assembly or possession of chemicals for the manufacture of drugs (R.C. 2925.041)	✓	
Aggravated funding of drug trafficking, funding of drug trafficking, and funding of marihuana trafficking (R.C. 2925.05)	✓	
Illegal administration or distribution of anabolic steroids (R.C. 2925.06)	✓	
Permitting drug abuse (R.C. 2925.13)	✓	
Deception to obtain a dangerous drug (R.C. 2925.22)	✓	
Illegal processing of drug documents (R.C. 2925.23)	✓	
Tampering with drugs (R.C. 2925.24)	✓	

	Criminal offenses for which a guilty plea, finding of guilt, conviction (under current law), or judicial finding of eligibility for intervention in lieu of conviction (under the bill) results in automatic revocation or denial of license <sup>40</sup>	Criminal offenses for which an individual cannot be granted relief from collateral sanctions on a certificate of qualification for employment <sup>41</sup>
Trafficking in harmful intoxicants or improperly dispensing or distributing nitrous oxide (R.C. 2925.32)	✓	
Illegal dispensing of drug samples (R.C. 2925.36)	✓	
Possession of counterfeit controlled substances, aggravated trafficking or trafficking in counterfeit controlled substances, promoting and encouraging drug abuse, and fraudulent drug advertising (R.C. 2925.37)	✓	
Contaminating a substance for human consumption or use or contamination with a hazardous chemical, biological, or radioactive substance; spreading a false report of contamination (R.C. 2927.24)	✓	
Placing a harmful or hazardous object or substance in a food or confection, or furnishing to a person a food or confection so adulterated (R.C. 3716.11)	✓	

	Criminal offenses for which a guilty plea, finding of guilt, conviction (under current law), or judicial finding of eligibility for intervention in lieu of conviction (under the bill) results in automatic revocation or denial of license <sup>40</sup>	Criminal offenses for which an individual cannot be granted relief from collateral sanctions on a certificate of qualification for employment <sup>41</sup>
Violation of an ordinance of a municipal corporation that is substantively comparable to an offense listed above	✓	✓

### Discretionary disciplinary action

The bill permits the State Board to deny, suspend, revoke, or limit a license if the applicant engages in an immoral act, incompetence, negligence, or conduct that is unbecoming to the “teaching profession” (rather than to the applicant’s “position” as under current law). It further specifies that the State Board does not need to consider whether there is a connection between the immoral act, incompetence, negligence, or conduct and the individual’s ability to perform the duties associated with the license or position.

The bill also specifies that a judicial finding of eligibility for intervention in lieu of conviction for any of the offenses that are *not* grounds for automatic license revocation or denial of licenses may be a reason for the State Board to deny, suspend, revoke, or limit a license. Under current law, the State Board is permitted, but not required, to deny, limit, suspend, or revoke a license for a judicial finding of eligibility for intervention in lieu of conviction for all criminal offenses.

Current law, not changed by the bill but subject to H.B. 263 of the 133<sup>rd</sup> General Assembly (see above) also permits the State Board to deny, limit, suspend, or revoke a license for (1) a felony, offense of violence, or theft offense that are not grounds for automatic revocation or denial of a license, (2) a drug abuse offense that is not a minor misdemeanor and is not grounds for automatic revocation or denial of a license, (3) a violation of an ordinance of a municipal corporation that is substantively comparable to these offenses, and (4) failure to comply with provisions of law regarding school management plans<sup>42</sup> and required reporting<sup>43</sup> of employee misconduct.

<sup>42</sup> R.C. 3313.536, not in the bill.

<sup>43</sup> See also R.C. 3314.40, 3326.24, 3328.19, and 5126.253, none in the bill.

## **Inactivation of licenses**

Under current law, upon the arrest, summons, or indictment of a school employee for an alleged violation of specified offenses, the employee must be suspended from all duties that require the care, custody, or control of a child. This requirement applies to all licensed and nonlicensed employees of school districts, educational service centers, community schools, STEM schools, college-preparatory boarding schools, and chartered nonpublic schools. In the case of a licensed employee, the arrest, summons, or indictment and suspension must be reported promptly to the Department. The suspension must continue through the conclusion of the criminal action against the employee.

The bill requires the Superintendent of Public Instruction, on behalf of the State Board, to inactivate the license of a school employee who is suspended as described above. The inactivation must remain in force during the pendency of the criminal action against the person. The bill specifies that (1) the inactivation does not constitute a suspension or revocation of the license by the State Board and (2) the state Superintendent need not provide the person with an opportunity for a hearing with respect to the inactivation. If the State Board does not revoke the license, the state Superintendent must reactivate the license upon conclusion of the criminal action against the person.

## **Investigations for purposes of disciplinary actions**

The State Board is authorized under current law to investigate any information received about an individual that reasonably appears to be a basis for disciplinary action. It is not required to conduct an investigation regarding the automatic revocation or denial of a license.

The bill removes a requirement that the State Board contract with the Attorney General to conduct these investigations. It also removes a requirement that information received under an investigation about a person against whom no action was taken must be expunged within two years of the completion of the investigation.

## **Release of information obtained during an investigation**

The bill permits the appointing or hiring officer of a school district or school located in Ohio or another state to request that the Department provide any report of misconduct that the Department has received regarding an individual whom the district or school is considering for employment. Upon receiving a request, the Department must provide the contents of any report of misconduct it has received to the requesting officer and must notify the officer that the information provided is confidential and may not be disseminated to another person or entity.

If the Department provides the contents of a report under this provision, the Department must document the information provided in the record of any investigation undertaken based on the report. The documentation must include a list of the information provided, the date the information was provided, and the name and contact information of the appointing or hiring officer to whom it was provided.

## **Registration in lieu of State Board licenses**

Currently, unlicensed teachers are permitted to teach in certain high-performing school districts so long as they register with the Department.<sup>44</sup> In addition, recently enacted law, which took effect April 12, 2021, eliminated a requirement that certain health care professionals who are licensed by other state licensing boards also hold a separate license from the State Board of Education in order to work in schools, and instead requires them simply to register with the Department. This registration in lieu of a separate license applies to school speech language pathologists, audiologists, school nurses, physical therapists, occupational therapists, and social workers who are licensed by their respective professional boards.<sup>45</sup>

The bill subjects those registrants to the same disciplinary actions as licensed teachers. Thus, the State Board may refuse to register an unlicensed teacher, limit the registration upon issuing it, or suspend, revoke, or limit it for the same reasons that the State Board may take those actions against a licensed teacher. Similarly, the State Board may conduct any investigations regarding an unlicensed teacher's registration.

## **Assisting individuals in obtaining school employment**

(R.C. 3319.318, 3314.03, 3326.11, and 3328.24)

The bill prohibits a "school representative" from knowingly engaging in any activity intended to assist another individual in obtaining school employment to teach school age children, if the representative knows or has reasonable cause to believe that the individual has committed a sex offense involving a student.

This prohibition does not apply if either:

1. The school representative is transmitting administrative and personnel files to the prospective employer; or
2. The information has been reported to law enforcement or the public children services agency and one of the following applies: (a) law enforcement has determined there is insufficient information to indict the individual for the alleged offense, (b) the individual has not been indicted within four years after the date of the report, or (c) the individual has been acquitted or otherwise exonerated of the offense.

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<sup>44</sup> R.C. 3302.151, not in the bill.

<sup>45</sup> R.C. 3319.221, as enacted by H.B. 442 of the 133<sup>rd</sup> General Assembly, effective April 12, 2021, not in the bill. Current law requires that, as a condition of registration, an individual have a criminal records check and be enrolled into the "rapback" program. The Retained Applicant Fingerprint Database (or rapback) is a database of fingerprints of individuals on whom Bureau of Criminal Identification and Investigation has conducted criminal records checks when determining eligibility for employment or licensure. Through it, an office like the Department will receive reports of subsequent arrests or convictions of registrants. (See also R.C. 109.5721, 3319.316, and 3319.391.)

## **Cheating on assessments**

(R.C. 3319.151 and 3319.99)

### **Prohibited actions**

Current law prohibits a person from revealing to any student any specific question that the person knows is part of a state achievement assessment or in any other way assisting a student to cheat on that assessment. If a person violates this provision, the person is guilty of a minor misdemeanor.

The bill prohibits a person from taking several other actions regarding state achievement assessments, but it does not establish any type of criminal penalty for violations of these additional provisions. The additional prohibited actions are:

1. Obtaining prior knowledge of the contents of a state achievement assessment;
2. Using prior knowledge of the content of a state achievement assessment to assist students in preparing for the assessment; and
3. Failing to comply with any rule adopted by the Department regarding security protocols for a state achievement assessment.

### **Consequences for teacher licensure and employment**

The bill requires the State Board, after conducting an investigation, to take any action (license suspension, revocation, or limitation) that it considers appropriate against the license of a school employee who takes any of the prohibited actions described above, based on the nature and extent of the violation. Current law, however, requires the State Board to suspend a school employee's license for one year for revealing test content.

The bill also specifies that the State Board must give the employee notice of an allegation regarding cheating on assessments *upon beginning an investigation* and an opportunity to respond *prior to taking any disciplinary action* (current law does not specify the timing by which these actions must occur).

Finally, the bill specifies that those actions regarding state achievement assessments that are prohibited by the bill, in addition to what is prohibited under current law, are grounds for termination of a teacher contract and for termination of a nonteaching employee.

## **Teach for America licenses**

(R.C. 3319.227)

The bill requires the state Superintendent, on behalf of the State Board, to inactivate a resident educator license issued to a participant in the Teach for American (TFA) Program if the participant resigns or is dismissed from TFA prior to completion of TFA's two-year support program. Currently, the State Board is required to revoke a TFA participant's resident educator license when the participant resigns or is dismissed. Additionally, the bill states that (1) the inactivation of a resident educator license issued to a TFA participant does not constitute a suspension or revocation of the license by the State Board and (2) the State Board and the state

Superintendent need not provide the person with an opportunity for a hearing with respect to the inactivation.

## **Employment of contractors**

(R.C. 3319.0812, 3314.03, 3326.11, and 3328.24)

The bill requires that any contractor that is providing services to a public or chartered nonpublic school or a county board of developmental disabilities must hold any license that the individual would be required to hold if employed directly by the district, school, or county board. The district, school, or county board must obtain verification of licensure from the contractor's employer prior to the contractor commencing the provision of services.

## **Pre-employment applications and screening**

(R.C. 3319.393, 3314.03, 3326.11, and 3328.24)

### **Written notice on employment applications**

The bill requires each school district, other public school (community school, STEM school, and college-preparatory boarding school), and chartered nonpublic school to include on all employment applications the following notice:

ANY PERSON WHO KNOWINGLY MAKES A FALSE STATEMENT IS  
GUILTY OF FALSIFICATION UNDER SECTION 2921.13 OF THE  
REVISED CODE, WHICH IS A MISDEMEANOR OF THE FIRST DEGREE.

### **Pre-employment screening process**

Before making hiring decisions, the bill requires each school district, other public school, and chartered nonpublic school to consult the Department's "Educator Profile" database, currently on the website as "CORE" – Connected Ohio Records for Educators. After consulting the database, a district or school may consult with the Department's Office of Professional Conduct to determine if an applicant has been the subject of a disciplinary report by a school official to the state Superintendent or had any disciplinary actions taken by the Department. A district or school also may consult any of the applicant's prior education-related employers.

The bill also permits a district or school to offer conditional employment to an individual pending the completion of the screening process, and permits the district or school to release the individual from employment if the screening process uncovers misconduct for which an individual may not be employed in a school.

Finally, the bill permits a district or school to require an applicant or volunteer to undergo background checks in addition to the criminal records checks already required under continuing law.

## **Review of personnel files**

(R.C. 3313.94, 3314.03, 3326.11, and 3328.24)

The bill requires each school district, other public school, and chartered nonpublic school, when a complaint is filed against an employee alleging misconduct by that employee, to conduct

a review of the employee's personnel file to determine if any recorded or reported instance of related misconduct or disciplinary actions are contained in the file. Further, each district or school that receives a request for the personnel file of a current or former employee from a different public or chartered nonpublic school (regarding that employee's application) must either: (1) send that file to the requestor within 20 business days of receiving the request or (2) if the school determines it is not possible to send the file within 20 business days, promptly notify the requestor and indicate the reason the information cannot be sent within that time.

## **Career-technical educator licensure**

(R.C. 3319.229)

The bill qualifies an individual holding a certificate of high school equivalence for a two-year initial career-technical workforce development educator license or a five-year advanced career-technical workforce development educator license. Current law requires a high school diploma for these licenses.

## **School counselor standards**

(R.C. 3319.61)

The bill requires the Educator Standards Board to include knowledge of the career-technical credit transfer program ("Career-Technical Assurance Guide" (CTAG)) into the Board's standards for school counselors.

CTAG is a result of criteria, policies, and procedures established by the Chancellor of Higher Education to ensure transfer of credit for career-technical courses "without unnecessary duplication or institutional barriers."<sup>46</sup>

## **IV. Community schools**

### **Automatic closure of community schools**

(R.C. 3314.355)

The bill prohibits the automatic closure of community schools on the basis of any report card ratings issued prior to the 2022-2023 school year. The 2022-2023 school year is a new starting point for automatic closure.

### **Background**

Together, H.B. 197 and H.B. 409, both of the 133<sup>rd</sup> General Assembly, prohibit the Department of Education from publishing and issuing ratings for overall grades, components, and individual measures on the state report cards for both the 2019-2020 and 2020-2021 school years. Those acts also establish a safe harbor from penalties and sanctions for districts and schools based on the absence of report card grades for those years.<sup>47</sup>

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<sup>46</sup> See R.C. 3333.162, not in the bill.

<sup>47</sup> Section 17(B) of H.B. 197 and Section 6 of H.B. 409 of the 133<sup>rd</sup> General Assembly.

Under current law, not changed by the bill, a community school that is not a dropout prevention and recovery school is subject to automatic closure, if it receives the following grades on three consecutive state report cards:

1. For a school that does not offer a grade level higher than 3, a grade of “F” in improving K-3 literacy or an overall grade of “F”;
2. For a school that offers any of grades 4 to 8:
  - a. A grade of “F” for performance index score and overall value-added progress dimension; or
  - b. An overall grade of “F” and a grade of “F” for overall value-added progress dimension.
3. For a school that offers any of grades 10 to 12:
  - a. A grade of “F” for performance index score and did not meet its annual measurable objectives; or
  - b. An overall grade of “F” and a grade of “F” for the value-added progress dimension.<sup>48</sup>

A dropout prevention and recovery community school, which receives a different type of state report card, is subject to automatic closure, if it receives a designation of “Does Not Meet Standards” for the three most recent school years.<sup>49</sup>

## **Automatic withdrawal of community school student waiver**

(Section 733.40)

For the 2021-2022 school year only, the bill waives the requirement under continuing law for a community school to automatically withdraw a student who, without legitimate excuse, fails to participate in 72 consecutive hours of the learning opportunities.

Under continuing law, community school governing authorities must adopt an attendance policy that includes a procedure for automatically withdrawing a student from the school if the student fails to participate in 72 consecutive hours of the learning opportunities without a legitimate excuse.<sup>50</sup>

## **Community school sponsor evaluations**

(R.C. 3314.016)

The bill directs the Department to evaluate once every three years any sponsor rated “exemplary” or “effective” for the three most *recent* years the entity was evaluated, instead of for at least three *consecutive* years as under current law.

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<sup>48</sup> R.C. 3314.35(A)(3), not in the bill.

<sup>49</sup> R.C. 3314.351, not in the bill.

<sup>50</sup> R.C. 3314.03(A)(6)(b) and 3314.08(H)(2).

The bill also specifies that certain sponsor incentives are available to any sponsor rated “exemplary” for the two most *recent* years the sponsor was evaluated, instead of for at least two *consecutive* years as under current law. Those incentives, unchanged by the bill, include: (1) automatic renewal of the written agreement with the Department, (2) the ability to extend the term of the sponsorship contract, (3) an exemption from certain deadline and expiration requirements, (4) no limit on the number of community schools the entity may sponsor, and (5) no territorial restrictions on sponsorship.

## **Background**

Generally, the Department must rate all community school sponsors as either “exemplary,” “effective,” “ineffective,” or “poor,” on an annual basis, based on the following components: (1) student academic performance, (2) adherence to the quality practices prescribed by the Department; and compliance with all applicable laws and administrative rules. However, as discussed above, an exception to annual evaluations exists for certain higher performing sponsors.

## **JCARR review of Department of Education changes**

(R.C. 3301.85)

The bill requires the Department of Education to submit to the Joint Committee on Agency Rule Review (JCARR) any proposed changes to the Education Management Information System (EMIS) or the Department’s “business rules and policies” that may affect community schools. Once submitted, JCARR must hold public hearings regarding the changes, consider testimony, and vote to determine whether community schools can reasonably comply with those changes.

The bill also prohibits the Department from implementing any changes to EMIS or its business rules and policies that may affect community schools unless and until JCARR issues a determination that community schools can reasonably comply with the proposed changes.

## **Montessori preschool payments for students under age five**

(R.C. 3314.06)

The bill removes a provision that requires the Department to pay an amount equal to the formula amount for each student under age four admitted to a Montessori preschool operated by a community school. Instead, the bill specifies such a school will receive no community school funds for students under age five.

## **Community School Revolving Loan Fund**

(R.C. 3314.30 and 3314.31, both repealed)

The bill eliminates the Community School Revolving Loan Fund and the Community School Security Fund, the latter of which was created to accept payment of funds borrowed from the Revolving Loan Fund.

Under current law, a community school may borrow from the Community School Revolving Loan Fund, which consists of federal moneys for the development and operation of

community schools, to pay the costs associated with any provision of the community school's contract. The maximum borrowable amount is \$250,000. According to the Office of Budget and Management, the fund, established in 2003, has never been accessed by a community school.

## **Pilot funding for dropout recovery e-schools**

(Sections 610.04 and 610.05, amending Section 5 of H.B. 123 of the 133<sup>rd</sup> General Assembly)

The bill extends to FY 2022 and FY 2023 the pilot program established for FY 2021 to provide additional funding for certain internet- or computer-based community schools (e-schools) operating dropout prevention and recovery programs on a per-pupil basis for students in grades 8-12. It specifies that an e-school must have participated in the program for FY 2021 to participate in the upcoming biennium.

An e-school was eligible to participate in FY 2021 if it notified the Department by December 31, 2020, and if it (1) was designated for the 2019-2020 school year as an e-school in which a majority of the students were enrolled in a dropout prevention and recovery program, (2) did not have a for-profit operator, and (3) received a rating of "exceeds standards" on the combined graduation component of the most recent report card issued for the e-school.

The bill also delays the deadline for the Department to issue its report upon completion of the pilot program to December 31, 2022 (rather than December 31, 2021, as under current law).

For more information regarding this pilot program, see pp. 10-13 of LSC's [final analysis of H.B. 123 of the 133<sup>rd</sup> General Assembly](#).

## **V. STEM schools**

### **STEM and STEAM schools and equivalents**

(R.C. 3326.02, 3326.03, 3326.032, 3326.04, 3326.07, 3326.08, 3326.14, 3326.23, and 3326.51; R.C. 3326.05 and 3326.111, repealed)

The bill makes numerous changes to the law governing STEM and STEAM schools and equivalents.

A STEM school is an independent, public school for any of grades K-12 established through a collaborative endeavor of both public and private entities, including at least one school district. As the name suggests, STEM schools emphasize study in the disciplines of science, technology, engineering, and math, but they also offer all courses required for graduation and are authorized to award their graduates high school diplomas. A STEAM school is a type of STEM school where the "A" denotes "arts." Each school, whether a STEM school or a STEAM school, is approved for operation by the Department of Education's STEM Committee.

A STEM or STEAM school equivalent meets the curriculum requirements of a STEM or STEAM school but is governed under its own laws or articles of incorporation and does not receive funding as a STEM or STEAM school. It is a designation that may be granted to a community school, a career center, or chartered nonpublic school.

## **STEM Committee membership**

(R.C. 3326.02)

The bill permits the Superintendent of Public Instruction, the Chancellor of Higher Education, and the Director of Development to appoint designees to participate in STEM Committee business on their behalf. It also specifies that a designee must be the same person for the time period the designation is effective.

## **Grades offered by STEM and STEAM schools**

(R.C. 3326.03)

The bill permits a STEM or STEAM school to submit an amendment proposal to the STEM Committee in order to offer additional grade levels. Under continuing law, STEM and STEAM schools may offer any of grades kindergarten through twelve.

## **STEM and STEAM school designations for JVSDs and ESCs**

(R.C. 3326.03 and 3326.51)

The bill eliminates the authority for a joint vocational school district (JVSD) or an educational service center (ESC) to apply for designation as a STEM or STEAM school. However, it permits a school operated by a JVSD that was designated as a STEM or STEAM school prior to the bill's effective date to maintain that designation if the school continues to comply with all STEM school law and its proposal for designation as a STEM or STEAM school.

## **STEM and STEAM school equivalent designations for career centers**

(R.C. 3326.032)

The bill eliminates the authority for a career center to receive a designation as a STEM or STEAM school equivalent in the same manner as a community school or a chartered nonpublic school. For this purpose, a career center is a school that enrolls students in any of grades 9-12 and in which a career-technical planning district (CTPD) provides career-technical education services that meets the State Board's standards. A CTPD may be a JVSD, a comprehensive career-technical program offered by a city, exempted village, or local school district, or career-technical program offered to other districts under contract.

## **Proposals for STEM and STEAM schools and equivalents**

(R.C. 3326.03, 3326.032, and 3326.07)

The bill requires the proposal for a STEM or STEAM school or equivalent to include evidence that the school will:

1. Exhibit school-wide cultural strategies reflecting innovation, an entrepreneurial spirit, inquiry, and collaboration with individual accountability;
2. Offer a rigorous, diverse, integrated, and problem-based or project-based curriculum (rather than only project-based as under current law) with the goal to prepare students for post-secondary learning experiences (rather than with the goal to prepare students for college as under current law);

3. Have a curriculum that emphasizes the use of design-thinking as a school-wide approach and provides opportunities for students to engage in personalized learning (rather than emphasizes personalized learning and teamwork skills as under current law);

4. Participate in regular STEM-focused professional development and share knowledge of best practices (rather than utilize an established capacity to capture and share knowledge for best practices and innovative professional development with the Ohio STEM Learning Network or its successor as under current law); and

5. In the case of a STEM or STEAM school equivalent, has established partnerships with institutions of higher education and businesses, as well as arts organizations if the proposal is for a STEAM school equivalent (existing law already requires this for STEM and STEAM schools).

It also eliminates the existing requirement for the proposal to include evidence that the school's curriculum incorporates scientific inquiry and technological design.

### **Distinctions as STEM programs of excellence**

(R.C. 3326.03 and 3326.04)

The bill repeals the authority for city, local, and exempted village school districts, community schools, and chartered nonpublic schools to apply for grants to support the operation of STEM programs of excellence. Instead, it specifies that a JVSD or ESC may apply for a distinction as a STEM program of excellence. Additionally, it specifies that nothing prohibits a school operated by a JVSD that was designated as a STEM or STEAM school prior to the bill's effective date from electing to apply for distinction as a STEM program of excellence.

The bill requires a proposal for distinction as a STEM program of excellence to satisfy requirements that are substantially similar to the requirements for proposals for STEM and STEAM schools and equivalents.

### **Effective period for designations and distinctions**

(R.C. 3326.03, 3326.032, and 3326.04)

The bill specifies that STEM and STEAM school designations, STEM and STEAM school equivalent designations, and distinctions as STEM programs of excellence are effective for five years unless revoked (see below). However, prior to the end of the five-year period, the STEM committee may review a school's designation or distinction if it has reason to believe that a school is not in compliance with the law and its proposal.

Correspondingly, the bill requires the Department to maintain records of the application status and renewal deadlines for each designation and distinction.

### **Renewal of designations and distinctions**

(R.C. 3326.03, 3326.032, and 3326.04)

The bill requires STEM and STEAM schools and equivalents and JVSDs and ESCs granted distinctions as STEM programs of excellence to reapply for designation or distinction every five years. The STEM Committee must authorize the continuation of a school's designation or distinction if it finds that the school is in compliance with all laws and its proposal.

## **Revocation of designations and distinctions**

(R.C. 3326.03, 3326.032, 3326.04, and 3326.08)

The bill specifies that, if the STEM Committee finds that a school is not in compliance as part of the reapplication process or as part of a review during the five-year effective period, it must require the school to:

1. Develop a corrective action plan in collaboration with the Department and the Ohio STEM Learning Network; and
2. Implement the plan and demonstrate exemplary STEM pedagogy and practices within one year of the plan's development.

The bill requires the Committee to revoke a school's designation or distinction if the school fails to implement the corrective action plan within one year.

Additionally, the Committee must order a STEM or STEAM school that is not operated by a city, local, or exempted village school district to close after its designation is revoked. Currently, the Committee may, but is not required to, order any STEM or STEAM school, including those operated by school districts, to close if the Department finds it is not in compliance with laws and its proposal for designation.

## **Annual list of written assurances**

(R.C. 3326.23)

The bill exempts a STEM or STEAM school that is governed and controlled by a city, local, or exempted village school district from the annual requirement to provide to the Department written assurances of compliance with various requirements.

## **Repeal of miscellaneous provisions**

(R.C. 3326.03, repealed R.C. 3326.05, repealed R.C. 3326.11, and R.C. 3326.14)

The bill repeals all of the following:

- The requirement that the STEM Committee award grants to STEM and STEAM schools;
- The authority for the STEM Committee to make recommendations to the General Assembly and the Governor for the training of STEM educators;
- The requirement that, if a STEM or STEAM school receives a grant under the federal Race to the Top Program, the governing body of that school must pay teachers based on performance as if it was a school district board of education; and
- The authority for any student enrolled in the 9<sup>th</sup> grade or lower in a STEM or STEAM school to take one or more of the five Ohio Graduation Tests (OGT) at any of the times those tests are administered. (The last class for which the OGT was required for graduation was the class of 2018.) However, the bill retains the existing requirement that a STEM or STEAM school must administer the state achievement assessments as if it were a school district.

## **VI. College Credit Plus program**

The College Credit Plus (CCP) program allows high school students and 7<sup>th</sup> and 8<sup>th</sup> grade students who are enrolled in public or nonpublic high schools or who are home-instructed to enroll in nonsectarian college courses to receive high school and college credit. Generally, the program governs arrangements in which the student, upon successful completion of a course, receives transcribed credit from the college. CCP courses may be taken at any state institution of higher education (except the Northeast Ohio Medical University) or any participating private or out-of-state college or university.

Each student may choose to participate 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. Generally, however, payments on behalf of a public school student are deducted from the state funds computed for that school, and payments for a nonpublic school or a homeschooled student are made out of funds appropriated specifically for that purpose.

All public high schools must participate in the program and any nonpublic high school may participate in the program.

### **Students in state-operated schools**

(R.C. 3365.01, 3365.032, and 3365.07)

The bill permits students enrolled in the State School for the Deaf, the State School for the Blind, or in a school operated by the Department of Youth Services (DYS) to participate in the CCP program in the same manner as students in other public schools. Consequently, under the bill, those students and the state-operated schools are subject to all existing program laws and requirements that apply to CCP participants and other public schools. The bill, however, does not address where students in the custody of DHS will attend college courses under the CCP program and the transportation or security for such students.

The bill requires payments made to institutions of higher education for CCP courses taken by students enrolled at the State School for the Deaf or the State School for the Blind or a school operated by DHS to be deducted from the amount appropriated by the General Assembly for support of those schools.

### **Academic eligibility for all students**

(R.C. 3365.03)

The bill removes the prescribed condition for students who are not “remediation-free” and instead creates an alternative remediation-free eligibility option, which must be defined by the Chancellor of Higher Education, in consultation with the Superintendent of Public Instruction. Current law requires a student, as a condition of eligibility for the CCP program, to be

“remediation free.” But a student who scores within one standard error of measurement below the threshold on a standard assessment determining remediation-free status may fulfill eligibility requirements, if the student also (1) has at least a 3.0 cumulative high school grade point average (GPA) or (2) receives a recommendation from a school counselor, principal, or career-technical program advisor. The bill removes the eligibility for a student within one standard error of measurement. Nevertheless, it grandfathers in students who qualified under that condition prior to the bill’s effective date.

## **Nonpublic school participation**

(R.C. 3365.02)

The bill specifically prohibits any requirement of the CCP program, and any rule adopted by the Chancellor of Higher Education or the State Board of Education for administering the program, to apply to a nonpublic school that chooses not to participate in the program.

Current statutory law states only that a nonpublic school that “chooses to participate in the program” is subject to the CCP requirements. However, an administrative rule of the Chancellor defines a participating nonpublic school as a school that does *any* of the following: (1) enters into an agreement with a college to offer CCP courses to its students, (2) promotes to its students the option to participate in CCP, *or* (3) enrolls a student who is receiving or is approved to receive CCP funding.<sup>51</sup> Thus, under this rule, it appears that a nonpublic school is considered to be “participating” if a student who is enrolled in that school chooses to participate and receives state funding under Option B, regardless of whether the school itself chooses to participate. The bill would negate that part of the Chancellor’s rule.

## **Course subject matter disclaimer**

(R.C. 3365.035 and 3365.04)

The bill requires the Departments of Education and Higher Education jointly to develop a permission slip regarding the potential for a student to be exposed to mature subject matter in a course taken through the CCP program. Both Departments must post the permission slip in a prominent place on their CCP websites. The permission slip also must be included in the counseling information that each public and participating chartered nonpublic school must provide to its students.

The bill requires each student desiring to participate in the CCP program, and the student’s parent, to sign the permission slip. The permission slip must be included in the student’s application to a participating institution of higher education in which the student wishes to enroll.

When admitting a student under the CCP program, each participating institution of higher education must include the following in the institution’s enrollment materials:

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<sup>51</sup> Ohio Administrative Code (O.A.C.) 3333-1-65(A)(3).

1. A questionnaire for students, developed by the institution, that acknowledges that the student possesses the necessary social and emotional maturity and is ready to accept the responsibility and independence that a college classroom demands that must be resubmitted to the institution;
2. Guidance on reviewing any available course materials prior to enrolling in a course;
3. Information about the institution's and the program's policies on withdrawing from or dropping a course; and
4. Information about the student's right to speak with the student's high school counselor or with the academic advisor assigned to the student under continuing law.

Each participating college also must include a discussion at student orientation about the potential for mature subject matter in courses taken through the program.

Finally, both Departments and each participating college must post the following disclaimer in a prominent place on their CCP program websites:

The subject matter of a course enrolled in under the College Credit Plus program may include mature subject matter or materials, including those of a graphic, explicit, violent, or sexual nature, that will not be modified based upon College Credit Plus enrollee participation regardless of where course instruction occurs.

## **VII. Other**

### **Transportation for community school and chartered nonpublic school students**

The bill prescribes a series of new requirements for city, local, and exempted village school districts to meet while providing transportation services, as required under continuing law, to community school and chartered nonpublic students. The bill establishes (1) new requirements regarding transportation plans for community school and chartered nonpublic school students, (2) limits on the use of mass transit system vehicles to transport them, and (3) a requirement to transport them when their schools are open. In addition, the bill changes the deadline by which a community school may accept responsibility to transport its students.

Generally, a school district must provide transportation for students in grades K-8 who live more than two miles from school, whether they attend district schools; public community schools; STEM schools; or private schools that hold a state charter. There are exceptions, however, such as when transportation to a community or STEM school or private school exceeds 30 minutes, or when the district board determines transportation to be impractical and offers to pay a parent instead. Also, there are mechanisms for community schools to take over the responsibility to transport their students. For a detailed discussion of the law on student transportation see the LSC Members Brief, [Transportation of Students](#).

## Transportation plans

(R.C. 3327.016; conforming change in R.C. 3313.48)

The bill generally requires city, local, and exempted school districts to develop transportation plans, including routes and schedules, for students enrolled in community schools and chartered nonpublic schools based on those schools' start and end times. The transportation plans must result in those students arriving to school within an hour before its start time and must not result in a student being picked up from school more than an hour after its end time.

Under the bill, community schools and chartered nonpublic schools must establish school start and end times for a school year by June 1 of the prior school year. Each school then must provide those times to the city, local, or exempted village school districts that the school expects will provide transportation services to its students.

A school district generally must use those start and end times to develop a transportation plan by July 1 for community and chartered nonpublic school students whom the district is required to transport and who enroll by June 1 of the prior school year. For any student who enrolls in a community or chartered nonpublic school after June 1, the district must develop a transportation plan within 14 calendar days after receiving a request for transportation services from the student's parent or guardian.

### Exception – ESC to develop transportation plans

As an exception to the general requirements described above, the bill prescribes a different statutory procedure for school districts that have 20 or more community or chartered nonpublic schools located in a school district. In that case, the educational service center (ESC) with which the school district has a service agreement, or the ESC with the most territory in the district's county if the district does not have a service agreement, must develop transportation plans.<sup>52</sup> The transportation plans also must result in those students arriving to school within an hour before the start time and must not result in a student being picked up from school more than an hour after the end time.

The ESC must convene a meeting with the school district and all community or chartered nonpublic schools located in the district. Each district or school must provide any information the ESC considers necessary. By July 15, the ESC must approve a transportation plan for each community or chartered nonpublic school.

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<sup>52</sup> Each school district with a student count of 16,000 or less must have a service agreement with an ESC. Districts with larger student counts are expressly permitted by not required to have such an agreement. See R.C. 3313.843, not in the bill.

## **Limits on use of mass transit systems**

(R.C. 3327.017)

The bill prescribes several limits on the use of vehicles operated by mass transit systems by school districts to provide or arrange for transportation of community school and chartered nonpublic school students.

For students enrolled in grades K-8, the bill prohibits a district from transporting them using mass transit vehicles unless the district enters into an agreement with the students' community or chartered nonpublic school authorizing that transportation. The bill expressly requires both the district and school to approve the agreement in order for it to be effective.

For students enrolled in grades 9-12, the bill specifies that, if a school district elects to transport them using vehicles operated by a mass transit system, the district must ensure that a student's route does not require more than one transfer.

## **Transportation when schools are open for instruction**

(R.C. 3327.01)

The bill requires a school district to transport community or chartered nonpublic school students to and from school on each day that their school is open for instruction, regardless of whether the district's school buildings are similarly open. However, the bill also maintains a provision of continuing law that exempts school districts from transporting community school and chartered nonpublic school students on Saturday or Sunday, unless the district and school have an agreement in place to provide such transportation.

## **Deadline for community schools to accept responsibility to transport students**

(R.C. 3314.091)

A school district and community school may enter into a bilateral agreement under which the community school will transport its students. Or, a community school may take over the transportation responsibility unilaterally without entering into an agreement with the students' resident school district by notifying the school district by January 1 of the previous school year. The bill adjusts that deadline to August 1 of the school year for which the community school will be providing or arranging transportation.

A newly opening community school must notify the district by April 15 prior to its first year of operation if it wishes to unilaterally accept transportation responsibility. The bill does not change this deadline nor does it affect the provision for bilateral agreements between districts and community schools.

## **Deduction of state funding for school district noncompliance**

(R.C. 3327.021)

The bill requires the Department to deduct a portion of city, local, or exempted village school district's state transportation funding if the Department determines that the district has

consistently, or for a prolonged period, been noncompliant with certain statutory obligations regarding student transportation.

Specifically, the bill requires the Department to monitor each city, local, or exempted village school district's compliance with:

1. Its general obligations under the law to transport students;
2. Its new obligation under the bill to generally transport community school and chartered nonpublic school students on days that the schools are open (see above);
3. Its new obligation under the bill regarding transportation plans for community schools and chartered nonpublic schools (see above); and
4. The bill's new prohibition against transporting community school and chartered nonpublic school students in grades K-8 using mass transit, unless the district has an agreement to do so with the students' school (see above).

If the Department determines a consistent or prolonged period of noncompliance on the part of the school district to meet those obligations, the Department must deduct from the district's state transportation funding an amount equal to the total daily amount of that funding for each day the district is noncompliant.

However, the bill expressly states that the requirement to monitor district compliance and deduct state transportation funding does not affect a school district's authority to provide payment in lieu of transportation.

## **Payment in lieu of transportation**

(R.C. 3327.02)

The bill requires a city, local, or exempted village school district, or a community school that has accepted responsibility to provide transportation, to make a determination regarding whether to provide payment in lieu of transportation for a student not later than 30 calendar days prior to the district's or school's first day of instruction. For students who enroll within that 30-day period or later, the district or school must make the determination within 14 calendar days of a student's enrollment.

It also authorizes a superintendent to make that determination, but requires that it be formalized at the next meeting of the school district board of education or community school governing authority.

In addition, the district or school must issue to a student's parent or guardian and the State Board a letter with a detailed description of the reasons why the payment in lieu determination was made.

## **FAFSA data system**

(R.C. 3313.6026; conforming changes in R.C. 3314.03, 3326.11, and 3328.24)

The bill requires each school district and each other public and chartered nonpublic high school to enter a data sharing agreement with the Chancellor of Higher Education to operate a

data system, created by the bill, to track the Free Application for Federal Student Aid (FAFSA) completion rate of Ohio's public and chartered nonpublic school students. (See "**FAFSA data system**" under "**DEPARTMENT OF HIGHER EDUCATION**," below.) Each district or school must provide principals and school counselors with access to the data system to assist with efforts to support and encourage students to complete the FAFSA form.

## **Computer science education**

### **State plan for computer science education**

(R.C. 3301.23)

#### **Committee to develop plan**

The bill requires the Department, in consultation with the Chancellor, to establish a committee to develop a state plan for primary and secondary computer science education in Ohio. The committee must be established within 30 days of the bill's effective date. It must consist of:

1. The Superintendent of Public Instruction, or designee;
2. The Chancellor, or designee;
3. Computer science stakeholders appointed by the state Superintendent, in consultation with the Chancellor that include representatives of:
  - a. Teachers;
  - b. Career-technical education;
  - c. Institutions of higher education;
  - d. Businesses; and
  - e. State and national computer science organizations.

The bill requires the committee to complete the state plan within one year of the bill's effective date. The Department must post the completed state plan in a prominent location on its website.

#### **Items to consider**

In developing the state plan, the committee must consider:

1. Best practices and challenges associated with implementing primary and secondary computer science curriculum in Ohio;
2. Demographic data for students who receive computer science education;
3. Benchmarks to create a sustainable supply of teachers certified to provide computer science education;
4. Best practices to form public and private partnerships for funding, mentoring, and internships for teachers providing computer science instruction;

5. A requirement for all students to complete a computer science course prior to high school graduation;
6. The establishment of a work-based learning pilot program that:
  - a. Includes high schools, universities, and local industry; and
  - b. Permits the Department and the Chancellor to develop pathways to align computer science education in Ohio with the state's workforce needs.
7. Any other topics determined appropriate by the committee.

### **Plan contents**

The state plan must include:

1. Any examination of the challenges that prevent school districts from offering computer science courses;
2. A requirement that the Department collect data regarding computer science courses offered by school districts and school buildings operated by districts, including the names of courses and whether the courses were developed using the standards and model curriculum adopted by the State Board, and post that data on its website; and
3. Any findings the committee determines appropriate based on its consideration of the topics described above.

### **Public school students and computer science courses**

(R.C. 3301.231 and 3301.232; conforming changes in R.C. 3314.03 and 3326.11)

#### **Option to enroll**

The bill requires that, generally, students enrolled in city, local, exempted village, and joint vocational school districts, community schools, and STEM schools must have the option to enroll in computer science courses or general education courses that include computer science principles. Specifically, it requires that:

1. For the 2022-2023 school year and after, students in 11<sup>th</sup> and 12<sup>th</sup> grades must have the option to enroll in a computer science course offered by the student's district or school, or an online computer science course offered by an educational provider and approved by the Department;
2. For the 2023-2024 school year and after, students in 9<sup>th</sup> and 10<sup>th</sup> grades must have the option to enroll in an age-appropriate, standalone computer science course offered by the student's district or school, or in an online computer science course offered by an educational provider and approved by the Department; and
3. For the 2024-2025 school year and after, students in grades K-8 must have the option to enroll in an age-appropriate general education course that incorporates computer science principles and is offered by the student's district or school.

However, the bill specifies these requirements must not be construed as prohibiting a district or school from offering computer science courses, or general education courses that incorporate computer science principles, to students enrolled in any of grades K-12.

### **Courses offered by public schools**

The bill generally requires school districts, community schools, and STEM schools to offer computer science or general education courses as described above. However, it also creates a procedure for a school district board of education, community school governing authority, or STEM school governing body to request a waiver from offering courses in a specific school building.

The state Superintendent must consider each waiver request and either approve or disapprove the waiver based on standards adopted by the State Board. For an approved waiver, the state Superintendent must specify how long the waiver will be in effect, which may be for up to five years. A district board, governing authority, or governing body may apply to renew the waiver.

Additionally, the bill requires districts and schools annually to submit to the Department, in a form and manner prescribed by the Department, data reporting the number of students enrolled in computer science courses and the type of such courses. The type of courses must be disaggregated by the course code and whether the course is offered by the district or an educational provider.

### **Courses offered by educational providers**

The bill requires the Department, in consultation with computer science stakeholders, to establish a program to provide high school students with access to online computer science courses as described above. Under the program, the Department must develop a process to solicit and review proposals from educational providers to offer online computer science courses. The Department must only approve a proposal if:

1. Each course included in the proposal is high-quality, rigorous, and aligned with the State Board's standards and model curriculum; and
2. A student may earn high school credits that apply to the state's minimum curriculum requirements prescribed under continuing law in each course included in the proposal.

The Department must determine a method to calculate and make payments to educational providers who enroll students in online computer science courses approved by the Department. The bill requires that the "method shall be deducted" from the foundation payments made to a participating student's district or school, in a manner similar to how the Department calculates and makes payments under the College Credit Plus (CCP) program.

### **Department's rulemaking authority**

The bill requires the Department to adopt rules to implement its provisions regarding computer science and general education courses and the offering of those courses. Additionally, it expressly states that those provisions do not affect CCP.

## **Annual report**

(R.C. 3301.233)

The bill requires the Department, in consultation with the Chancellor, to issue an annual report on computer science education that includes information regarding:

1. School districts, community schools, and STEM schools that offer computer science courses;
2. The types of computer science courses offered by districts and schools;
3. The number of teachers who hold a valid educator license or license endorsement in computer science or any other areas determined appropriate by the Department, in consultation with the Chancellor; and
4. The type of computer science courses, and the grade levels for those courses, taught by teachers who hold a license or endorsement described above.

The bill further requires that information to be disaggregated by:

1. Region of the state;
2. For school districts, whether the district is urban, rural, or suburban, and any other classification determined appropriate by the Department, in consultation with the Chancellor; and
3. Demographic data of students enrolled in computer science courses, including race and ethnic group, gender, and whether the students are economically disadvantaged, and that such data be reported by district or school and computer science course code.

Finally, the report must include the number of undergraduate students who study computer science in Ohio institutions of higher education, disaggregated by region of the state, student demographics, and, if data is available, student participation in a pathway partnership in the previous five-year period.

## **Computer science education licensure exemption**

(Sections 610.10 and 610.11, amending Section 733.61 of H.B. 166 of the 133<sup>rd</sup> General Assembly)

The bill extends through the 2022-2023 school year an exemption that permits a school district, community school, or STEM school to allow an individual with a valid educator license in any of grades 7-12 to teach a computer science course if, prior to teaching the course, the individual completes a professional development program approved by the district superintendent or school principal. That program must provide content knowledge specific to the course the individual will teach. The superintendent or principal must approve any professional development program endorsed by the College Board, the organization that creates and administers the national Advanced Placement examinations, as appropriate for the course the individual will teach.

The individual may not teach a computer science course elsewhere than the school district or school that employed the individual when the individual completed the professional development program.

Beginning July 1, 2023, a district or school may allow an individual to teach a computer science course only if the individual satisfies the requirements of permanent law, unchanged by the act. That law requires an individual who teaches computer science either to (1) hold an educator license in computer science, (2) hold a license endorsement in computer technology and pass a computer science context examination, or (3) hold a supplemental teaching license for computer science.

### **Licenses and endorsements to teach computer science**

(R.C. 3319.236 and Sections 610.10 and 610.11, amending Section 733.61 of H.B. 166 of the 133<sup>rd</sup> General Assembly)

The bill specifies that, for the purposes of computer science licensure or endorsements, “computer science courses” means courses that are reported in the Education Management Information System (EMIS) as computer science courses and are aligned with standards adopted by the State Board.

### **State Board’s standards and curriculum**

(R.C. 3301.079)

The bill requires the State Board to update its standards and curriculum for computer science education within one year of the bill’s effective date.

### **Effects of vaping – school district health curriculum**

(R.C. 3313.60(A)(5))

The bill requires school districts to include instruction on the harmful effects and legal restrictions against the use of electronic smoking devices (vaping) in its health education curriculum. This is in addition to the requirement to provide instruction on the harmful effects of and legal restrictions against the use of drugs of abuse, alcoholic beverages, and tobacco, as required by continuing law.

### **Victim counseling**

(R.C. 3319.47)

The bill permits school districts, other public schools, and chartered nonpublic schools to provide counseling to victims of sexual harassment or sexually related conduct.

### **Academic distress commissions – moratorium**

(Section 265.520)

The bill prohibits the state Superintendent from establishing any new academic distress commissions (ADCs) for the 2021-2022 and 2022-2023 school years. Under continuing law, the state Superintendent must establish an ADC for any school district that receives three

consecutive overall grades of “F” on the district’s state report card. The bill does not affect the previously established ADCs for Youngstown, Lorain, and East Cleveland school districts.

H.B. 166 of the 133<sup>rd</sup> General Assembly placed a one-year moratorium on the establishment of new ADCs, which expired on October 1, 2020.<sup>53</sup>

Additionally, in 2020 due to the COVID-19 pandemic, the Department of Education was prohibited under H.B. 197 and, later, H.B. 409 from issuing ratings for overall grades on the state report cards for any school districts or schools for the 2019-2020 and 2020-2021 school years, respectively. And, due to absence of report card grades, a safe harbor was enacted for districts and schools from various provisions of law reliant on report card grades, including the establishment of new ADCs and additional progressive consequences for existing ADCs for those school years. On the other hand, the powers authorized prior to those school years were retained by the CEO of the ADC.<sup>54</sup>

For a detailed description of current statutory law on ADCs, see pp.10-23 of the LSC Final Analysis of H.B. 70 of the 131<sup>st</sup> General Assembly at: <https://www.legislature.ohio.gov/download?key=2653&format=pdf>.

## **Adult Diploma Program minimum age**

(R.C. 3319.902)

The bill expands eligibility for the Adult Diploma Program to include any student who is at least 20 years old and has not received a high school diploma or a certificate of high school equivalence. Under current law, only individuals age 22 or older are eligible to participate.

The Adult Diploma Program provides job training and an alternate pathway for adults to earn an industry-recognized credential aligned to one of Ohio’s in-demand jobs and earn a state-issued high school diploma.

## **Ohio Code-Scholar Pilot Program**

(R.C. 3313.905)

The bill requires Southern State Community College (SSCC) to establish and maintain the five-year Ohio Code-Scholar Pilot Program to support technical workforce needs. By July 31, 2021, SSCC must appoint a program coordinator to oversee the pilot program. Full administration of the program must be implemented by the fall of 2022. The program coordinator shall do all of the following:

1. Form a coalition consisting of members of the Department of Education, educators in grades K-12, career-technical education staff, educational service center staff, representatives of post-secondary institutions, federally and state-funded research organizations, and local area businesses in the areas in which the pilot program is operating;

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<sup>53</sup> Section 265.520 of H.B. 166 of the 133<sup>rd</sup> General Assembly.

<sup>54</sup> Section 17(B) of H.B. 197 of the 133<sup>rd</sup> General Assembly, as subsequently amended by H.B. 409 of the 133<sup>rd</sup> General Assembly.

2. Act as the liaison between SSCC and the coalition to develop the pilot program;
3. Collaborate with the coalition to develop a curriculum for grades 7-12 for the pilot program that focuses on industry standards in the field of computer sciences, including coding (see “**Program curriculum by grade level**,” below);
4. Submit an annual report to SSCC regarding the progress and implementation of the pilot program;
5. Determine the manner in which the pilot program must recruit school districts and other participants from eligible counties for the fall of 2021 (those counties include Fayette, Clinton, Adams, Highland, Brown, and Pike);
6. Develop a structured timeline by which the pilot program must operate over the five-year period, with full administration beginning in the fall of 2022;
7. Determine the manner in which to incorporate the College Credit Plus Program within the pilot program;
8. Collaborate with the designated department, advisor, and instructor, as appointed by SSCC to develop an articulation system for credits earned under the pilot program and align them into a for-credit program at SSCC; and
9. Act as fiscal operator of the pilot program and oversee the use of any funds appropriated by the General Assembly.

### **Program curriculum by grade level**

The program curriculum for grades 7 and 8 must focus on career exploration, career readiness initiatives, and an introduction to coding and computer sciences. For grades 9-12, the focus must be in intermediate and advance coding, computer sciences, and the potential for industry-level credentialing.

### **Reporting requirements**

At the end of the five-year period, the bill requires SSCC, in collaboration with the program coordinator, to submit a full report and any legislative recommendations to the General Assembly regarding the outcomes of the pilot program.

### **Career Promise Academy pilot program**

(R.C. 3302.043)

The bill requires the Department of Education to establish the Career Promise Academy Summer Demonstration Pilot Program to operate in the 2021-2022 and 2022-2023 school years. Under the program, the Department must solicit proposals from city school districts that have persistently low state report card ratings, but are not subject to an academic distress commission, to establish and operate a Career Promise Academy during the summer.

A Career Promise Academy must provide students entering 9<sup>th</sup> grade with intensive literacy instruction, internship or mentoring experiences, and instruction regarding academic preparedness skills, life skills, and financial literacy.

The bill requires the Department to approve one proposal based on criteria adopted by the Department and to award a grant to the school district with an approved proposal. A proposal approved under the Department's criteria must include:

1. A requirement that the Career Promise Academy operate for four consecutive weeks in the summer of 2021 and five consecutive weeks in the summer of 2022;
2. A requirement that only 75 or fewer students participate in the Career Promise Academy in one summer;
3. A requirement that the school district submit to the Department any data that the Department and district jointly determine are necessary to evaluate the pilot program;
4. A method to determine student eligibility to participate in the Career Promise Academy. The method must identify students entering 9<sup>th</sup> grade who are at risk of not qualifying for a high school diploma based on scores on state English language arts and math assessments administered in 8<sup>th</sup> grade and other academic or social-emotional factors.
5. A description of the instruction and internship or mentoring experiences that participating students will receive;
6. An agreement with the school district's business advisory council and other organizations or businesses to identify or provide internship and mentoring experiences to participating students;
7. An agreement with at least one institution of higher education to identify and engage with prospective teachers to serve as mentors and academic coaches to participating students.

Finally, the bill requires the Department to adopt guidelines and procedures to operate the pilot program.

## **Autism Scholarship Program**

(R.C. 3310.41 and 3310.411)

The bill subjects any registered private provider approved for the Autism Scholarship Program and any of its employees to criminal records check requirements prescribed under continuing law. It further requires a registered private provider to submit the results of criminal records checks to the Department of Education.

The Department must use the submitted records checks to enroll individuals employed by registered private providers in the Retained Applicant Fingerprint Database ("rapback") in the same manner as licensed educators.

Additionally, the bill adds a "registered behavior technician"<sup>55</sup> and "certified Ohio behavior analyst"<sup>56</sup> to the list of qualified, credentialed providers that may offer intervention services under the program.

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<sup>55</sup> O.A.C. 5123-9-41.

<sup>56</sup> R.C. Chapter 4783, not in the bill.

## **Interscholastic athletics**

### **International students**

(R.C. 3313.5315)

The bill limits participation of international students with F-1 visas, issued by the U.S. State Department, in K-12 interscholastic athletics to only those who attend a school that began operating a dormitory on its campus prior to 2014. This limitation had been in effect from late 2017 through late 2019, through the law initially authorizing international students to participate. The law was amended in 2019 to remove the dormitory requirement.<sup>57</sup> The bill reinstates the dormitory requirement.

### **Transfer rules**

(Repealed R.C. 3313.5316)

The bill repeals the requirement, enacted in 2019, that school districts, interscholastic conferences, and organizations that regulate interscholastic athletics have uniform transfer rules for public and nonpublic schools.

## **Nonpublic school administration of drugs**

(R.C. 3313.713)

The bill subjects chartered nonpublic schools to the same requirements and procedures as school districts related to the administration of prescription drugs to students. First, each chartered nonpublic school must adopt a policy regarding whether school employees may administer prescription drugs to students. Just like school districts, that policy must either (1) prohibit the district's employees from administering prescription drugs or (2) authorize designated employees to do so. If the school permits administration of prescription drugs it must adopt a policy designating the employees authorized to administer them. Those employees must be licensed health professionals or individuals who have completed a drug administration training program conducted by a licensed health professional and considered appropriate by the chartered nonpublic school's governing authority. Conversely, a chartered nonpublic school that does not permit administration of prescription drugs must adopt a policy stating that no employee may do so, except as required by federal special education law.

A chartered nonpublic school that opts to administer prescription medication may do so only after all of the following occur:

1. The school receives a written request to administer medication to the student signed by a parent or guardian;
2. The school receives a statement signed by the prescriber that includes the student's name, address, school and class in which the student is enrolled, name of drug and dosage, the

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<sup>57</sup> R.C. 3313.5315, enacted by H.B. 49 of the 132<sup>nd</sup> General Assembly and amended by H.B. 166 of the 133<sup>rd</sup> General Assembly.

times at which each dose is to be administered, the date administration begins and ends, any potentially severe adverse reactions, and instructions for administration;

3. The parent or guardian agrees to submit a revised statement signed by the prescriber if any of the information changes;

4. The person authorized to administer medications receives a copy of the statement;

5. The person authorized to administer medications receives the medication in the container in which it was dispensed by the prescriber or pharmacist;

6. All other procedures required by the school are followed.

Currently, employees of chartered nonpublic schools are expressly permitted to administer only specified medications, including glucagon, insulin, epinephrine, and metered dose or dry powder inhalers.<sup>58</sup>

## Advanced standing programs for secondary students

(R.C. 3313.6013)

The bill specifically requires school districts, community schools, STEM schools, college-preparatory boarding schools, and chartered nonpublic high schools to provide information at least annually to students in grades 6 through 11 about advanced standing programs offered by the district or school. Current law requires that students be informed about programs, but does not specify the frequency.

## Obsolete reports, plans, or recommendations

(R.C. 3311.741, 3313.488, 3313.603, 3314.013, and 3314.017; Repealed R.C. 3301.0724, 3301.122, 3301.46, 3301.922, 3313.901, 3314.033, and 3314.37)

The bill eliminates the following education-related reports, plans, and recommendations that are out-of-date, expired, or no longer have data available:

Section number	Description
<b>R.C. 3301.0724 (Repealed)</b>	An annual report by the Department of Education to the General Assembly regarding aggregate spending on specified compensation components for the previous school year for teachers and other school employees employed by each school district.
<b>R.C. 3301.122 (Repealed)</b>	A ten-year strategic plan developed by the Superintendent of Public Instruction that is aligned with the strategic plan developed for higher education to be submitted to the General Assembly (due December 1, 2009).

<sup>58</sup> R.C. 3313.7111, 3313.7112, 3313.7114, and 3313.7116, none in the bill.

Section number	Description
<b>R.C. 3301.46 (Repealed)</b>	A joint plan proposing a standard method and form for documenting high school transcripts, credit transfer and articulation, and any electronic clearing house for student transcript transfer developed jointly by the Department and the Chancellor of Higher Education (due April 30, 2009).
<b>R.C. 3301.922 (Repealed)</b>	An annual report regarding participation by public and chartered nonpublic schools to screen students for body mass index and weight status to be submitted by the Department to the Governor and the General Assembly.
<b>R.C. 3311.741(E)</b>	A report evaluating a municipal school district's performance to be submitted by the state Superintendent to the Governor and the General Assembly (due November 15, 2017).
<b>R.C. 3313.488(E)</b>	A monthly report by the state Superintendent to the Speaker of the House and the President of the Senate for each month that a school district is unable to meet its expenses.
<b>R.C. 3313.603(D)</b>	A report that analyzes student performance data to determine if there are mitigating factors that warrant extending graduation qualification exemptions for students who entered 9 <sup>th</sup> grade between July 1, 2010 and July 1, 2016, by the Department, in collaboration with the Chancellor of Higher Education (due December 1, 2015).
<b>R.C. 3313.901 (Repealed)</b>	A plan for accelerating the modernization of the career-technical education curriculum by the State Board of Education (to be presented July 1, 1990, with annual progress reports issued through FY 2000).
<b>R.C. 3314.013(D)</b>	Standards for operation of internet- or computer-based community schools (e-schools) by the Director of the Governor's Office 21 <sup>st</sup> Century Education to the Speaker of the House and the President of the Senate (due July 1, 2012).
<b>R.C. 3314.017(J)</b>	Study committee recommendations regarding community schools that primarily serve students enrolled in dropout prevention and recovery programs that offer blended learning, portfolio learning, and credit flexibility to the General Assembly (due April 17, 2020).
<b>R.C. 3314.033 (Repealed)</b>	Recommendations by the State Board to the General Assembly regarding the standards governing the operation of e-schools and other educational courses delivered by electronic media (due September 30, 2003).
<b>R.C. 3314.37 (Repealed)</b>	A five-year research and development initiative to collect and analyze data with which to improve community school dropout prevention and recovery programs, known as the ISUS Institutes (initiative ended on June 30, 2013).

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## ENVIRONMENTAL PROTECTION AGENCY

### 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 National Pollutant Discharge Elimination System (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.
- Eliminates a \$15 application fee for the following:
  - A registration certificate necessary for certain scrap tire collection facilities;
  - A permit, or variance, or plan approval under the Solid and Hazardous Waste Law.
- Eliminates a non-Title V air contaminant source fee schedule that only applied from January 1, 1994, to December 31, 2003.

### Scrap tires removed from “no fault” sites

- Increases, from 5,000 to 10,000, the number of scrap tires that can be removed from a person’s property by the Ohio Environmental Protection Agency (OEPA) at no cost to the property owner if certain conditions apply (i.e., placement of scrap tires was not the fault of the property owner).
- Allows the OEPA Director to increase the 10,000 scrap tire threshold.

## **Lead and copper notification rules**

- Eliminates a requirement that the OEPA Director adopt rules setting specific administrative penalties that apply to community or nontransient noncommunity water systems for violations of notice requirements regarding lead and copper laboratory results.
- Authorizes the Director instead to assess the administrative penalties under existing statutory guidelines that apply to other violations of the Safe Drinking Water Law.
- Generally shifts reporting and other requirements regarding lead and copper contamination from statute to a rules-based system administered by the Director.
- Increases the timeframe (from two business days to not more than 30 business days after the receipt of lab results) within which the owner or operator of a community or nontransient noncommunity water system must notify residents when a tap sample does not exceed the applicable lead threshold.
- Requires the owner or operator of those systems to update and resubmit maps according to a schedule determined by the Director but no less frequently than required under the Safe Drinking Water Act, rather than every five years as in current law.
- Eliminates a requirement that the Director provide financial assistance from the Drinking Water Assistance Fund to community and nontransient noncommunity water systems for the purpose of fulfilling the notice and mapping requirements.

## **Certified and accredited laboratories under the VAP**

- Eliminates the OEPA Director's authority to certify laboratories for purposes of performing analyses under the Voluntary Action Program (VAP).
- Instead, specifies that a laboratory must hold a valid accreditation from a specified outside accreditation body to perform analyses under the VAP.
- Generally requires a person participating in the VAP to use the services of an accredited laboratory to perform analyses, but specifies that data analyzed by a certified laboratory before the bill's effective date may still be utilized.
- Retains the Director's authority to enter the property of a certified laboratory and conduct audits for purposes of investigation and extends this authority to accredited laboratories.
- Prohibits the Director from contracting with an accredited laboratory to perform an audit if the laboratory performed any analyses that formed the basis for the issuance of a no further action letter in connection with the audit.
- Eliminates outdated provisions governing the VAP.

## Water pollution control: practical qualification level

- Specifies that, for purposes of determining compliance with a pollutant discharge limit set below the practical quantification level (PQL), any reported value below PQL constitutes compliance (instead of any level “at or below”).

## Isolated wetland mitigation ratio table reference

- Corrects an incorrect division reference to the Ohio Administrative Code.

## Fees

(R.C. 3745.11, 3734.57, and 3734.901)

The bill extends the time period for charging various OEPA fees under the laws governing air pollution control, water pollution control, safe drinking water, and solid waste. The following table sets forth each fee, its purposes, and the time period OEPA is authorized to charge the fee under current law and the bill:

Type of fee	Description	Sunset under current law	Sunset under the bill
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 is required to be paid through June 30, 2022.	The bill extends the fee through June 30, 2024.
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:	An applicant is required to pay the tier one fee through June 30, 2022, and the tier two fee on and after July 1, 2022.	The bill extends the tier one fee through June 30, 2024; the tier two fee begins on or after July 1, 2024.

Type of fee	Description	Sunset under current law	Sunset under the bill
	<p>--A tier one fee of \$100 plus 0.65% of the estimated project cost, up to a maximum of \$15,000; or</p> <p>--A tier two fee of \$100 plus 0.2% of the estimated project cost, up to a maximum of \$5,000.</p>		
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, 2020, and January 30, 2021.	The bill extends the fees and the fee schedules to January 30, 2022, and January 30, 2023.
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, 2020, and January 30, 2021.	The bill extends the fee to January 30, 2022, and January 30, 2023.
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, 2020, and January 30, 2021.	The bill extends the fee to January 30, 2022, and January 30, 2023.
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 applies through June 30, 2022, and is required to be paid annually in January.	The bill extends the initial license and license renewal fee through June 30, 2024.
Fee for plan approval to construct, install,	Anyone who intends to construct, install, or modify a public water supply system must obtain approval	The cap on the fee is \$20,000 through June 30, 2022, and	The bill extends the cap of \$20,000 through June 30,

Type of fee	Description	Sunset under current law	Sunset under the bill
or modify a public water system	of the plans from OEPA. The fee for the plan approval is \$150 plus 0.35% of the estimated project cost. However, current law sets a cap on the fee.	\$15,000 on and after July 1, 2022.	2024; the cap of \$15,000 applies on and after July 1, 2024.
Fee on state certification of laboratories and laboratory personnel	In accordance with two schedules, OEPA charges a fee for evaluating certain laboratories and laboratory personnel.  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.	The schedule with higher fees applies through June 30, 2022, and the schedule with lower fees applies on and after July 1, 2022.  The \$1,800 additional fee applies through June 30, 2022.	The bill extends the higher fee schedule through June 30, 2024; the lower fee schedule applies on and after July 1, 2024.  The bill extends the additional fee through June 30, 2024.
Fee for examination for certification as an operator of a water supply system or wastewater system	A person applying to OEPA to take an examination for certification as an operator of a water supply system or a wastewater system (class A and classes I-IV) must pay a fee, at the time an application is submitted, in accordance with a statutory schedule.	A schedule with higher fees applies through November 30, 2022, and a schedule with lower fees applies on and after December 1, 2022.	The bill extends the higher fee schedule through November 30, 2024; the lower fee schedule applies on and after December 1, 2024.
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, 2022, the fee is \$100. If the application is submitted on or after July 1, 2022, the fee is \$15.	The bill extends the \$100 fee through June 30, 2024; the \$15 fee applies on and after July 1, 2024.
Application fee for an NPDES permit	A person applying for an NPDES permit must pay a nonrefundable application fee.	If the application is submitted through June 30, 2022, the fee is \$200. If the application is submitted on or	The bill extends the \$200 fee through June 30, 2024; the \$15 fee applies on and after July 1, 2024.

Type of fee	Description	Sunset under current law	Sunset under the bill
		after July 1, 2022, the fee is \$15.	
Fees on the transfer or disposal of solid wastes	A total of \$4.75 in state fees is levied on each ton of solid waste disposed of or transferred in Ohio.  The fees are used for administering the hazardous waste (90¢), solid waste (75¢), and other OEPA programs (\$2.85), and for soil and water conservation districts (25¢).	The fees apply through June 30, 2022.	The bill extends the fees through June 30, 2024.
Fees on the sale of tires	A base fee of 50¢ per tire is levied on the sale of tires to assist in the cleanup of scrap tires.  An additional fee of 50¢ per tire is levied to assist soil and water conservation districts.	Both fees are scheduled to sunset on June 30, 2022.	The bill extends the fees through June 30, 2024.

The bill also eliminates a \$15 application fee for both of the following:

1. A registration certificate necessary for certain scrap tire collection;
2. A permit, or variance, or plan approval under the Solid and Hazardous Waste Law.

Finally, the bill eliminates an obsolete non-Title V air contaminant source fee schedule that applied from 1994 to 2003.

## Scrap tires removed from “no fault” sites

(R.C. 3734.85)

The bill increases, from 5,000 to 10,000 (or more if the OEPA Director approves a larger amount), the number of scrap tires that can be removed from a person’s property by OEPA at no cost to the property owner. The bill maintains the stipulation that all of the following conditions apply:

1. The tires were placed on the property *after* the property owner acquired title to the property, or the tires were placed on the property *before* the owner acquired title to the property by bequest or devise;
2. The property owner did not have knowledge that the tires were being placed on the property, or the property owner posted the property signs prohibiting dumping or took other action to prevent the placing of tires on the property;

3. The property owner did not participate in or consent to the placing of the tires on the property;

4. The property owner received no financial benefit from the placing of the tires on the property or otherwise having the tires on the property;

5. Title to the property was not transferred to the property owner for evading scrap tire abatement liability; and

6. The person responsible for placing the tires on the property, in doing so, was not acting as an agent for the property owner.

## **Lead and copper notification rules**

(R.C. 6109.121; R.C. 6109.01 and 6109.23, not in the bill)

The bill eliminates a requirement that the OEPA Director adopt rules setting specific administrative penalties that apply to community or nontransient noncommunity water systems for violations of notice requirements regarding lead and copper laboratory results. Instead, it authorizes the Director to establish the administrative penalties under existing statutory guidelines that apply to other violations of the Safe Drinking Water Law.

In general, the bill shifts reporting and other requirements that the owner or operator of such water systems must follow regarding lead and copper contamination from statute to rule. This shift includes requirements concerning the following subjects:

1. Administrative penalties, as discussed above;
2. Laboratory sampling and reporting requirements;
3. Notification requirements that the owner or operator of a community or nontransient noncommunity water system must follow regarding laboratory results;
4. Certification requirements concerning the notification requirements;
5. OEPA Director notifications where a system fails to make required notices; and
6. System mapping requirements that show areas of a system that are known or likely to contain lead service lines and lead fixtures.

Specifically, the bill requires the rules to include requirements that the owner or operator of a community or nontransient noncommunity water system do both of the following:

1. When a tap sample for lead or copper is *below* the applicable lead threshold, provide notice of the results to residents within a time period specified in rules that is not more than 30 days after the receipt of lab results, rather than within two business days as in current law;
2. Under rules concerning mapping requirements, update and resubmit the maps according to a schedule determined by the Director, but no less frequently than required under the Safe Drinking Water Act, rather than every five years as in current law.

The bill eliminates a requirement that the Director provide financial assistance from the Drinking Water Assistance Fund to community and nontransient noncommunity water systems for the purpose of fulfilling the notice and mapping requirements.

Under current law, a community water system is a public water system that has at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents. A nontransient noncommunity water system is a public water system that regularly serves at least 25 of the same persons over six months per year and is not a community water system.

## **Certified and accredited laboratories under the VAP**

(R.C. 3746.01, 3746.04, 122.65, 3746.07, repealed; R.C. 3746.071 (3746.07), 3746.09, 3746.10, 3746.11, 3746.12, 3746.13, 3746.17, 3746.18, 3746.19, 3746.20, 3746.21, 3746.31, and 3746.35)

Current law establishes the Voluntary Action Program (VAP) administered by OEPA. Under the VAP, a person may undertake cleanup of a contaminated property to specific standards. When those standards are met, a certified professional (a person certified by OEPA to assess the cleanup) may issue a “no further action letter.” This letter verifies that the property, in the view of the certified professional and based on an analysis performed by a certified laboratory, has been remediated and meets appropriate standards. After the issuance of a no further action letter, the OEPA Director may issue a covenant not to sue. This covenant releases the person who undertook a voluntary action from all civil liability to the state to:

1. Perform investigational activities at the property that was the subject of the voluntary action; and
2. Perform remedial activities to address a release of hazardous substances or petroleum at the property (with certain conditions).

The bill eliminates a requirement that OEPA certify laboratories for purposes of assessing whether cleanup standards have been met under the VAP. Instead, it requires each laboratory to hold a valid accreditation from an outside accreditation body, as follows:

1. For analysis of asbestos:
  - a. The American Industrial Hygiene Association, Asbestos Analysts Registry;
  - b. The National Institute of Standards Technology, National Voluntary Laboratory Accreditation Program (NELAP) for asbestos fiber analysis; or
  - c. An accreditation body recognized by the National Environmental Laboratory Accreditation Conference (NELAC).
2. For analysis of any constituents other than asbestos:
  - a. An accreditation body recognized by NELAC;
  - b. A NELAP accreditation from an accreditation body recognized by NELAC.

The bill generally requires a person participating in a voluntary action to use the services of an accredited laboratory to perform analyses. But, it specifies that data analyzed by a laboratory certified by OEPA before the bill’s effective date may still be used for a voluntary action. Because this data may still be utilized, the bill retains the Director’s authority to audit any work performed by a certified laboratory before the bill’s effective date. For these purposes, the Director may do any of the following:

1. Enter the property of a certified laboratory for purposes of investigation;
2. Conduct a special audit when a no further action letter was issued under the VAP but the analyses were performed by a certified laboratory for which certification was suspended or revoked before the bill's effective date; and
3. Audit work performed by a certified laboratory to determine if the laboratory's performance of its duties has resulted in the issuance of a no further action letter that is not consistent with cleanup standards.

The bill expands the Director's investigation and auditing authority so that it also applies to accredited laboratories. It also prohibits the Director from contracting with an accredited laboratory to perform an audit if the laboratory performed any analyses that formed the basis for the issuance of a no further action letter in connection with the audit. This prohibition is a continuation of a prohibition that applies to certified laboratories. Finally, the bill eliminates outdated provisions governing the VAP that applied before the Director adopted the rules governing the VAP.

### **Water pollution control: practical qualification level**

(R.C. 6111.13)

The bill specifies that, for purposes of determining compliance with a water pollutant discharge limit set below the practical quantification level (PQL), any reported value below PQL (instead of any level "at or below" PQL) constitutes compliance. A PQL is the minimum concentration of an analyte (substance whose chemical constituents are being measured) that can be measured with a high degree of confidence that the analyte is present at the reported concentration.

### **Isolated wetland mitigation ratio table reference**

(R.C. 6111.027)

The bill corrects an incorrect division reference to the Ohio Administrative Code in the law governing isolated wetlands. Current law references mitigation ratios established under division (F) of rule 3745-1-54 of the Administrative Code. However, after the most recent revision to that rule, that reference is no longer accurate. The bill corrects this by instead only referring to rule 3745-1-54.

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## FACILITIES CONSTRUCTION COMMISSION

- Requires a school district, instead of the Facilities Construction Commission as in current law, to notify the Superintendent of Public Instruction if the district will exceed the limit on net indebtedness specified in continuing law.
- Makes changes to water bottle filling station and drinking fountain requirements prescribed under continuing law for state-assisted classroom facility construction projects.

### Notification of district net indebtedness

(R.C. 133.06)

The bill requires a school district, instead of the Facilities Construction Commission, as in current law, to notify the Superintendent of Public Instruction if the district will exceed the limit on net indebtedness specified in continuing law.

#### Background

Continuing law generally prohibits a school district from incurring net indebtedness exceeding 9% of its tax valuation. A district also may not submit to its voters the question of incurring new debt that will make the district's net indebtedness exceed 4% of its tax valuation, unless the state Superintendent consents to the submission. (Except for limited debt to purchase energy conservation improvements in its buildings, or alternative fuel vehicles, a district may not issue debt in excess of 0.1% of its tax valuation without voter approval.)

School districts, however, may exceed those limits when necessary to raise the district share to participate in a school facilities project. The district must notify the state Superintendent whenever a district will exceed either limit.

### School water bottle filling stations

(R.C. 3318.038)

Under law enacted in late 2020, each design plan for a state-assisted classroom facility construction project must contain or provide for (1) a minimum of two water bottle filling stations in each building, (2) a minimum of one drinking fountain or water bottle filling station on each floor and wing, and (3) a minimum of one drinking fountain or water bottle filling station for every 100 students in the building.

The bill revises these design requirements by:

1. Specifying that each building must have a minimum of one water bottle filling station or a "combination unit" on each floor or wing of the building and per 100 students;
2. Specifying that a water bottle filling station may be integrated into a drinking fountain as a "combination unit";

3. Requiring that each water bottle filling station be accessible to all people in compliance with the federal Americans with Disabilities Act; and

4. Requiring a minimum of one water bottle filling station in or near each cafeteria, gymnasium, outdoor recreation space, or other high-traffic area.

The bill also generally requires each school to permit students and staff to carry and use water bottles that are made of durable material, have lids to prevent spills, and are filled exclusively with water. Exceptions to this requirement include the use of water bottles in libraries, computer labs, science labs, and other locations where the district board or school governing body determines it is dangerous to have drinking water.

Finally, the bill specifically authorizes each district board or school governing authority to issue disciplinary action for misuse of a water bottle. However, under continuing law a district board already has general statutory authority to make any rules necessary for the governance of the district's employees and students, and to discipline for rule violators.<sup>59</sup> That authority extends to taking disciplinary action for misuse of a water bottle.

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<sup>59</sup> R.C. 3313.20, 3313.47, and 3313.66, none in the bill.

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## GENERAL ASSEMBLY

### **General Assembly open meetings – allow committee caucus**

- Allows the same-party members of a standing committee of the House or Senate to meet without violating the General Assembly Open Meetings Law.

### **Evaluation of publicly funded child care and Step Up to Quality**

- Requires a subcommittee or standing committee from each chamber during the 134<sup>th</sup> General Assembly to evaluate publicly funded child care and the Step Up to Quality Program.
- Requires each committee to hold hearings and receive testimony, including testimony from the JFS Director if requested by the committee.
- Authorizes each committee to issue a report of its findings and recommendations.

### **Joint committee – federal COVID relief aid**

- Establishes the Joint Legislative Oversight and Review Committee of Federal COVID Relief Aid to oversee and review the distribution and spending of funds received from the federal government for COVID relief purposes.

### **Joint committee – career pathways and workforce training**

- Establishes a Joint Legislative Study Committee with regard to career pathways and post-secondary workforce training programs and requires it to issue a report by November 1, 2022.

### **General Assembly open meetings – allow committee caucus**

(R.C. 101.15)

The bill allows a “standing committee caucus” to meet privately without violating the General Assembly Open Meetings Law. Under the bill, “standing committee caucus” means all of the members of a standing committee of either house of the General Assembly who are members of the same political party.

Under current law, except for certain meetings of the Joint Legislative Ethics Committee, or meetings of a caucus (all of the members of either house of the General Assembly who are members of the same political party), all meetings of any committee are declared to be public meetings open to the public at all times.

### **Evaluation of publicly funded child care and Step Up to Quality**

(Section 307.250)

The bill requires the Speaker of the House and the Senate President – not later than 30 days after the bill’s effective date – to direct a subcommittee or standing committee from each

chamber of the 134<sup>th</sup> General Assembly to evaluate all of the following regarding both publicly funded child care and the Step Up to Quality Program:

- The number of children and families receiving publicly funded child care;
- The number of early learning and development programs participating in ODJFS's Step Up to Quality Program and providing publicly funded child care;
- Funding sources for both publicly funded child care and the Step Up to Quality Program;
- The long-term sustainability of those funding sources;
- Eligibility levels for publicly funded child care, including the levels at which families may lose their eligibility;
- Issues regarding access to publicly funded child care and quality-rated early learning and development programs;
- The impact and feasibility of the requirement that all early learning and development programs providing publicly funded child care be rated in Step Up to Quality's third highest tier or above by June 30, 2025.

## **Committees**

The subcommittees or standing committees directed to evaluate publicly funded child care and the Step Up to Quality Program must be those primarily responsible for considering matters related to child care and family services.

## **Hearings and report**

As part of its evaluation, each committee must hold hearings to receive testimony from the public and relevant state agencies and boards. The committee's chairperson may request the JFS Director or any employee appointed by the Director to appear before the committee and testify to relevant matters. Each committee also may issue a report of its findings and recommendations. The staff of the Legislative Service Commission is to provide services to each committee performing its duties under the bill. Each committee's duty to evaluate publicly funded child care and the Step Up to Quality Program expires on the adjournment of the 134<sup>th</sup> General Assembly.

## **Joint legislative committee — federal COVID relief aid**

(Section 701.40)

The bill establishes the Joint Legislative Oversight and Review Committee of Federal COVID Relief Aid. The Committee's purpose is to oversee and review the distribution and spending of federal COVID relief funds. The Committee consists of the following members:

- Five members of the House, appointed by the Speaker;
- Five members of the Senate, appointed by the Senate President.

For each chamber's members, three members must be from the majority party and two members from the minority party. The Speaker and President must appoint members within 30 days of the provision's effective date.

The Committee, in fulfilling its duties, may do any of the following:

- Hold hearings;
- Hear testimony from witnesses;
- Issue reports; and
- Make recommendations regarding the oversight, expenditure, and reporting of COVID-relief aid usage.

## **Joint committee – career pathways and workforce training**

(Section 733.30)

The bill establishes a 13-member Joint Legislative Study Committee to review current career pathways and post-secondary workforce training programs and to develop prescribed recommendations.

The committee includes the following members:

1. Two members of the House appointed by the Speaker;
2. One member of the House appointed by the Minority Leader;
3. The chairperson and ranking member of the House Finance Subcommittee on Higher Education;
4. Two members of the Senate appointed by the Senate President;
5. One member of the Senate appointed by the Minority Leader;
6. The chairperson and ranking member of the Senate Workforce and Higher Education Committee; and
7. The following members appointed by the Governor:
  - a. A representative of the Governor's Office of Workforce Transformation;
  - b. A representative of the Department of Education; and
  - c. A representative of the Chancellor of Higher Education.

The Legislative Service Commission must provide support to the committee.

The committee must review (1) current workforce training programs offered by post-secondary educational institutions and whether the programs are aligned with local, regional, and statewide workforce needs, and (2) current career pathways, how they align with state, regional, and local labor market demand data, and whether they prioritize credentials that carry the most value in the labor market. Upon completion of its review, the committee must issue a report to the General Assembly by November 1, 2022, that contains findings related to

current career pathways and workforce training and development programs, as well as recommendations regarding the following:

1. The state's workforce education priorities and how those priorities are funded;
2. A common definition for short-term credentials and certificates of value across primary, secondary, and post-secondary education providers that ensures consistency and alignment with the state's policy and funding priorities;
3. Any strategies or programs the committee identified that may ensure that the state's investments will increase student success and career readiness by increasing the number of workforce certificates and credentials that lead to an in-demand job;
4. The types of reporting and data necessary for the Chancellor to collect regarding post-secondary workforce credentials, including programs for which credit is not awarded;
5. Policy strategies identified by the committee to increase awareness and participation by students in career technical pathways through partnerships between primary, secondary, and post-secondary education providers and business and industry;
6. Strategies identified by the committee to increase work-based learning programs such as apprenticeships and programs that permit students to attend post-secondary educational institutions while maintaining their employment;
7. Whether the state should consider prioritizing investments in short-term credentials through a new funding structure for workforce education and career-technical programs, including:
  - a. State support of workforce training programs at community colleges and Ohio technical centers;
  - b. Financial aid opportunities for students pursuing a workforce certificate or credential; and
  - c. Strategies to improve and expand short-term workforce career pathway opportunities to make them more accessible to residents of the state.

The report also must include any proposed legislative changes or funding recommendations the committee determines is appropriate.

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## GOVERNOR

- Requires the Governor's Office of Faith-Based and Community Initiatives to submit an annual report detailing its spending and distribution of Temporary Assistance for Needy Families block grant funds.

### **TANF report**

(R.C. 107.121)

The bill requires the Governor's Office of Faith-Based and Community Initiatives to prepare and submit, not later than July 30 each year, a report that details the following:

1. A breakdown of how the office spent funds from the Temporary Assistance for Needy Families (TANF) block grant;
2. A breakdown of all grants awarded by the office using TANF block grant funds; and
3. A breakdown of each entity that was awarded a grant, including the services the entity provided, the number of individuals served, and the total amount of grant money spent by the entity.

The office must submit this report to the Speaker of the House, the President of the Senate, and the Director of the Legislative Service Commission.

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## DEPARTMENT OF HEALTH

### Summary orders at nursing homes and assisted living facilities

- Permits the Director of Health (ODH Director) to issue orders, take corrective action, and impose fines without providing a nursing home, residential care (assisted living) facility, or other home with notice and an opportunity for a hearing if the Director determines immediate action is necessary to protect resident health or safety.
- Permits a home to request a hearing under the Administrative Procedure Act after a summary order is issued.

### Inspections of assisted living facilities

- Authorizes the ODH Director to inspect a residential care (assisted living) facility every 30 months, instead of every 15 months as in current law, once the facility has had two consecutive 15-month inspections without any substantiated violations and other related conditions are met.

### Hospital licensure

- Within three years of the bill's effective date, requires a hospital operating in Ohio to be licensed by the ODH Director rather than registered as under current law.
- Specifies that any existing law reference to a hospital that is not included in the bill is to be construed as a reference to a hospital licensed under the bill's licensure requirements.

### Home health service provider licensing

- Requires home health agencies and independent (nonagency) providers of skilled home health services and nonmedical home health services to be licensed by the Department of Health (ODH).

### Expedited licensing inspections

- Specifies that an existing licensed residential care (assisted living) facility may request an expedited licensing inspection from the ODH Director when the facility is seeking approval to increase or decrease its licensed capacity or make any other change for which the Director requires a licensing inspection to be conducted.

### Frontline Health Care Worker Pilot Program

- Requires ODH to establish and operate, during FYs 2022 and 2023, a Frontline Health Care Worker Education, Training, and Certification Pilot Program to reimburse adult education institutions for the cost of education-related expenses and wraparound services provided to students enrolled in certain health care training programs.
- Qualifies institutions for reimbursement with respect to students who reside in a county with a population of 500,000 or more, has experienced more than 15,000 confirmed cases of COVID-19, and is a severely distressed area, distressed area, or underserved area as defined by the U.S. Department of Housing and Urban Development.

## **Home visiting services**

- Allows families with children up to age five (instead of age three) to receive home visits through the Help Me Grow Program.
- Changes the frequency of the ODH summit on home visiting services to once every two years, instead of twice a year.

## **Technological resources**

- Removes a requirement that providers conducting home visits under the Help Me Grow Program, WIC clinics, and Medicaid managed care organizations promote the use of technological resources that provide information on having a healthy pregnancy and healthy baby.

## **Newborn screening**

- Requires newborns to be screened for X-linked adrenoleukodystrophy and spinal muscular atrophy, with the screenings to begin 240 days after the bill's effective date.
- Requires the state's Newborn Screening Advisory Council, not later than six months after a disorder has been added to the federal Recommended Uniform Screening Panel, to determine whether or not to recommend to the Director of Health that Ohio newborns be screened for the same disorder.
- Requires the Director, not later than six months after receiving the recommendation, to specify the disorder for screening in rule, with screening to begin within one year.

## **Smoking and tobacco**

### **Minimum age to sell tobacco products**

- Prohibits employees under 18 from selling tobacco products.

### **Dispensing tobacco cessation drugs without a prescription**

- Authorizes pharmacists and pharmacy interns to dispense tobacco cessation drugs without a prescription in accordance with physician-established protocols.

### **Moms Quit for Two grant program**

- Continues the Moms Quit for Two grant program for the delivery of tobacco cessation interventions to women who are pregnant or living with children and reside in communities with the highest incidence of infant mortality.

### **Smoke-Free Workplace Law**

- Expands the Smoke-Free Workplace Law to include electronic smoking devices and vapor products.

## **Retail tobacco store definition**

- Revises the definition of “retail tobacco store” to apply to stores that sell “lighted or heated tobacco products,” conforming the definition to the bill’s revised definition of “smoking.”

## **Renovation, Repair, and Painting Rule**

- Authorizes the ODH Director to enter into agreements with the U.S. Environmental Protection Agency for the administration and enforcement of the federal Renovation, Repair, and Painting (RRP) Rule, which establishes requirements regarding lead-based paint hazards associated with renovation, repair, and painting activities.
- Allows the Director to do both of the following:
  - Accept available assistance in support of those agreements; and
  - Adopt rules to administer and enforce the federal RRP Rule.

## **Summary orders at nursing homes and assisted living facilities**

(R.C. 3721.081)

### **Orders and action**

In circumstances where the Director of Health (ODH Director) determines immediate action is necessary to protect resident health or safety, because a nursing home, residential care (assisted living) facility, or other home is not acting with sufficient promptness or efficiency to protect resident health or safety, the bill authorizes the Director to do either or both of the following without providing notice and an opportunity for a hearing:

1. Issue orders, including specifying actions that a home must immediately take;
2. Take direct action to protect resident health and safety if the home fails to act on an order issued.

The orders may be issued or action taken as necessary to protect the health or safety of residents of a home, including removing a threat to resident health or safety, transferring residents until a threat is resolved, and appointing a temporary administrator for the home for the duration of the order.

The authority is subject to the following limits:

1. The ODH Director cannot enter a home unless the Director provides the operator with 24-hours advance notice;
2. The ODH Director’s transfer authority is subject to limitations based on whether the reason for the transfer is an environmental or clinical condition. For environmental conditions affecting a home, the Director may transfer only residents directly affected by the condition. For clinical conditions that affect an entire home, the Director may transfer all residents for the lesser of 30 calendar days or until the condition no longer affects the home. If the condition persists

longer than 30 calendar days, the Director must provide notice to the home specifying the reason for determining that the condition is still affecting the home. The home may request a hearing regarding the notice.

### **Expenses and fines**

A home is responsible for any expenses incurred to comply with an order. If a hearing is conducted and the ODH Director is found to have acted in violation of the bill's provisions, all reasonable expenses incurred by the home as a result of the Director's action must be reimbursed to the home within 90 days of the final adjudication order.

The bill authorizes the Director to impose a fine of up to \$100,000 for each instance of noncompliance with a summary order. All fines must be reasonably commensurate to the harm caused by the home. Fines must be credited to the General Operations Fund in the state treasury.

### **Requests for hearings**

A home that is subject to a summary order or action under the bill, including a fine, may request a hearing under the Administrative Procedure Act. The request must be received by the Director within 15 days after the notice of the order was mailed. The hearing must be held within ten days after the request, unless the parties agree otherwise. The Director must issue a final adjudication order no later than 30 days after the hearing is complete. A summary order remains in effect, unless reversed by the Director, until a final adjudication order is issued.

A final adjudication order may be appealed in accordance with the Administrative Procedure Act.

## **Inspections of assisted living facilities**

(R.C. 3721.02)

Under current law, before a nursing home or residential care (assisted living) facility may be licensed, it must be inspected by the ODH Director and the State Fire Marshal, or a fire department approved by the Fire Marshal. A home must be inspected every 15 months thereafter.

The bill extends the period for inspections by the ODH Director from 15 months to 30 months if all of the following apply:

- The facility has had at least two consecutive 15-month inspections with no substantiated violations;
- During that same time period, there were no substantiated violations from any other inspections or from any investigations of complaints;
- There are no outstanding violations from any previous inspections or investigations during any other time period.

An assisted living facility still must be inspected by the State Fire Marshal or an approved fire department once every 15 months.

## Hospital licensure

(R.C. 3722.02 (primary), 3722.01 to 3722.14, and 3722.99; conforming changes in numerous other R.C. sections)

Beginning three years after its effective date, the bill requires each hospital operating within Ohio to hold a license from the ODH Director, rather than be registered as under current law. Should a hospital fail to obtain the license by the required date, it will be subject to civil and criminal penalties.

Because the bill does not amend all of the references to registered hospitals in the Revised Code, it also specifies that, beginning three years after its effective date, any existing law reference to a hospital is to be construed as a reference to a hospital licensed under the bill's licensure requirements.

### Effective date of mandatory licensure and interim period

For three years after the bill's effective date, existing law requirements are maintained, and the bill's new requirements apply only to hospitals that have obtained licenses. As described in more detail below, the Ohio Department of Health (ODH) may begin to consider applications for licensure one year after the bill's effective date. Hospitals will then have two years to become licensed. During that period, some facilities may be both licensed under the new hospital licensing plan and subject to existing law requirements. Once the bill's license mandate becomes effective, each hospital within the state must be licensed by the ODH Director in order to operate.

### Definitions

The bill defines "**hospital**" to mean an institution or facility that provides inpatient medical or surgical services for a continuous period longer than 24 hours. Note that a **hospital** includes a "**children's hospital**," defined to mean a hospital or a distinct portion of a hospital that provides general pediatric medical and surgical care in which at least 75% of annual inpatient discharges for the preceding two calendar years were individuals younger than 18.

### Entities not subject to hospital licensure

The bill specifies that its licensure requirements do not apply to the following:

- A hospital operated by the federal government;
- An ambulatory surgical facility or other health care facility licensed by the ODH Director;
- A nursing home or residential care (assisted living) facility licensed by the ODH Director;
- A hospital or inpatient unit licensed by the Department of Mental Health and Addiction Services (OhioMHAS);
- A residential facility licensed by OhioMHAS or the Department of Developmental Disabilities;
- A community addiction services provider certified by OhioMHAS;
- A facility providing services under a contract with the Department of Developmental Disabilities;

- A facility operated by a licensed hospice care program and that is used exclusively for the care of hospice patients;
- A facility operated by a licensed pediatric respite care program and that is used exclusively for the care of pediatric respite care patients;
- The site where a health care practice is operated, regardless of whether the practice is organized as an individual or group practice;
- A clinic providing ambulatory patient services where patients are not regularly admitted as inpatients;
- 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 an exemption from certain Ohio Board of Nursing licensing requirements.

### **Note on maternity units, newborn care nurseries, and ambulatory surgical facilities**

Ohio law requires hospital maternity units and newborn care nurseries to be licensed by the ODH Director. The bill maintains this licensure – but only for the period during which a hospital is not required to be licensed. After hospital licensure is mandatory, the bill repeals the law governing maternity unit and newborn care nursery licensure because they will be covered by the hospital’s license.

The bill also specifies that an ambulatory surgical facility does not include a hospital provider-based department that is otherwise licensed under the bill’s provisions.

### **Penalties for operating without a license**

Should a hospital operate without a license, the bill requires the ODH Director to do the following:

- Notify the hospital that it is operating without a license and provide it with an opportunity to apply for licensure;
- Direct the hospital to cease operations;
- Impose a civil penalty of not more than \$250,000 as well as a penalty of not less than \$1,000 and not more than \$10,000 for each day the hospital operates without a license.

The bill also authorizes the Director to petition the court of common pleas of the county in which the hospital is located for an order enjoining the hospital from operating.

Moreover, a hospital can be subject to criminal penalties for operating without a license. Violations are first degree misdemeanors, punishable by a fine of not more than \$1,000 and a jail

term of not more than 180 days.<sup>60</sup> In addition, the bill imposes an additional penalty of \$1,000 for each day the hospital operates without a license.

### **Applications for licensure**

Each private or public entity, including a state university, seeking to operate a hospital must apply to the ODH Director for a license. The Director cannot consider any application until one year from the bill's effective date. Applications must be submitted in the form and manner prescribed by the Director in rules.

#### **Eligibility**

To be eligible for licensure, an applicant must satisfy the following:

- Have submitted a complete application, which includes identifying the main hospital location and any location operated by the hospital and paying the fee specified in rules adopted by the Director;
- Be certified under Title XVIII of the Social Security Act (Medicare), accredited by a national accrediting organization approved by the federal Centers for Medicare and Medicaid Services, or, in the case of a new hospital, eligible under rules adopted by the Director;
- Demonstrate the ability to comply with standards established in rules adopted by the Director;
- Specify the number of beds for the hospital, including skilled nursing beds, long-term care beds, and special skilled nursing beds.

### **License issuance, validity, and renewals**

If an applicant meets the eligibility requirements, the Director must issue to the applicant a license to operate a hospital. The license is valid for three years and may be renewed for additional three-year periods. Applications for renewal must be submitted to the Director in the manner prescribed in rule. The bill provides for staggered renewals in the initial years of the licensure structure.

The bill further provides that a license is valid only for the hospital identified in the application. It also requires the license holder to post a copy of the license in a conspicuous place in the hospital.

#### **License transfer**

If a hospital is assigned, sold, or transferred to a new owner, the new owner must apply for a license transfer within 30 days of the assignment, sale, or transfer.

The new owner is responsible for complying with any action taken or proposed by the Director (see "**Violations**" and "**Imminent threat of harm**" below). If a notice has been issued under the Administrative Procedure Act, the new owner becomes party to the notice.

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<sup>60</sup> R.C. 2929.24 and 2929.28, not in the bill.

## **Hospital inspections**

On the filing of a license application, the ODH Director may inspect the hospital prior to issuing or denying the license. The bill also appears to allow for inspections as part of the license renewal process.

### **Process to avoid inspections**

An applicant may avoid an inspection by submitting to the Director a copy of the hospital's most recent on-site survey report from the federal Centers for Medicare and Medicaid Services or an accrediting organization demonstrating that the hospital is certified or accredited.

### **Confidentiality of on-site survey reports**

The bill specifies that an on-site survey report from an accrediting body that is submitted in accordance with the bill's provisions is confidential and not a public record.

### **Unit inspections**

At least once every 36 months, the bill requires the Director to inspect each licensed hospital's maternity unit, newborn care nursery, and any unit providing health care services, defined under the bill to include the following:

- Pediatric intensive care;
- Solid organ and bone marrow transplantation;
- Stem cell harvesting and reinfusion;
- Cardiac catheterization;
- Open heart surgery;
- Operation of linear accelerators;
- Operation of cobalt radiation therapy units;
- Operation of gamma knives.

### **Other inspections**

The Director may at any time inspect a licensed hospital in order to address an incident that may impact public health, respond to a complaint submitted to the Director, or otherwise ensure the safety of patients cared for by the hospital.

### **Inspection fees**

Any inspection conducted under the bill's provisions is subject to a fee. Upon conducting the inspection, the Director must provide the applicant or license holder with a fee statement. Not later than 15 days after receiving the fee statement, the applicant or license holder must submit the total amount of the fee.

## **Rulemaking**

### **Health, safety, welfare, and quality standards**

Not later than one year after the bill's effective date, the bill requires the ODH Director to adopt rules establishing health, safety, welfare, and quality standards for licensed hospitals, including standards for the following:

- Maternity units;
- Newborn care nurseries;
- Health care services, including pediatric intensive care, solid organ and bone marrow transplantation, stem cell harvesting and reinfusion, cardiac catheterization, open heart surgery, operation of linear accelerators, operation of cobalt radiation therapy units, and operation of gamma knives.

### **Standards and procedures for licensure**

Not later than one year after the bill's effective date, the ODH Director must adopt rules establishing standards and procedures for the licensure of hospitals, including all of the following:

- Procedures for applying and renewing licenses;
- Procedures for transferring licenses;
- Procedures for inspections following complaints;
- Fees for initial applications, license renewals, and license transfers, as well as inspections;
- Standards and procedures for imposing civil penalties;
- Standards and procedures for correcting violations, including through the submission of correction plans;
- Standards and procedures for identifying, monitoring, managing, reporting, and reducing exposures to risk conditions, such as Legionella, including through the use of environmental facility assessments, the development of water management plans, and the use of disinfection measures;
- Standards and procedures for data reporting;
- Standards and procedures for emergency preparedness;
- Standards and procedures for the provision of technical assistance;
- Standards and procedures for new hospitals to demonstrate eligibility for licensure;
- Standards and procedures to address changes to a hospital's license, including adding or removing a location of the hospital.

### **Penalties and fees**

With respect to the rules governing the imposition of civil penalties, the Director must establish a scale for determining the amount of a civil penalty that may be imposed. The scale

must include per day amounts for ongoing violations. The total amount of a civil penalty must not exceed \$250,000 for each violation.

In the case of inspection fees, the Director must establish an amount to cover only the costs of inspections. All other fees established in rule are limited to the amount necessary to support the hospital licensure program.

### **Other rules**

The bill authorizes the Director to adopt any other rules as necessary to implement the bill's provisions.

### **Administrative Procedure Act**

Rules adopted under the bill's provisions must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

### **Collaboration with hospital industry**

When adopting rules, the Director must collaborate with representatives of Ohio's hospital industry to maximize their public health utility and to limit the administrative burden and costs of compliance.

### **Violations**

The bill specifically requires each licensed hospital to comply with its provisions and the rules adopted under it. If the ODH Director finds that a license holder has violated any of the bill's requirement or the rules adopted under it, the bill authorizes the Director to take any of the following actions:

- Impose a civil penalty of not less than \$1,000 and not more than \$250,000;
- Require the license holder to submit a plan to correct or mitigate the violation;
- Suspend a health care service or revoke a license if the Director determines the license holder is not in substantial compliance with the bill or rules adopted under it.

Any decision or determination to take any of the foregoing actions is subject to the Administrative Procedure Act.

### **Notice of proposed action**

If the Director seeks to suspend a health care service or revoke a license, the Director must give the hospital written notice of the proposed action. The notice is required to specify all of the following:

- The nature of the conditions giving rise to the Director's judgment;
- The measures that the Director determines the hospital must take to respond to the conditions; and
- The date, which must not be later than 30 days after the notice is delivered, on which the Director intends to suspend the health care service or revoke the license if the conditions

are not corrected and the Director determines that the license holder has not come into substantial compliance with the bill or rules adopted under it.

### **Inspections**

After receiving the notice of proposed action, if the hospital notifies the Director, by the time specified in the notice, that the conditions giving rise to the Director's determination have been corrected and that the hospital is in substantial compliance, the bill requires the Director to inspect the hospital. If, on the basis of the inspection, the Director determines that the conditions have not been corrected or the hospital has not come into substantial compliance, the Director may suspend the service or revoke the license.

The bill also authorizes the Director to suspend a health care service or revoke a license if a hospital fails to notify the Director.

### **Order of suspension or revocation**

When suspending a service or revoking a license, the Director must issue a written order of suspension or revocation and cause it to be delivered to the hospital.

### **Adjudications and final orders**

The bill grants a hospital subject to suspension or revocation the opportunity to request an adjudication. If requested, it must be held within 15 days but not earlier than seven days after making the request, unless another date is agreed to by the hospital and Director of Health. The suspension or revocation remains in effect, unless reversed by the Director, until a final adjudication order becomes effective.

The bill requires the Director to issue a final adjudication order not later than 90 days after the adjudication's completion. If the Director does not issue a final order within the 90-day period, the suspension or revocation is void, but any final adjudication order issued after the 90-day period is not to be affected.

### **Injunctive relief**

If the Director issues a final adjudication order suspending a health care service or revoking a license and the license holder continues to operate a hospital, the Director may ask the Attorney General to apply to the common pleas court of the county where the hospital is located for an order enjoining the license holder from continuing to operate the hospital.

### **Imminent threat of harm**

The bill authorizes the ODH Director to take certain actions if the Director determines that an imminent threat of harm exists at a hospital. "Imminent threat of harm" is defined to mean imminent danger or serious physical or life-threatening harm to one or more occupants of a hospital.

The actions that the Director may take include:

- Petitioning a court for injunctive relief, which may include closing the hospital, suspending a service within the hospital, or transferring its occupants to other hospitals or appropriate settings;

- If the Director opts not to pursue injunctive relief, providing written notice of proposed action;
- If the hospital notifies the Director that it has corrected the conditions giving rise to a real and present danger, conducting inspections to determine if the danger remains.

### **Notice of proposed action**

When providing notice of proposed action, the Director must deliver that notice to the hospital's administrator, governing board, and statutory agent. This may be done either by hand or certified mail.

### **Technical assistance**

The bill authorizes the ODH Director to provide each hospital with technical assistance in all of the following areas:

- Infectious diseases, including measures to prevent and control their spread;
- Quality improvement projects, including health equity and disparities;
- Population health initiatives;
- Data analytics;
- Workforce recruitment and development.

The bill also allows the Director to engage with one or more quality improvement organizations to assist in providing technical assistance. The Director may terminate the assistance of a quality improvement organization at any time.

The Director may use any fees or civil penalties collected in accordance with the bill's provisions to fund the provision of technical assistance to licensed hospitals, including contracting with entities to provide training or technical assistance determined necessary by the Director.

### **Hospital governing board**

Each licensed hospital is required by the bill to have a governing board to oversee its management, operation, and control. The governing board is specifically responsible for overseeing the appointment, reappointment, and assignment of privileges to medical staff.

### **Admitting privileges**

The bill repeals the law governing the admission and medical supervision of hospital patients, including admissions initiated by advanced practice registered nurses and physician assistants.<sup>61</sup>

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<sup>61</sup> R.C. 3727.06.

## Opioid reporting

The bill revises the law governing reports of the number of babies diagnosed as opioid dependent at birth. Under current law, each licensed maternity unit, newborn care nursery, and maternity home must report those numbers to the ODH Director quarterly. Beginning three years after the bill's effective date, the duty to report will fall instead on hospitals operating maternity units or newborn care nurseries. However, until the three years have run, maternity units, newborn care nurseries, and maternity homes must continue to report to the Director. Note that after the three years have elapsed, maternity homes will continue to be required to report.

The bill permits a third-party organization to report opioid dependent births on a hospital's behalf. It also requires the Director to adopt rules establishing standards and procedures for the required reporting, including when submitted by third-party organizations.

## Disease reporting

Beginning three years after the bill's effective date, each hospital, or a third-party organization on the hospital's behalf, must report to the ODH Director the contagious, environmental, or infectious diseases, illnesses, or health conditions or unusual infectious agents or biological toxins for which it provides treatment to patients.

The bill requires the Director to adopt rules that:

- Specify the diseases, illnesses, conditions, infectious agents, and biological toxins to be reported;
- Specify the frequency with which a hospital must report; and
- Prescribe the manner in which reports are to be made, including by third-party organizations.

Any information reported is protected health information as described under continuing law and may be released only in accordance with that law. Under the bill, information that does not identify an individual may be released in summary, statistical, or aggregate form.

Under continuing law not amended by the bill, hospitals are among a list of health care providers required to report to local boards of health the existence of certain diseases.<sup>62</sup> Health providers may do this by submitting an electronic report to the Ohio Disease Reporting System.

## General operations fund

The bill specifies that any fees and civil penalties collected under it must be deposited in the state treasury and used solely for purposes of administering and enforcing the bill's provisions.

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<sup>62</sup> R.C. 3701.17 and 3701.23, not in the bill, and O.A.C. 3701-3-03 and 3701-3-05.

## Home health service provider licensing

(R.C. 3740.01, 3740.02, 3740.03, 3740.04, 3740.05, 3740.07, 3740.10, 3740.11, and 3740.99; conforming changes in other R.C. sections)

### License required

Starting one year after its effective date, the bill requires a license for any home health agency or nonagency (independent) provider offering skilled home health services or nonmedical home health services. Skilled home health services include skilled nursing care, physical therapy, occupational therapy, speech-language pathology, medical social services, home health aide services, and any other services the ODH Director specifies by rule. Nonmedical home health services include bathing or bathing assistance; assistance with dressing, walking, and toileting; catheter care (but not insertion), meal preparation and feeding; personal care services; and any other services the Director specifies by rule.

A home health agency is any business or government entity, other than a nursing home, residential care facility, hospice care program, pediatric respite care program, or immediate family member, that provides skilled home health services or nonmedical home health services at a patient's place of residence. The licensure requirement is for the agency and not individual employees of an agency. Current law specifies criminal records check and database review requirements for employees of home health agencies.

Nonagency providers are people who provide care to individuals on a self-employed basis and do not directly or contractually employ other people to provide services. An immediate family member providing care is not a nonagency provider.

Skilled home health services licenses and nonmedical home health services licenses are valid for three years.

### Skilled home health services license requirements

An applicant for a skilled home health services license must submit an application including evidence that the agency or nonagency provider is one of the following: (1) certified for participation in the Medicare program, (2) accredited by an approved national accreditation agency, (3) certified by the Department of Aging to provide community-based long-term care or certified by the Department of Developmental Disabilities to provide supported living, to the extent authorized by ODH rules, or (4) otherwise meets Medicare conditions of participation but is not certified for participation in the Medicare program.

The application fee and renewal fee for a skilled home health services license is \$250. An applicant for a new license who was not providing direct care immediately prior to the effective date of the bill must provide evidence of a \$50,000 surety bond issued by a company licensed to do business in Ohio.

Skilled home health services licenses are inclusive of nonmedical home health services. A home health agency or nonagency provider who holds a skilled home health services license may provide nonmedical home health services without obtaining a nonmedical home health services license.

## **Nonmedical home health services license requirements**

An application for a nonmedical home health services license must include: (1) fingerprints from the primary owner of the home health agency or of the nonagency provider, (2) copies of any documents filed and recorded with the Secretary of State, (3) a notarized affidavit verifying the identity of the applicant, (4) a copy of the home health agency's criminal records check policy (not applicable to nonagency providers), (5) a statement identifying the applicant's days and hours of operation, (6) a description of the nonmedical home health services to be provided and any relevant policies or procedures, and (7) identification of the applicant's primary place of business and geographic area served. The ODH Director may adopt rules to waive any of these requirements if the home health agency or nonagency provider is certified by the Department of Aging to provide community-based long-term care or certified by the Department of Developmental Disabilities to provide supported living.

The application fee and renewal fee for a nonmedical home health services license is \$250. An applicant for a new license who was not providing direct care immediately prior to the effective date of this bill must provide evidence of a \$20,000 surety bond issued by a company licensed to do business in Ohio.

### **ODH duties**

#### **Licensing**

Under the bill, ODH is responsible for reviewing all applications for skilled home health services licenses and nonmedical home health services licenses. If the applicant has not had a site visit in the five years prior to submitting an application, the review must include a site visit to verify that Medicare conditions of participation are met.

ODH is responsible for issuing licenses if the applicant has paid the application fee and meets other licensing requirements. ODH has the power to refuse to issue a license or refuse to renew or reinstate a license holder's license for reasons it establishes by rule. It may also impose limitations on a license, revoke or suspend a license, place a license holder on probation, or otherwise reprimand the license holder.

The bill allows ODH to adjust an initial license renewal date to align renewal of a license with the renewal of a certification or accreditation that is a condition of licensure.

#### **Rulemaking**

The ODH Director is responsible for adopting rules to implement the new licensing requirements. These rules must address the following:

- Initial license application forms and procedures;
- License renewal application forms and procedures;
- The extent to which certifications issued by the Department of Aging to provide community-based care satisfy requirements for licensure;
- The extent to which certifications issued by the Department of Developmental Disabilities to provide supported living satisfy requirements for licensure;

- The documentation that must be provided to demonstrate that Medicare conditions of participation are met if the applicant is not certified for participation in the Medicare program;
- Reasons ODH may take disciplinary action on a license.

When adopting rules, the ODH Director must consult with the Director of Aging, the Director of Developmental Disabilities, and the Medicaid Director.

### **Criminal penalties**

The bill establishes that if a person or agency provides skilled home health services or nonmedical home health services without a license issued by ODH, that person or agency is guilty of a misdemeanor of the second degree on the first offense. For each subsequent offense, the penalty increases to a misdemeanor of the first degree.

### **Expedited licensing inspections**

(R.C. 3721.02)

Nursing homes, residential care (assisted living) facilities, homes for the aging, and veterans' homes (collectively referred to as homes) must be inspected at least once by the ODH Director before the Director issues the home a license. Current law permits an applicant for licensure to request an expedited licensing inspection from the Director. If, before receiving a license, a home requests an expedited licensing inspection, the Director is required to conduct the inspection not later than ten days after receiving the request.

With respect to existing homes that are licensed as assisted living facilities, the bill permits these facilities to request an expedited licensing inspection from the ODH Director when a facility is seeking approval to increase or decrease its licensed capacity or to make any other change for which the Director requires a licensing inspection to be conducted. Under current rules adopted by the Director, the expedited licensing inspection process is not available to existing assisted living facilities requiring an inspection for these types of changes.

The bill provides that any rules adopted by the ODH Director to implement the bill's requirements for existing assisted living facilities seeking an expedited licensing inspection are not subject to the law that requires a state agency to remove two or more existing rules when simultaneously adopting a new rule.

### **Obsolete procedures and terms**

The bill eliminates provisions of law describing (1) a process by which a home may request that the ODH Director review plans for a building that is to be used as a home to determine compliance with applicable state and local building and safety codes and (2) authority to collect fees for reviewing the plans. According to representatives of ODH, this process for reviewing plans is not currently used by the Department.

The bill also replaces the following terms that are no longer used to refer to certain types of long-term care facilities: rest home and adult care facility.

## Frontline Health Care Worker Pilot Program

(Section 291.60)

In FYs 2022 and 2023, the bill requires ODH to establish and operate a Frontline Health Care Worker Education, Training, and Certification Pilot Program. Its purpose is to reimburse adult education institutions for the cost of education and wraparound services provided to students of health care training programs. The reimbursement is for costs incurred for students age 18 or older who (1) are enrolled in programs to prepare them for employment as a health care virtual assistant, medical assistant, medical coder, nurse aide, patient care assistant, or phlebotomist, and (2) reside in a county with a population of 500,000 or more, has experienced more than 15,000 confirmed cases of COVID-19, and is a severely distressed area, distressed area, or underserved area as defined by the U.S. Department of Housing and Urban Development.

The bill defines adult education institution as a private, nonprofit provider of career education and training for adults that is licensed, accredited, or credentialed, or otherwise recognized in a manner approved by ODH. To be eligible under the pilot program, an adult education institution must not receive other higher education funding from the state.

The bill identifies two types of expenses that are reimbursable under the pilot program:

1. Education-related expenses, including tuition, course fees, laboratory fees, enrollment application fees, books, and supplies; and
2. Wraparound services costs, including smoking cessation, drug and alcohol counseling, college and career access advising, financial aid counseling and scholarship retention services, workability and employability skills training, employment placement and retention services, financial literacy, or any other similar or related service approved by ODH.

ODH may adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119) to implement the pilot program.

## Home visiting services

(R.C. 3701.61 and 3701.613 with conforming changes in R.C. 5167.16)

The bill expands eligibility to receive home visiting services through the Help Me Grow Program to include families with children under age five. Current law limits home visits to families with pregnant women or children under age three. The goals of home visits include improving maternal and child health, reducing family violence, improving school readiness, improving economic self-sufficiency, and reducing smoking.

Moreover, the bill reduces, from twice a year to every two years, the frequency with which ODH must facilitate a summit to share the latest research on home visiting programs and to discuss how to make home visiting programs more effective.

## Technological resources

(R.C. 3701.132 and 3701.61; repealed R.C. 5167.172)

The bill repeals the law that requires the Help Me Grow Program, WIC clinics, and Medicaid managed care organizations to promote the use of technological resources, such as

text messaging applications, that provide information on having a healthy pregnancy and healthy baby.

## **Newborn screening**

(R.C. 3701.501)

The bill revises the law governing the screening of newborns for genetic, endocrine, and metabolic disorders. Under existing law, each newborn is to be screened for the disorders specified in rules adopted by the ODH Director. At present, statutory law requires the rules to specify Krabbe disease for screening. The bill adds X-linked adrenoleukodystrophy and spinal muscular atrophy, with the screenings to begin 240 days after the bill's effective date.

To assist the Director in determining other disorders for which a newborn must be screened, Ohio law has established the Newborn Screening Advisory Council (NSAC). As part of this law, the NSAC is to evaluate disorders and make recommendations to the Director. In doing so, it must consider certain factors, including a disorder's incidence and the potential for successful treatment. To this list of factors, the bill adds whether the U.S. Secretary of Health and Human Services has included the disorder in the federal Recommended Uniform Screening Panel (RUSP).

In the case of a disorder included within the RUSP, the bill requires the NSAC to do the following:

- Not later than six months after the disorder's inclusion, determine whether or not to recommend to the Director that each newborn be screened for the disorder.
- If the screening is recommended, submit the recommendation as soon as practicable to the Director.

The bill further requires the Director, not later than six months after receiving NSAC's recommendation, to specify the disorder for screening in rules. The screening must begin no later than one year after the rule becomes effective.

## **Smoking and tobacco**

### **Minimum age to sell tobacco products**

(R.C. 2927.02)

The bill expands the offense of illegal distribution of tobacco products by prohibiting tobacco businesses from permitting employees under 18 from selling tobacco products. A violation is a fourth degree misdemeanor on a first offense and a third degree misdemeanor on a subsequent offense.

The bill also provides that it is not a violation of either of the following other prohibitions for an employer to permit an employee age 18, 19, or 20 to sell a tobacco product:

- The prohibition against a tobacco business distributing tobacco products to any person under 21;

- The prohibition against a tobacco business distributing tobacco products in a place lacking a conspicuous, required sign relating to the underage sale of tobacco products.

## **Dispensing tobacco cessation drugs without a prescription**

(R.C. 4729.42 and 4731.90)

### **Provider and protocol requirements**

The bill authorizes a pharmacist, or pharmacy intern practicing under the direct supervision of a pharmacist, to dispense tobacco cessation drugs without a prescription in accordance with a physician-developed protocol to individuals who are seeking to quit using tobacco-containing products. The following requirements must be met in order for the authorization to apply:

- The pharmacist or intern must successfully complete an accredited or approved course on tobacco cessation therapy;
- The pharmacist or intern must practice in accordance with a physician-established protocol that specifies a definitive set of treatment guidelines and the locations where the tobacco cessation drugs may be dispensed.

The bill requires the protocol to include provisions to implement the following requirements:

- Use by the pharmacist or intern of a screening procedure to determine if an individual is a good candidate to receive tobacco cessation drugs dispensed by a pharmacist or intern;
- Referral by the pharmacist or intern of high-risk individuals or individuals with contraindications to a primary care or other provider;
- Development and implementation of a follow-up care plan in accordance with guidelines adopted in rules;
- Parental or guardian consent for individuals younger than 18.

### **Documentation and notice**

The bill requires documentation related to screening, dispensing, and follow-up care plans to be maintained in the pharmacy's records. Not later than 30 days after a screening is conducted, the pharmacist or pharmacy intern must provide notice to the individual's primary care provider, or to the individual if the primary care provider is unknown.

### **Prohibition**

The bill prohibits a pharmacist or pharmacy intern from dispensing tobacco cessation drugs without a prescription unless the bill's requirements are met. It also prohibits a pharmacist from delegating the pharmacist's authority to dispense or supervise the dispensing of tobacco cessation drugs.

## Rules

The bill requires the Pharmacy Board to adopt rules in accordance with the Administrative Procedure Act to implement its provisions. The rules must specify which tobacco cessation drugs may be included in a protocol. The Department of Health must be consulted before adopting rules that specify those drugs.

Regarding rules related to requirements for protocols, the Pharmacy Board must consult with the State Medical Board.

### Moms Quit for Two grant program

(Section 291.30)

The bill continues Moms Quit for Two. Authorized in each biennium since 2015, it is a grant program administered by ODH that awards funds to government or private, nonprofit entities demonstrating the ability to deliver evidence-based tobacco cessation interventions to women who are pregnant or living with children and reside in communities that have the highest incidence of infant mortality, as determined by the ODH Director.

Program funds cannot be used to provide tobacco cessation interventions to Medicaid-eligible women.

### Smoke-Free Workplace Law

(R.C. 3794.01)

The bill expands the Smoke-Free Workplace Law to include electronic smoking devices and vapor products. Current law prohibits smoking in a public place or a place of employment. For a first violation of this prohibition, ODH issues a warning letter to the offending individual or proprietor. Subsequent fines are set in accordance with the following:

Violation #	Proprietor Violation	Individual Violation
2 <sup>nd</sup>	\$100	\$100
3 <sup>rd</sup>	\$500	\$100
4 <sup>th</sup>	\$1,000	\$100
5 <sup>th</sup> and subsequent	\$2,500	\$100

ODH may also sue repeat offenders seeking a court requiring the offender to stop the offending behavior.<sup>63</sup>

<sup>63</sup> R.C. 3794.02 and 3794.09, not in the bill; O.A.C. 3701-52-09.

## **Retail tobacco store definition**

(R.C. 3794.01)

The bill revises the definition of “retail tobacco store” to apply to stores that sell “lighted or heated tobacco products” as opposed to “cigars, cigarettes, pipes, or other smoking devices for burning tobacco,” conforming it to the bill’s revised definition of “smoking.”

## **Renovation, Repair, and Painting Rule**

(R.C. 3742.11)

The bill authorizes the ODH Director to enter into agreements with the U.S. Environmental Protection Agency (USEPA) for the administration and enforcement of the federal Renovation, Repair, and Painting (RRP) Rule. Under the RRP Rule, firms performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities, and pre-schools built before 1978 must be certified by USEPA (or a USEPA-authorized state), use certified renovators who are trained by USEPA-approved training providers, and follow lead-safe work practices.

The bill also allows the Director to accept available assistance in support of the agreements. The Director may adopt rules to administer and enforce the federal RRP Rule. If the Director adopts rules, the rules must specify the following:

1. Provisions governing applications for certification to undertake renovation, repair, and painting projects;
2. Provisions governing the approval and denial of certification and the renewal, suspension, and revocation of certification;
3. Fees for any certification issued or renewed under the Rule;
4. Requirements for training and certification, which must include levels of training and periodic refresher training for certifications issued under the Rule;
5. Procedures to be followed by a person certified under the Rule to undertake renovation, repair, and painting projects and to prevent public exposure to lead hazards and ensure worker protection during renovation, repair, or painting projects;
6. Provisions governing the imposition of civil penalties (up to \$5,000 per violation) for violations of procedures adopted under the Rule;
7. Record-keeping and reporting requirements for a person certified under the Rule;
8. Procedures for the approval of training providers under the Rule, including specific training course requirements; and
9. Any other procedures and requirements that the Director determines necessary for implementation of the Rule.

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## **DEPARTMENT OF HIGHER EDUCATION**

### **Restriction on instructional fee increases**

- For the 2021-2022 and 2022-2023 academic years, permits state universities, the Northeast Ohio Medical University, and university branch campuses to increase instructional and general fees by not more than 2% over the previous academic year.
- For the 2021-2022 and 2022-2023 academic years, permits community colleges, state community colleges, and technical colleges to increase instructional and general fees by not more than \$5 per credit hour over the previous academic year.
- Excludes from the fee 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, and fees to offset the cost of providing textbooks to students.

### **In-state tuition for certain graduate students**

- Qualifies for in-state tuition a nonresident who, after completing a bachelor's degree at a state institution of higher education, enrolls in an eligible graduate program at that, or another, state institution in the next semester in which that program accepts students.

### **Electronic attendance of board of trustees' meetings**

- Permits a state institution of higher education to establish a policy allowing its trustees to attend board meetings using a means of electronic communication.
- Permits a trustee attending a meeting using a means of electronic communication to be considered present at the meeting, to be counted for the purposes of establishing a quorum, and to vote at the meeting.

### **Textbook auto-adoption at state institutions**

- Requires each state institution of higher education to consider a textbook auto-adoption policy prior to academic year 2022-2023.

### **Ohio Innovative Partnership – Choose Ohio First Scholarship**

- Eliminates the Ohio Research Scholars Program part of the Ohio Innovative Partnership, but retains the Choose Ohio First Scholarship Program.
- Removes medicine, dentistry, and medical and dental education from the list of academic fields in which students may receive Choose Ohio First scholarships.
- Repeals the primary care medical student, primary care nursing student, and primary care dental student components of the Choose Ohio First Scholarship Program.
- Specifically includes “health professions” in the scholarship program’s purpose statement.

- Requires the Chancellor of Higher Education to determine which proposals will receive Choose Ohio First Scholarship Program awards based on the extent to which a proposal recruits underrepresented populations in certain academic fields.
- Requires the Chancellor to “endeavor to provide,” rather than guarantee, that students from all regions of the state are able to participate in the Choose Ohio First Scholarship Program.
- Requires all students receiving a Choose Ohio First scholarship (rather than half) to be involved in work-based learning through a co-op, internship, experience in a university, college, or private laboratory, or other work-based learning experience.
- Repeals a provision that permits the Chancellor to authorize an institution of higher education to award a scholarship amount exceeding the amount permitted under current law in certain circumstances.
- Specifies that the Choose Ohio First Scholarship Program Reserve Fund must consist of amounts designated for the purposes of the fund by the General Assembly, the federal government, or other sources.
- Makes other changes regarding the administration of the Choose Ohio First Scholarship Program.

### **Ohio National Guard Scholarship eligibility**

- Extends eligibility for the Ohio National Guard Scholarship to full-time and part-time students who are enrolled for at least three credit hours of coursework in prescribed programs for an in-demand trade.

### **Commercial Truck Driver Student Aid Program**

- Establishes the Commercial Truck Driver Student Aid Program to provide a combination of a grant and a loan to eligible students enrolled in certified commercial truck driver’s license schools.
- Requires each participating student to commit to residing and being employed in Ohio for a minimum of one year upon completion of a certified commercial driver’s license program.

### **FAFSA data system**

- Requires the Chancellor and the Management Council of the Ohio Education Computer Network to establish a data system to track the Free Application for Federal Student Aid (FAFSA) complete rate of Ohio’s public and chartered nonpublic school students.
- Permits the Chancellor to publish and share aggregate FAFSA data, including completion counts and rates for Ohio and each district or school.

### **OhioCorps Program**

- Renames the “OhioCorps Pilot Program” as the “OhioCorps Program.”

- Eliminates the limit on the program's operation to the 2019-2020 and 2020-2021 school years.
- Revises the eligibility criteria for the OhioCorps scholarship.

## Computer science

- Requires that, beginning in the 2022-2023 academic year, each state university must recognize a student's successful completion of certain advanced computer science courses as meeting general admissions requirements to the university.
- Requires each educator preparation program to require each candidate for an educator license who enters the program in the 2022-2023 academic year, or any academic year thereafter, to receive instruction in computer science and computational thinking.

As used in this chapter 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.

## Restriction on instructional fee increases

(Section 381.160)

For FY 2022 and FY 2023 (the 2021-2022 and 2022-2023 academic years), the bill limits each state university, the Northeast Ohio Medical University, and each university branch campus to not more than a 2% increase in its in-state undergraduate instructional and general fees over what the institution charged in the prior academic year.

For those same years, each community college, state community college, and technical college may not increase its instructional and general fees more than \$5 per credit hour over what it charged in the previous academic year.

Increases for all other special fees, including newly created ones, are subject to the approval of the Chancellor of Higher Education.

However, the bill's limits on fee increases explicitly *exclude*:

- Room and board;
- Student health insurance;
- Fees for auxiliary goods or services provided to students at the cost incurred to the institution;
- Fees assessed to students as a pass-through for licensure and certification exams;

- Fees in elective courses associated with travel experiences;
- Elective service charges;
- Fines;
- Voluntary sales transactions; and
- Fees to offset the cost of providing textbooks to students, which may appear directly on a student's tuition bill as assessed by the institution's bursar.

As in previous biennia when the General Assembly capped tuition increases, the bill's provisions do not apply to increases required to comply with institutional covenants related to the institution's obligations or to meet unfunded legal mandates or legally binding prior obligations or commitments. Further, the Chancellor, with Controlling Board approval, may approve an increase to respond to exceptional circumstances identified by the Chancellor.

Additionally, institutions with an undergraduate tuition guarantee program may increase fees in accordance with that separate provision. Under that program, each entering cohort of undergraduate students of a state university pays an immediate increased rate for instructional and general fees, but that rate is guaranteed not to increase again for that particular cohort for the next four years.<sup>64</sup>

## **In-state tuition for certain graduate students**

(R.C. 3333.31)

The bill requires the Chancellor of Higher Education to grant resident tuition status to a qualifying nonresident individual entering an eligible graduate program offered at a state institution of higher education. To qualify, that individual must complete a bachelor's degree program at that, or another, state institution and then enroll in the graduate program in the next semester in which it accepts students for admission. For the provision's purposes, an "eligible graduate program" is a graduate degree program that does not grant a professional degree.

Continuing law requires the Chancellor to define resident tuition status for individuals enrolled at state institutions. Generally, the Chancellor must deny residency status to any individual living in Ohio primarily to attend a state institution.

## **Electronic attendance of board of trustees' meetings**

(R.C. 3345.82)

As a permanent exception to the Open Meetings Act, the bill permits the board of trustees of a state institution of higher education to establish a policy that allows trustees to use a means of electronic communication to attend and vote at a board meeting. For this purpose, "electronic communication" is live, audio-enabled communication that permits trustees attending the

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<sup>64</sup> R.C. 3345.48, not in the bill.

meeting and trustees and members of the public present in person at the place where the meeting is being conducted to communicate with each other simultaneously.

A board's policy must specify the number of regular meetings at which each trustee must be present in person, which may not be less than half of the regular board meetings held annually. Additionally, the policy must specify the following minimum standards regarding a meeting conducted using electronic communication:

1. At least one-third of the trustees attending a meeting must be present in person at the place where the meeting is conducted;
2. All votes taken at the meeting must be taken by roll call vote; and
3. A trustee who intends to attend a meeting using electronic communication must notify the chairperson of that intent not less than 48 hours prior to the meeting, except in the case of a declared emergency.

Except as provided in the bill, no one may limit the number of trustees who may attend a meeting using electronic communication, limit the total number of meetings that the board may conduct using electronic communication, limit the number of meetings a trustee may attend using electronic communication, or impose other limits or obligations on a trustee attending a meeting using electronic communication.

A trustee who attends a meeting using an electronic means of communication must be considered present at the meeting and counted for the purposes of establishing a quorum.

Under continuing law, the Open Meetings Act generally requires that each public body hold meetings that are open to the public, that minutes of the meeting be taken, and that, in most circumstances, members of the public body be present in person to be considered present or vote at the meeting and for the purposes of establishing a quorum.<sup>65</sup>

## **Textbook auto-adoption at state institutions**

(Section 733.20)

The bill requires state institutions of higher education, prior to the 2022-2023 academic year, to evaluate their respective implementation of textbook affordability initiatives, by working collaboratively with the institution's faculty senate, to consider adopting a textbook auto-adoption policy. Citing the textbook auto-adoption policy at Wright State University as an example, the bill specifies that faculty members may retain full authority in selecting textbooks and materials appropriate for their classes.

By August 15, 2022, the board of trustees of each state institution must adopt a resolution or otherwise vote to affirm or decline adoption of the policy crafted by the administration and faculty senate. If the board adopts that policy, the bill requires transmission of a copy of the resolution to the Chancellor of Higher Education.

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<sup>65</sup> R.C. 121.22, not in the bill.

## **Ohio Innovative Partnership – Choose Ohio First Scholarship**

(R.C. 3333.61, 3333.613, 3333.615, 3333.62, 3333.63, 3333.64, 3333.65, 3333.66, 3333.68, and 3333.69; repealed R.C. 3333.611, 3333.612, 3333.614, and 3333.67)

### **Ohio Research Scholars Program**

The bill eliminates the Ohio Research Scholars Program, which is part of the Ohio Innovative Partnership, but retains the Choose Ohio First Scholarship Program. In doing so, it also replaces all references to the Ohio Innovative Partnership with references to the Choose Ohio First Scholarship Program.

Under existing law, the Ohio Research Scholars Program awards grants to state colleges and universities to use in recruiting scientists as faculty members, and the Choose Ohio First Scholarship Program assigns scholarships to state colleges and universities to recruit Ohio residents in certain academic fields.

The Choose Ohio First Scholarship Program assigns a number of scholarships to state universities and the Northeast Ohio Medical University (NEOMED) to recruit Ohio residents as undergraduate students. They may do so in collaboration with other state institutions of higher education and private colleges and universities in Ohio.

### **Academic fields for Choose Ohio First scholarships**

The bill removes medicine, dentistry, and medical and dental education from the list of academic fields in which students may receive Choose Ohio First scholarships. It retains, however, existing law that permits students in the fields of science, technology, engineering, and mathematics and science, technology, engineering, and mathematics education to receive scholarships.

The bill also repeals the primary care medical student, primary care nursing student, and primary care dental student components of the scholarship program.

Finally, the bill specifically includes “health professions” in the scholarship program’s purpose statement.

### **Criteria for scholarship proposals**

The bill requires the Chancellor to determine which proposals will receive Choose Ohio First Scholarship awards based on the extent to which a proposal recruits underrepresented populations in certain academic fields.

It also changes the existing list of criteria, at least one of which must be satisfied, that the Chancellor must use to determine which proposals will receive awards. Specifically, it adds:

1. The extent to which the state university or NEOMED has committed to, or demonstrated, an increase in total graduates in the academic fields specified above; and
2. An associate’s degree to the criteria concerning the extent to which the proposal facilitates the completion of a degree in a cost-effective manner.

It also removes the following criteria:

1. The amount of other monetary or nonmonetary resources that the proposal will use;
  2. The demonstrated productivity or future capacity of the students or scientists to be recruited;
  3. The extent to which other resources will be used to supplement students' scholarships;
- and
4. The extent to which the proposal:
    - a. Is integrated with the Centers of Research Excellence;
    - b. Is collaborative with other institutions of higher education;
    - c. Facilitates a more efficient use of existing facilities and programs;
    - d. Will create additional capacity in educational or economic areas of need;
    - e. Will encourage graduates of two-year institutions in certain academic fields to transfer to state colleges or universities;
    - f. Encourages students to transfer into certain academic programs;
    - g. Permits students to attend a state university or NEOMED who otherwise could not afford it;
    - h. Increases the likelihood that students will successfully complete their degree programs;
    - i. Ensures that a student awarded a scholarship is prepared to complete a degree program; and
    - j. Increases the number of women participating in the program.

### **Statewide participation**

The bill requires the Chancellor to “endeavor to provide,” rather than guarantee, that students from all regions of the state are able to participate in the Choose Ohio First Scholarship Program. It also repeals a provision that requires the Chancellor to endeavor to distribute scholarships so that all regions of the state benefit from the economic impact development of the program.

### **Participation in work-based learning**

The bill expands to all students receiving a Choose Ohio First scholarship (rather than half of those students) the requirement to be involved in work-based learning through a co-op, internship, experience in a university, college, or private laboratory, or other work-based learning.

But it also permits state and private institutions to appeal to the Chancellor for a waiver in cases where exceptional circumstances make placement of all students impractical or significantly unachievable. (Existing law permits private four-year Ohio institutions to submit a proposal for Choose Ohio First scholarships and requires them to comply with all program requirements that apply to state institutions.)

## **Agreement governing use of scholarships**

The bill repeals the law that requires the agreement that each state and private institution must enter, regarding the use of Choose Ohio First scholarships, to include performance measures, reporting requirements, and an obligation to fulfill pledges of other resources for the proposal.

It also repeals a provision that permits the Chancellor, if making awards to a program or initiative that will be in collaboration with other state or private institutions, to enter into an agreement to grant the award directly to the collaborating institution.

## **Recruitment initiatives**

The bill repeals the requirement that the Chancellor encourage state institutions to submit Choose Ohio First proposals for initiatives that recruit either:

1. Residents who enrolled in colleges and universities in other states or countries to enroll in state universities or colleges as graduate students in certain academic fields; or
2. Graduate students from an Ohio college or university who received, or will receive, a degree in certain academic fields to participate in a graduate-level teacher education master's program in a field that satisfies certain criteria.

## **Scholarship amounts**

The bill repeals a provision permitting the Chancellor to authorize an institution to award a scholarship in an amount exceeding the amount permitted under current law to (1) undergraduate students enrolled in a program leading to a teaching profession in certain academic fields and (2) graduate students who qualify for scholarships under the recruitment initiatives described above.

## **Extension of awards**

The bill permits the Chancellor, with Controlling Board approval, to grant a one-time extension of a Choose Ohio First Scholarship award for up to four years. Currently, state universities or NEOMED must reapply each time an award expires in order to renew.

## **Reserve Fund**

The bill specifies that the Choose Ohio First Scholarship Program Reserve Fund must consist of amounts designated for the purposes of the fund by the General Assembly, the federal government, or other sources.

## **Ohio National Guard Scholarship eligibility**

(R.C. 5919.34)

The bill expands eligibility for the Ohio National Guard Scholarship Program. Specifically, it qualifies for a scholarship any individual who, in addition to meeting other criteria prescribed under continuing law, is actively enrolled as a full-time or part-time student for at least three credit hours a week in coursework in a credential-certifying program, licensing program, trade certification program, or apprenticeship program for an in-demand trade, as identified by the

Adjutant General, the Chancellor of Higher Education, or the Office of Workforce Development within the Department of Job and Family Services.

Under current law, the program provides eligible Ohio National Guard members with undergraduate or nursing diploma tuition scholarships for attendance at public and private nonprofit colleges and universities and private for-profit career colleges and schools.

## **Commercial Truck Driver Student Aid Program**

(R.C. 3333.125, 3333.38, and 3345.32)

The bill establishes the Commercial Truck Driver Student Aid Program under which the Chancellor of Higher Education awards a qualified student a combination of a grant and a loan to pay for the costs of a certified commercial driver's license program. In addition to meeting certain eligibility criteria, to receive an award a student must commit to residing and being employed in Ohio for a minimum of one year upon completion of a certified commercial driver's license program. Specifically, the bill requires the student to commit to being either self-employed as a truck driver using a valid Ohio mailing address or employed as a truck driver by an entity that has a valid Ohio mailing address.

### **Eligibility**

To be eligible for an award under the program, an individual must satisfy all of the following requirements:

1. Be an Ohio resident;
2. Be enrolled in a certified commercial driver's license school;
3. Pass a drug test;
4. Have three or fewer moving violations in two consecutive years;
5. Not have not pled guilty to or been convicted of operating a motor vehicle under the influence of alcohol or a drug of abuse; and
6. Meet any additional eligibility criteria established by the Chancellor.

If an individual is eligible for the program but then either has more than three moving violations in two consecutive years or pleads guilty to or is convicted of operating a motor vehicle under the influence, the individual loses eligibility.

The Chancellor must adopt rules establishing requirements for certification for a commercial driver's license school in which an eligible student must be enrolled to participate in the program. The Chancellor may not certify a commercial driver's license school that charges employers recruiting fees. The bill also specifies that a certified driver's license program offered by a for-profit career college or school ("proprietary school") already certified by the State Board of Career Colleges and Schools is considered a certified commercial driver's license school.

### **Award amounts**

An award under the program consists of two parts. The first part is a grant that is equal to one-half of the remaining state cost of attendance after the student's federal Pell grant and

expected family contribution are applied to instructional and general charges for enrollment in a certified commercial driver's license school. The second part is a loan in an amount equal to the grant. The Chancellor must adopt rules establishing the terms and conditions for the loans.

The amount of a grant and a loan awarded under the program is in addition to what the student may receive under the Ohio College Opportunity Grant (OCOG). However, the bill directs the Chancellor to decrease the loan amount by the amount the student receives under OCOG.

If the amount appropriated to support the program is inadequate to provide grants and loans to all eligible students who apply, the Chancellor must proportionately reduce the amount of each award (grant and loan) for that academic year.

### **Promissory note**

Each student who accepts a grant under the program must sign a promissory note payable to the state in the event that the student either fails to complete the certified commercial driver's license program or fails to meet the one-year requirement to reside and be employed in Ohio upon completing that program.

The amount payable under the note must be the amount of the student's grant plus interest accrued annually beginning one calendar year after the student completes, does not complete, or disenrolls from, the certified commercial driver's license program. The Chancellor must determine the interest rate and period of repayment under the note.

A note must stipulate, however, that the obligation to make payments under the note is cancelled if the student meets the one-year requirement to reside and be employed in Ohio upon completing a certified commercial driver's license program. Additionally, the note must stipulate that the obligation to make payments is also cancelled if the student dies or becomes totally and permanently disabled.

### **Commercial Truck Driver Student Aid Fund**

The bill establishes the Commercial Truck Driver Student Aid Fund in the state treasury to be used by the Chancellor to make grants and loans under the bill and for administrative expenses.

### **FAFSA data system**

(R.C. 3333.301)

The bill requires the Chancellor and the Management Council of the Ohio Education Computer Network to establish a data system to track the Free Application for Federal Student Aid (FAFSA) completion rate of Ohio's public and chartered nonpublic school students. The Chancellor and the Council must develop guidelines and procedures to operate the system.

The bill also authorizes the Chancellor to publish and share aggregate FAFSA data, including completion counts and rates for Ohio and each school district, community school, STEM school, college-preparatory boarding school, and chartered nonpublic school. The bill states that the data may be used for the benefit of schools, to increase public understanding regarding FAFSA, and to assist in encouraging student completion of the FAFSA form.

Finally, the bill requires each school district and each other public and chartered nonpublic high school to enter into a data sharing agreement with the Chancellor to operate the data system. (See “**FAFSA data system**” under “**DEPARTMENT OF EDUCATION,**” above.)

The Chancellor and the Council appear already to operate a FAFSA data system, the FAFSA Data Service. However, it appears that currently only school districts, community schools, and STEM Schools are eligible to participate and that participation is voluntary.<sup>66</sup>

## **OhioCorps Program**

(R.C. 3333.80, 3333.801, and 3333.802)

The bill renames the “OhioCorps Pilot Program” as the “OhioCorps Program” and makes several other changes to that program’s operations. Specifically, it eliminates law that limits the program’s operation to the 2019-2020 and 2020-2021 school years. It also delays the deadline for the Chancellor’s report to the General Assembly, regarding the program’s implementation, to the end of the 2021-2022 school year, rather than the end of the 2020-2021 school year as under current law.

Finally, the bill changes two of the eligibility criteria for an OhioCorps scholarship. It requires a student to achieve a remediation-free score in math, reading, or English on a nationally standardized assessment (ACT or SAT), rather than requiring the student to achieve a remediation-free score on the entire assessment as under current law. In addition, it requires a student to complete and attain a passing grade in at least one College Credit Plus (CCP) course. Under current law, a student must do so in at least one math and one English language arts CCP course.

OhioCorps is established to guide at-risk high school and qualifying middle students toward a pathway to higher education through mentorship programs operated by state institutions of higher education. Students who participate in the mentorship programs, enroll in a state institution, and meet other eligibility criteria may qualify for OhioCorps scholarships.

## **State university admissions and computer science education**

(R.C. 3345.063)

Beginning with the 2022-2023 academic year, the bill requires each state university to recognize a student’s successful completion of an advanced computer science course in high school as a unit for admission to the university under certain circumstances. Specifically, a state university must do so if the course is aligned with the State Board of Education’s computer science standards and if the student completed the course to meet one of several requirements contained in the minimum high school curriculum requirements. The state university must apply the completed course to a general university admissions requirement similar to the high school curriculum requirement the student met with the course.

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<sup>66</sup> For more information, see the FAFSA Data Service’s [website](#) and the Management Council’s [website](#).

The following table indicates how, under the bill, a student could use a computer science course to meet a high school curriculum requirement, and how a state university must recognize the course as meeting a general admissions requirement.

Completed Course	Minimum high school curriculum requirement	State university general admissions requirement
An advanced computer science course equal to one unit of instruction	One unit of math instruction	One unit toward a general math requirement
An advanced computer science course equal to one unit of instruction	One unit of science instruction	One unit toward a general science requirement
An advanced computer science course equal to one unit of instruction	One general elective unit	One unit toward a general elective requirement
A computer coding course equal to one unit of instruction	One unit of foreign language instruction	One unit toward a general foreign language requirement

In addition, the bill requires each state university to post a description of its recognition of advanced computer science as a core unit for admission to the university in a prominent location on the university's website.

## **Educator preparation programs and computer science**

(R.C. 3333.049)

The bill specifies that each educator preparation program must require each candidate for an educator license who enters the program in the 2022-2023 academic year and after to receive instruction in computer science and computational thinking, as applied to student learning and classroom instruction and as appropriate for the grade level and subject area of the candidate's prospective educator license.

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## OHIO HISTORY CONNECTION

- Establishes the Ohio Commission for the United States Semiquincentennial consisting of 24 appointed members and 13 ex officio, nonvoting members.
- Specifies the duty of the Commission is to plan, encourage, develop, and coordinate the commemoration of the 250<sup>th</sup> anniversary of the founding of the United States in 2026 and the impact of Ohioans on the nation's past, present, and future.
- Requires the Commission to submit to the Governor and the General Assembly a comprehensive report that includes specific recommendations for the commemoration of the 250<sup>th</sup> anniversary of the founding of the United States, and also to submit annual reports.
- Permits the chairperson of the Commission to appoint an executive director and other personnel as necessary.
- Terminates the Commission on July 31, 2026.

### Ohio Commission for the United States Semiquincentennial

(R.C. 149.309)

The bill establishes the Ohio Commission for the United States Semiquincentennial for the purpose of planning the commemoration of the 250<sup>th</sup> anniversary in 2026 of the founding of the United States, as well as Ohio's role in U.S. history before and after receiving statehood.

The Commission must consist of 24 appointed members and 13 ex officio, nonvoting members. The 24 appointed members are as follows:

- Two members of the Senate;
- Two members of the House;
- Four private citizens appointed by the Governor;
- Four private citizens appointed by the Senate President;
- Four private citizens appointed by the Senate Minority Leader;
- Four private citizens appointed by the Speaker of the House;
- Four private citizens appointed by the House Minority Leader.

The 13 ex officio, nonvoting members are as follows:

- The Secretary of State;
- The Attorney General;
- The Auditor of State;
- The Treasurer of State;

- The President of the Board of Trustees of the Ohio History Connection;
- The Director of Transportation;
- The Superintendent of Public Instruction;
- The Chancellor of Higher Education;
- The Director of Natural Resources;
- The Adjutant General;
- The Chairperson of the Board of the Ohio Arts Council;
- The Director of Public Safety;
- The Superintendent of the Ohio State Highway Patrol.

Each member must serve until the Commission's expiration on July 31, 2026, unless the member no longer holds the office that qualifies them for membership. Vacancies are filled in the same manner as the original appointment. The members of the Commission are not entitled to compensation for service on the commission, except for reimbursement for reasonable travel expenses.

Commission meetings must be held throughout Ohio at times and locations determined by the Chairperson. A majority of the members of the Commission constitute a quorum, but a lesser number may hold hearings subject to the call of the Chairperson.

The chairperson of the Commission may appoint an executive director, as well as any other necessary staff. However, the executive director must be confirmed by an affirmative vote of a majority of the Commission's members.

The Commission must launch and maintain an official website that is open and available for public viewing. The website must include the following:

- The Commission's comprehensive report, which must be prepared no more than three years after the bill's effective date;
- Information regarding gifts received by the Commission; and
- The Commission's annual progress report, including an accounting of its funds and whether the Commission is making progress toward its objective.

As part of its planning process, the Commission must give due consideration to the related plans and programs developed by federal, other state, local, and private groups. Of these groups, the Commission may choose representatives to serve on special committees to plan, develop, and coordinate specific activities. Beyond these considerations, the Commission also must conduct extensive public engagement campaigns throughout Ohio to solicit feedback from all Ohioans for the development of the Commission's plans and overall program. As part of these outreach efforts, the Commission must aim to involve and showcase all counties across Ohio as part of the overall program. The costs associated with these duties, as well as the plans and overall program developed by the Commission, must be recorded by the Commission.

No more than three years after the bill's effective date, the Commission must deliver its comprehensive report to the Governor and the General Assembly. The report must include each of the following:

- A detailed timeline of the Commission's plans and overall program through July 31, 2026;
- The Commission's recommendations for the allocation of financial and administrative responsibility among the public and private authorities and organizations recommended for participation by the Commission;
- The projected number of jobs created through the implementation of the Commission's plan and overall program;
- The projected economic consequences of the implementation of the Commission's plan and overall program;
- The plan for the Ohio pavilion, an exhibition of Ohio's history and culture;
- The plan for improvements, if any, to the infrastructure of the state necessary for the successful delivery of the Commission's plan and overall program;
- Outputs and outcomes against which progress and success of the Commission's plan and overall program can be measured.

The report may include recommendations for legislation that will help the Commission execute its plan and overall program, and must be published on the Commission's official website.

If the Chair of the Commission requests information directly from a state agency, the state agency must provide the requested information to the Commission.

The Commission may accept, use, and dispose of gifts and donations of money, property, or personal services. Information relating to the gifts must be detailed and submitted to the Ohio Ethics Commission (OEC) each quarter and must be available on OEC's official website.

The bill also enables the Commission to procure supplies, services, and property. If the Commission retains any property after its termination, the General Assembly may designate this property to a local government or state agency by act.

In addition to the Commission's comprehensive report, it also must deliver to the Governor and General Assembly a report of its activities, including an accounting of funds received and expended during the year covered by the report, the outputs and outcomes achieved, and whether those achievements meet the Commission's plan and overall program. The report must be available on the Commission's official website.

Finally, the Commission is terminated on July 31, 2026.

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## DEPARTMENT OF INSURANCE

### Joint venture title insurance companies

- Requires, for a title company that is a joint venture, the company's annual review to assess whether or not all members of the joint venture received revenue from the title company commensurate to their ownership interest in the title company.
- Requires, for title companies that are joint ventures, all members of the joint venture to be allowed or invited to join any successor joint ventures formed upon dissolution or termination of the original joint venture.

### Long-term care insurance tax credit study

- Requires the Departments of Insurance and Medicaid to complete a joint study by July 1, 2022, analyzing whether offering tax credits for the purchase of long-term care insurance would increase the number of Ohioans with such insurance.

### Joint venture title insurance companies

(R.C. 3953.331 and 3953.36)

Under existing law, unchanged by the bill, every title insurance agent or agency that handles escrow, settlement, closing, or security deposit accounts must have an independent review made of its escrow, settlement, closing, and security deposit accounts.<sup>67</sup> The bill specifies that for a title insurance company that is a joint venture,<sup>68</sup> the required annual review must assess whether or not all members of the joint venture received revenue during the year in question from the title company commensurate to their ownership interest in the company. In addition, the title insurance companies that are joint ventures must maintain sufficient records of their affairs, including their escrow operations, escrow trust accounts, and operating accounts so that the Superintendent of Insurance can adequately ensure that the title insurance company that is a joint venture and all members of the joint venture are in compliance with the requirements set forth in the bill. The records must be kept for at least ten years following the transactions to which the records relate. The bill requires the Superintendent to adopt rules setting forth the standards of the review required and the form in which this information is to be provided. The Superintendent may also prescribe by rule the specific records and documents to be kept.

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<sup>67</sup> R.C. 3953.33, not in the bill.

<sup>68</sup> A joint venture is a legal organization that takes the form of a short-term partnership in which the persons jointly undertake a transaction for mutual profit. Cornell Law School, Legal Information Institute, *Joint venture*, [https://www.law.cornell.edu/wex/joint\\_venture](https://www.law.cornell.edu/wex/joint_venture).

For a title company that is a joint venture that is set to dissolve or terminate on a specified date, the bill requires that all members of that joint venture must be allowed or invited to join any successor joint ventures formed upon dissolution or termination of the original joint venture.

### **Long-term care insurance tax credit study**

(Section 757.30)

The bill requires the Departments of Insurance and Medicaid to complete a joint study by July 1, 2022, analyzing whether offering tax credits for the purchase of long-term care insurance would increase the number of Ohioans with such insurance.

In addition to recommending a range of tax credit amounts, if any, that would encourage the purchase of long-term care insurance, the study must also analyze whether employers or other group plan providers should be able to purchase long-term care insurance policies for their employees or members and whether hybrid life insurance policies should be included in the Departments' long-term care partnership program. (That program allows individuals to purchase long-term care insurance policies while keeping assets that would otherwise disqualify the individuals from Medicaid.<sup>69</sup>)

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<sup>69</sup> R.C. 3923.41, not in the bill.

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## **DEPARTMENT OF JOB AND FAMILY SERVICES**

### **TANF spending plan**

- Requires the Department of Job and Family Services (JFS) to submit a TANF spending plan to the Governor describing anticipated TANF spending for the upcoming fiscal biennium.
- Requires the Governor to submit the TANF spending plan to the General Assembly as an appendix to the Governor's budget.
- Requires JFS to submit an updated TANF spending plan to the chairpersons of certain standing committees of the House and Senate at the conclusion of each fiscal year, and permits those chairpersons to call the JFS Director to testify about the plan.

### **Individual Development Account reports**

- Eliminates a requirement that a county department of job and family services prepare and file a semi-annual report with JFS regarding the Individual Development Account Program it operates.
- Eliminates a requirement that JFS prepare an annual report regarding these programs.

### **Case plans and family service plans**

- Beginning January 1, 2023, makes it mandatory for a public children services agency (PCSA) or private child placing agency (PCPA) to include in its case plan for a child in temporary custody (unless it is not in the child's best interest) a permanency plan that describes agency-provided services to achieve permanency for the child if reasonable efforts at family reunification are unsuccessful.
- Requires permanency plan services to be provided concurrently with efforts at family reunification.
- Requires the JFS Director to adopt, according to R.C. Chapter 119, case plan rules for the concurrent provision of permanency plan services for a child in temporary custody.
- Repeals the family service plan option from the requirement that a PCSA maintain a case plan or a family service plan for any child for whom the PCSA provides in-home services under an alternative response to a child abuse or neglect report.

### **Caseworker in-service training**

- Requires the JFS Director to adopt rules to establish circumstances under which a PCSA executive director may waive portions of caseworker in-service training requirements.

### **Kinship caregiver placement efforts**

- Requires a PCSA or PCPA with temporary custody of a child or a child placed in a planned permanent living arrangement (TC/PPLA child) to make intensive efforts to identify potential kinship caregivers using certain search technology.

- Requires a court to review a PCSA's or PCPA's efforts to locate appropriate and willing kinship caregivers for a TC/PPLA child in the agency's custody at every hearing concerning that child.
- Requires a PCSA or PCPA to include a summary of its efforts to find an appropriate and willing kinship caregiver for a TC/PPLA child as part of the semiannual administrative review of the child's case plan, unless a court has deemed such efforts unnecessary.
- Allows a court to issue, under certain circumstances, an order determining that a TC/PPLA child's current placement is in the child's best interest and that further intensive efforts at finding kinship caregivers are unnecessary.
- Provides that a TC/PPLA child's current caregivers are to be considered to be the child's kin with equal standing with relatives regarding permanency if the court determines the current placement is in the child's best interest and intensive efforts to find kinship caregivers are unnecessary.
- Excuses a PCSA or PCPA from considering a TC/PPLA child's relative as a permanent placement option if the relative has failed to show interest within six months of receiving notice of the child's placement in the temporary care of the PCSA or PCPA.
- Provides that nothing in the kinship caregiver placement efforts provisions of the bill prevents a PCSA or PCPA from search for an appropriate kinship caregiver.

### **Kinship caregiver program**

- Requires each county department of job and family services (CDJFS) to incorporate a kinship caregiver program, which includes a family stabilization service and caregiving service, into its prevention, retention, and contingency plan.
- Earmarks \$10 million in each of FYs 2022 and 2023 for the program, and requires the JFS Director to allocate funds to CDJFSs via formula.
- Requires each PCSA to use the allocated funds to provide reasonable and necessary relief of child caring functions so kinship caregivers can provide and maintain a home for the child in place of the child's parents.
- Requires the CDJFS to enter into a memorandum of understanding with the PCSA for authorization of the expenditure up to the amount of the allocation.
- Specifies that the program will end if funding is no longer available and any CDJFS or PCSA cannot be held responsible for payment of services.

### **Kinship guardianship assistance (KGA)**

- Requires the JFS Director, not later than nine months after the bill's effective date, to submit amendments to the state Title IV-E plan in order to implement Title IV-E kinship guardianship assistance (federal KGA) available (1) on behalf of an eligible child to relatives, and (2) to any relative on behalf of a kinship guardianship (KG) young adult.

- Requires implementation of the state plan amendments to begin 15 months after the bill's effective date if the Secretary of Health and Human Services approves the plan and the General Assembly has appropriated funds sufficient to operate the program required by the amended plan.
- Allows a PCSA to enter into an agreement with a child's relative to provide state kinship guardianship assistance (state KGA), if state funds are available and certain conditions are met.
- Requires implementation of state KGA no later than 15 months after the bill's effective date if the amended state plan for federal KGA (described above) is approved.
- Excludes federal KGA and state KGA from the definition of gross income for child support purposes.
- Allows for specified relatives receiving federal KGA or state KGA to participate in Ohio works first if other conditions are also met.
- Allows kinship caregivers to participate in the kinship permanency incentive program if they are not receiving state KGA or federal KGA on behalf of a KG young adult.
- Repeals requirements governing PCSA placement of children with special needs determined impossible to adopt and the duty to periodically redetermine and report the child's status to JFS.

### **Online training for foster caregivers**

- Repeals the law permitting up to 20% of a prospective foster caregiver's preplacement training to be provided online.
- Requires JFS to adopt rules, in accordance with R.C. Chapter 119, regarding the amount of preplacement and continuing training hours that may be completed online for prospective and existing foster caregivers.

### **PASSS payment program**

- Codifies and transfers, from PCSAs to JFS, complete administration of the post adoption special services subsidy (PASSS) program, under which payments are made on behalf of an adopted child with a physical or developmental disability or mental or emotional condition.
- Permits JFS to contract with any person to carry out PASSS duties.
- Prohibits PASSS payments to any person:
  - 18 years or older beyond the end of the school year during which the person attains that age; or
  - A mentally or physically disabled person who is 21 or older.
- Requires JFS to adopt rules necessary to implement, and to actually implement, the recodified PASSS by July 1, 2022.

## **Bills of Rights for foster youth and resource families**

- Requires JFS to adopt by rule, in accordance with R.C. Chapter 119, a Foster Youth Bill of Rights and a Resource Family Bill of Rights.
- Provides that if a right in the Foster Youth Bill of Rights conflicts with a right in the Resource Family Bill of Rights, the Foster Youth Bill of Rights prevails.
- Defines a “resource caregiver” as a foster caregiver or a kinship caregiver and a “resource family” as a foster home or the kinship caregiver family.
- Provides that the rights created for foster youth and resource families do not create grounds for a civil action against JFS, the recommending agency, or the custodial agency.

## **Notification for sibling of adopted person**

- Provides that an adopted person’s legal parents may be notified that an adopted person’s sibling has been placed into out-of-home care after an adoption has been finalized.
- Defines “sibling,” for notification purposes only, as a former biological sibling, former legal sibling, or any person who would have been considered a sibling if not for a termination or other disruption of parental rights.

## **Criminal records check for individuals overseeing a child**

- Adds certain crimes to the Bureau of Criminal Identification and Investigation criminal background check for persons responsible for out-of-home child care and members of a household for a host family hosting a child under a host family agreement.

## **Background checks for institutions and associations**

- Requires an institution or association to obtain certain background information before employing a person or engaging a subcontractor, intern, or volunteer if:
  - The institution or association is a residential facility; or
  - The institution or association is not a residential facility and the person, subcontractor, intern, or volunteer will have contact with children.
- Requires the institution or association, regarding the background information, to:
  - Obtain a search (instead of *conduct* a search as current law requires) of the U.S. Department of Justice National Sex Offender Public Website; and
  - Obtain a summary report (instead of *request* a summary report as current law requires) of a search of the uniform statewide automated child welfare information system.
- Allows an institution or association to refuse to employ a person or engage a subcontractor, intern, or volunteer based solely on the search and summary report obtained.

- Requires an institution or association to obtain the search and summary report for a person, subcontractor, intern, or volunteer if that information has not been obtained by the effective date of this provision.

### **Federal foster care assistance for emancipated young adults**

- Expands the juvenile courts that may exercise jurisdiction over an emancipated young adult (EYA) receiving federal foster care payments to include the court of the county where the EYA resided when his or her custody, planned permanent living arrangement, or care and placement terminated.
- Revises the timing for JFS or its representative to petition for a judicial determination that the EYA's best interest is served by continuing care and placement with JFS or its representative after the EYA enters a voluntary participation agreement for placement and care.
- Explicitly associates seeking and obtaining the determination with maintaining the EYA's eligibility for Title IV-E assistance.
- Eliminates the remedy that an EYA loses eligibility for continued care and placement with JFS or its representative under a voluntary participation agreement (VPA) if a court, 180 days after the VPA becomes effective, determines the continued care and placement does not serve the EYA's best interest.
- Requires a court to make a permanency plan determination regarding an EYA:
  - 12 months after the VPA's effective date (instead of 12 months after the date it is signed, as current law requires);
  - At least once every 12 months after the first determination (instead of simply "annually" as current law requires); and
  - That JFS or its representative made reasonable efforts (instead of just that reasonable efforts were made, as current law requires) to finalize a permanency plan to prepare the EYA for independence.
- Requires federal payments for foster care to be suspended if the best interest and reasonable efforts determinations (described above) are not timely made.

### **Reimbursement for federal juvenile court programs**

- Adds prevention services costs under the federal Family First Prevention Services Act to the list of expenses for which a juvenile court may receive reimbursement upon agreement with JFS on behalf of a child in certain circumstances.
- Adds a child who is at imminent risk of removal from the home and is a sibling of a child in the temporary or permanent custody of the court to the list of circumstances of a child on whose behalf reimbursement may be sought.

## **Streamlining County Level-Information Access Task Force**

- Creates the Task Force on Streamlining County Level-Information Access to make recommendations on streamlining information access across information technology systems for (1) county departments of job and family services, (2) child support enforcement agencies, (3) public children services agencies, and (4) county OhioMeansJobs centers.
- Requires the Task Force to do all of the following:
  - Identify barriers to efficient operations between information technology systems that affect both department and agency operations and client services;
  - For each identified barrier, explore the feasibility of allowing county employees access to more than one information technology system;
  - Prioritize which barriers should be addressed first; and
  - Submit a report to the General Assembly by February 1, 2022.

## **Publicly funded child care**

- Revises the law governing eligibility for publicly funded child care, including by specifying that the eligibility period is to be at least 12 months.

## **Step Up to Quality**

- Maintains the law requiring JFS to ensure that all publicly funded child care providers are rated in the third highest tier or above by June 30, 2025, but eliminates the statutory phase-in schedule requiring specified percentages of providers to be rated by specified dates leading up to 2025.

## **Type A family day-care homes**

- Eliminates the requirement that JFS include in the rules governing Type A family day-care homes standards for preparing and distributing parent rosters.

## **Child care resource and referral services**

- Eliminates the requirement that the JFS Director adopt rules for funding child care resource and referral service organizations.

## **Head Start program definition**

- Revises the definition of “head start program” for purposes of the law governing the licensure and regulation of child care providers, including by specifying that it is a school-readiness program.

## **Elderly Simplified Application Project**

- Requires the JFS Director to submit an application to the U.S. Department of Agriculture for participation in the Elderly Simplified Application Project within the Supplemental Nutrition Assistance Program.

## Ohio Commission on Fatherhood

- Extends the timeline of appointing the chairperson of the Ohio Commission on Fatherhood from every year to every other year, occurring in odd-numbered years.

## Unemployment compensation

- Makes information maintained by or furnished to the Unemployment Compensation Review Commission confidential and, with one exception, inadmissible in cases unrelated to the Unemployment Compensation Law (similar to current law regarding information maintained by, or furnished to, JFS).
- Prohibits disclosure of information maintained by the Commission unless an exception applies.
- Reduces from 30 days to ten days the time for the JFS Director to approve or deny a shared work plan and notify the employer of the determination.
- Increases the maximum percentage an individual's workweek can be reduced for purposes of participating in the SharedWork Ohio Program from 50% to 60%.
- Requires, if permitted by federal law, any portion of compensation paid under the SharedWork Ohio Program to be charged to the mutualized account and not to a participating employer's experience during any period the compensation is being reimbursed under federal law.

## TANF spending plan

(R.C. 107.03 and 5101.806)

The bill requires the Department of Job and Family Services (JFS), not later than November 1 of each even-numbered year, to submit a TANF spending plan to the Governor. The plan must describe the anticipated spending of Temporary Assistance for Needy Families (TANF) block grant funds for the upcoming fiscal biennium. The plan must be prepared in such a manner as to facilitate the inclusion of the information in the Governor's budget. It must be submitted to the General Assembly as an appendix to the Governor's budget.

By July 30 of each even-numbered year, JFS must prepare and submit an updated TANF spending plan. This updated plan, at a minimum, must include information detailing the total amount of TANF block grant funds that were distributed during the first fiscal year of the biennium and an updated estimate of total TANF block grant funds that will be distributed during the second fiscal year of the biennium. The report must be submitted to the chairperson of a standing committee of the House designated by the Speaker and the chairperson of a standing committee of the Senate designated by the Senate President.

The bill authorizes the chairpersons of the designated standing committees to call the JFS Director to testify before the committees regarding the TANF spending plan.

## Individual Development Account (IDA) reports

(R.C. 329.12 and 5101.971)

The bill eliminates a requirement that a county department of job and family services prepare and file with JFS a semi-annual report regarding its IDA Program. The IDA Program allows lower income individuals to deposit funds into an account, which are then matched by the county department. The funds may be used by an individual to purchase a home, start a business, or for post-secondary education expenses.<sup>70</sup>

The bill also eliminates the requirement that JFS publish an annual report regarding the counties' IDA programs.

## Case plans and family service plans

(R.C. 2151.412)

### Permanency plans

Beginning January 1, 2023, the bill makes it mandatory, instead of discretionary, for a public children services agency (PCSA) or a private child placing agency (PCPA) to include, within its case plan for a child in temporary custody, a permanency plan for the child, unless the permanency plan would not be in the child's best interest. The bill requires that the permanency plan describe the services the PCSA or PCPA must provide to achieve permanency for the child if reasonable efforts to return the child to the child's home, or eliminate the child's continued removal from home, are unsuccessful. The services must be provided concurrently with reasonable efforts to return the child home or eliminate the child's continued removal from home.

Current law requires each PCSA and PCPA to prepare and maintain a case plan for a child to whom the PCSA or PCPA is providing services if (1) it filed a complaint alleging that the child is an abused, neglected, or dependent child, (2) it has temporary or permanent custody of the child, (3) the child is living at home subject to an order for protective supervision by JFS, or (4) the child is in a planned permanent living arrangement. The PCSA or PCPA has discretion to add, as a supplement to the plan, a plan for permanent family placement for the child.

The JFS Director must adopt rules, according to the Administrative Procedure Act (R.C. Chapter 119), necessary to carry out the purposes described above regarding supplement plans and concurrent permanency plans.

### Family service plans

The bill changes the requirement that a case plan *or* a family service plan must be maintained for any child for whom the PCSA provides in-home services under an alternative response to a report of child abuse or neglect, by repealing the option that allows a PCSA to maintain a family service plan. In addition, the bill removes the requirement that the Director adopt rules for family service plans.

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<sup>70</sup> O.A.C. 5101:1-3-18(D)(1).

Under ongoing law, an alternate response is a PCSA's response to a report of child abuse or neglect that engages the family in a comprehensive evaluation of child safety, risk of subsequent harm, and family strengths and needs that does not include a determination as to whether abuse or neglect occurred.<sup>71</sup>

## **Caseworker in-service training**

(R.C. 5153.122 and 5153.124)

The bill requires the JFS Director, no later than nine months after the effective date of this requirement, to adopt rules in accordance with R.C. Chapter 119 to establish circumstances under which an executive director of a PCSA may waive portions of in-service training for PCSA caseworkers. This waiver requirement is in addition to the current law in-service training waiver for PCSA caseworkers in their first year.

Under current law, each PCSA caseworker must complete at least 102 hours of in-service training during the first year of continuous employment as a caseworker, and 36 hours annually afterward. However, a PCSA executive director may waive the first-year requirement for a school of social work graduate who participated in the University Partnership Program, an in-school training program designed to prepare social work students to enter the field of child welfare.

## **Kinship caregiver placement efforts**

(R.C. 2151.4115, 2151.4116, 2151.4117, 2151.4118, 2151.4119, 2151.4120, 2151.4121, 2151.4122, and 2151.416)

### **Finding kinship caregivers**

#### **Intensive efforts**

The bill requires each PCSA and PCPA to make intensive efforts to identify potential kinship caregivers whenever the agency has temporary custody of, or is party to a planned permanent living arrangement (PPLA) regarding, a child (TC/PPLA child).

A "kinship caregiver" is any of the following who is 18 or older and is caring for a child in place of the child's parents:

- The following individuals related by blood or adoption to the child:
  - Grandparents, including grandparents with the prefix "great," "great-great," or "great-great-great";
  - Siblings;
  - Aunts, uncles, nephews, and nieces, including such relatives with the prefix "great," "great-great," "grand," or "great-grand";
  - First cousins and first cousins once removed.

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<sup>71</sup> R.C. 2151.011(B)(4).

- Stepparents and stepsiblings of the child;
- Spouses and former spouses of individuals named in the dot points above;
- A legal guardian of the child;
- A legal custodian of the child;
- Any nonrelative adult who has a familiar and long-standing relationship or bond with the child or the family, which relationship or bond will ensure the child's social ties.

### **Summary of efforts**

The bill requires a PCSA or PCPA to include a summary of its intensive effort, to secure an appropriate and willing kinship caregiver for a TC/PPLA child as part of the semiannual administrative review of the child's case plan (which is required under continuing law), unless a court has deemed such efforts unnecessary. The efforts must include the use of search technology, which the bill defines as any locate-and-research tool, search engine, electronic database, or social media search tool available to the PCSA or PCPA.

### **Exemption**

The bill excuses a PCSA or PCPA from considering a TC/PPLA child's relative as a permanent placement option if the relative has failed to show interest within six months of receiving a notice from the PCSA or PCPA that it has temporary custody of the child. Under continuing law, that notice is sent to all grandparents and other adult relatives of a child within 30 days of the child's removal from the custody of the child's parents.<sup>72</sup>

The bill provides, however, that nothing in its provisions prevents a PCSA or PCPA from continuing to search or consider kinship caregivers.

### **Court review**

The bill requires that at every court hearing regarding a TC/PPLA child, the court determine whether the PCSA or PCPA has continued intensive efforts to identify and engage appropriate and willing kinship caregivers. This determination requires the court's review of the following:

- Whether the child is receiving care from a kinship caregiver;
- The PCSA or PCPA efforts since the previous hearing to place the child with a kinship caregiver, including efforts to use search technology to find biological family members;
- Whether any previous court order (described under "**Court determination**," below) should continue.

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<sup>72</sup> R.C. 2151.33, not in the bill.

## **Court determination**

The bill allows a court to issue an order that determines (1) the TC/PPLA child's current, nonkinship-caregiver placement is in the child's best interest and (2) that further intensive efforts to identify and engage an appropriate and willing kinship caregiver are unnecessary, if:

- The child has been in a stable home environment with the child's current caregivers for the past 12 months;
- The current caregivers are interested in providing permanency for the child; and
- Removal from the current caregivers would be detrimental to the child's emotional well-being.

The bill provides that the current caregiver of the child will be considered to have a kin relationship with the child and will have equal standing with other kin regarding permanency if a court makes the determination described above.

## **Kinship caregiver program**

(Section 307.81)

### **CDJFS program incorporation**

Under the bill, each county department of job and family services (CDJFS) must incorporate a kinship caregiver program into its prevention, retention, and contingency (PRC) plan. The program must include a family stabilization service and a caregiving service. The stabilization service must be designed to transition the child into and maintain the child in the home of the kinship caregiver. For the purpose of the stabilization service, each child living with a kinship caregiver must constitute a PRC assistance group of one. For the purpose of the caregiving services, each assistance group must include at least a child living with a kinship caregiver and also the kinship caregiver. JFS may adopt rules under R.C. Chapter 119 as necessary to carry out the program.

### **Program funding**

The bill earmarks \$10 million in each of FY 2022 and FY 2023 for the program. The JFS Director must allocate funds to CDJFSs by providing 12% divided equally among all counties, 48% in the ratio that the number of residents per county under age 18 bears to the total number of such persons residing in Ohio, and 40% in the ratio that the number of residents in the county with incomes under 100% of the federal poverty guideline bears to the total number of such persons in Ohio.

Each PCSA must use the funds to provide reasonable and necessary relief of child caring functions so kinship caregivers can provide and maintain a home for a child in place of the child's parents. When a county's children services board is designated as the PCSA (but not when the CDJFS or a private or government entity is designated), the CDJFS must enter into a memorandum of understanding with the PCSA authorizing the expenditure up to the amount of the allocation.

If funding is no longer available, the program will end and any CDJFS or PCSA cannot be held responsible for payment of services.

## Kinship guardianship assistance (KGA)

(R.C. 3119.10, 5101.141, 5101.1411, 5101.1415, 5101.1416, 5101.1417, 5101.802, 5107.10, and 5153.163)

### Federal KGA

The bill seeks to obtain federal kinship guardianship assistance (federal KGA) under Title IV-E of the Social Security Act to assist any relative who meets certain requirements (described below) with regard to the care of a kinship guardianship young adult (KGA young adult) or an eligible child.

The bill defines a “**relative**,” with respect to a child, as any of the following who is age 18 or older:

- The following individuals related by blood or adoption to the child:
  - Grandparents, including grandparents with the prefix “great,” “great-great,” or “great-great-great”;
  - Siblings;
  - Aunts, uncles, nephews, and nieces, including such relatives with the prefix “great,” “great-great,” “grand,” or “great-grand”;
  - First cousins and first cousins once removed;
  - Stepparents and stepsiblings of the child.
- Spouses and former spouses of individuals described above;
- A legal guardian of the child;
- A legal custodian of the child;
- Any nonrelative adult that has a familiar and long-standing relationship or bond with the child or the family, which relationship or bond will ensure the child’s social ties.

A “**KG young adult**” is an individual who:

- Was in the temporary or permanent custody of a PCSA or a planned permanent living arrangement prior to being committed to the legal custody or legal guardianship of a kinship caregiver at 16 or 17 years old, and attained age 16 before a federal KGA agreement became effective;
- Has attained age 18, but not 21.

A child is an “**eligible child**” for federal KGA if the child meets the following requirements:

- The child has been removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child;
- The child has been eligible for foster care maintenance payments under existing law while residing for at least six consecutive months in the home of a relative;

- Returning the child home or adoption of the child are not appropriate permanency options;
- The child demonstrates a strong attachment to the child's relative who has legal custody or guardianship of the child and the relative has a strong commitment to caring permanently for the child;
- With respect to a child who is 14 years old, the child has been consulted regarding the federal KGA agreement.

### **On behalf of a KG young adult**

#### ***State plan amendment requirement***

The bill requires the JFS Director, not later than nine months after the bill's effective date, to submit an amendment to the state plan required by federal law to the U.S. Secretary of Health and Human Services to provide federal KGA to any relative meeting the following criteria:

- A juvenile court issued an order granting legal custody of a KG young adult to the relative, or a probate court issued a nontemporary order granting the relative legal guardianship of a KG young adult;
- The relative entered into a federal KGA agreement while the KG young adult was 16 or 17;
- The relative maintains parental responsibility for the KG young adult;
- The KG young adult meets at least one of the following requirements:
  - Is completing secondary education or a program leading to an equivalent credential;
  - Is enrolled in an institution that provides post-secondary or vocational education;
  - Is participating in a program or activity designed to promote, or remove barriers to, employment;
  - Is employed for at least 80 hours a month;
  - Is incapable of doing the activities described above due to a physical or mental condition.

#### ***Implementation and performance***

The bill requires implementation of the state plan amendments to begin 15 months after the bill's effective date if (1) the plan as amended is approved by the Secretary of Health and Human Services, and (2) the General Assembly has appropriated sufficient funds to operate the KGA Program. It further requires JFS to perform all new duties required by the amended plan, but JFS may contract with others to carry out those duties to the extent permitted under Title IV-E.

#### ***Extension or refusal of federal KGA***

The bill allows relatives meeting the federal KGA criteria (above) to request an extension of federal KGA at any time before the KG young adult reaches 21 years old.

It allows any relative receiving federal KGA for a KG young adult to refuse payments at any time.

### ***Eligibility for foster care-related programs***

A KG young adult eligible to receive federal KGA is not considered an emancipated young adult and is not eligible for foster care payments under Title IV-E. Any relative receiving federal KGA and the KG young adult are eligible for the federal “Fostering Connections to Success and Increasing Adoption Act of 2008.”

### ***State hearing***

Any JFS decision that terminates federal KGA for a KG young adult is subject to a state hearing under continuing law.

### **On behalf of an eligible child**

#### ***State plan amendment requirement***

The bill requires JFS, not later than nine months after the bill’s effective date, to submit an amendment to the state plan to the U.S. Secretary of Health and Human Services to provide federal KGA on behalf of a child to a relative meeting the following requirements:

- The relative has cared for the eligible child as a foster caregiver, as defined by Ohio law, for at least six consecutive months;
- The juvenile court issued an order granting the relative legal custody of the child, or a probate court issued a nontemporary court order granting the relative legal guardianship;
- The relative has committed to care for the child on a permanent basis;
- The relative has signed a federal KGA agreement.

#### ***Implementation and performance***

The bill requires implementation of the amendments to the plan to begin 15 months after the bill’s effective date if the plan, as amended, is approved by the Secretary of Health and Human Services.

### **County expenditure reports**

The bill requires a board of county commissioners, to the extent federal KGA payments for maintenance costs require county funds to be spent, to report the nature and amount of each expenditure to JFS.

### **Distribution to PCSA**

The bill requires JFS to distribute to PCSAs that incur and report expenditures described immediately above federal financial participation (FFP) received for administrative and training costs incurred in the operation of federal KGA. JFS may withhold up to 3% of the FFP for certain administrative and training costs.

## **Interstate compacts**

The bill authorizes JFS to develop or join interstate compacts, on behalf of the state, for providing social services to children regarding whom all of the following apply: (1) they have special needs, (2) Ohio or another party state is providing KGA on their behalf, and (3) they move into or out of Ohio, coming from or going to another state.

## **JFS rules for federal KGA**

The bill requires JFS, not later than nine months after the bill's effective date, to adopt rules that are necessary to carry out the purposes of the federal KGA for both KG young adults and eligible children. The rules must include the following:

- Allowing a KG young adult, on whose behalf federal KGA is received, to maintain eligibility while transitioning into, or out of, qualified employment or educational activities; and
- Requiring a 30-day notice of termination to be sent by JFS to a person receiving federal KGA for a KG young adult who is determined ineligible for federal KGA.

## **State KGA**

The bill allows a PCSA that had custody of a child immediately prior to a court granting legal custody or legal guardianship to a relative to enter into an agreement with a child's relative under which the PCSA may provide, as needed, and to the extent state funds are available, state kinship guardianship assistance (State KGA), when all of the following apply:

- The relative has cared for the eligible child as a foster caregiver, as defined under Ohio law, for at least six consecutive months;
- A juvenile court issued an order granting the relative legal custody of the child, or a probate court issued a nontemporary court order granting the relative legal guardianship, and the relative has committed to care for the child on a permanent basis;
- The relative signed a State KGA agreement prior to assuming legal custody or guardianship of the child;
- The child had been removed from home pursuant to a voluntary placement agreement, or as a result of a judicial determination to the effect that continuation in the home would be contrary to the welfare of the child;
- Returning the child home or adoption are not appropriate permanency options for the child;
- The child demonstrates a strong attachment to the relative and the relative has a strong commitment to caring permanently for the child;
- With respect to a child who is 14, the child has been consulted regarding the State KGA arrangement;
- The child is not eligible for federal KGA payments.

State KGA provided under a State KGA agreement is subject to an annual need determination.

The State KGA provisions must be implemented not later than 15 months after the bill's effective date, if the state plan is amended as described above to provide federal KGA to eligible children.

### **Kinship permanency incentive and Ohio Works First**

The bill prohibits a kinship caregiver (a relative, as defined in the bill, who is caring for a child in place of the child's parents) from participating in the kinship permanency incentive program under continuing law if the kinship caregiver is a relative receiving federal KGA for a KGA young adult or State KGA. But, if the kinship caregiver is not receiving such assistance or is receiving federal KGA on behalf of an eligible child, the kinship caregiver may participate.

The bill further provides that an assistance group that meets certain requirements, including that the group contain a specified relative residing with and caring for a related minor child and receiving any federal or State KGA, may participate in the Ohio Works First Program.

### **Gross income and KGA for child support**

The bill excludes any federal KGA and State KGA from the definition of gross income for child support calculation purposes. Under current law, federal adoption assistance and foster care maintenance payments are already excluded.

### **PCSA duties regarding impossibility of adoption**

The bill repeals the prohibition against a PCSA placing or maintaining a child with special needs in a setting other than with a person seeking to adopt the child, unless the PCSA has determined, and periodically redetermined, the impossibility of the child's adoption. It also repeals the requirement for a PCSA to report to JFS its reasons for determining the impossibility.

### **Online training for foster caregivers**

(R.C. 5103.031 and 5103.0316)

The bill requires JFS to adopt rules in accordance with R.C. Chapter 119 providing for the amount of preplacement and continuing training hours for prospective and existing foster caregivers that may be completed online. It repeals the law permitting up to 20% of required preplacement training for a prospective foster caregiver to be provided online.

### **PASSS payments**

(R.C. 5101.1418 and 5153.163)

The bill codifies, and then transfers the operation of, the post adoption special services subsidy (PASSS) program to JFS from PCSAs. Under PASSS, a child in need of public care or protective services may be provided assistance through agreement with the adoptive parent, to the extent state funds are available. Such a child is one (1) who has a physical or developmental disability or emotional condition that existed before the adoption, or developed after the adoption because of the child's preadoption condition, and (2) whose adoptive parent does not have the economic resources to pay the costs resulting from the disability or condition. The agreement allows PASSS payments to be made on the child's behalf for medical, surgical, psychiatric, psychological, and counselling services, including residential treatment.

In addition to the transfer of administration of PASSS completely to JFS, the bill makes the following changes:

- Permits JFS to contract with another person to carry out the PASSS duties;
- Uses the terms “disabled” and “disability” instead of “handicapped” or “handicap” for the PASSS program;
- Prohibits PASSS payments from being made on behalf of (1) any person, 18 or older, beyond the end of the school year during which the person turned 18, or (2) a mentally or physically disabled person who is 21 or older;
- Requires the Director to adopt rules by July 1, 2022, under R.C. Chapter 119, to implement the recodified PASSS. The rules must establish:
  - The application process for the PASSS payments;
  - Standards for determining the children who qualify to receive PASSS payments;
  - The method of determining the amount, duration, and scope of services provided to a child;
  - The method of transitioning the PASSS program from PCSAs to JFS;
  - Any other rule, requirement, or procedure JFS considers appropriate for the implementation of this section.

Finally, the bill requires JFS to implement the recodified PASSS program no later than July 1, 2022.

## **Bills of Rights for foster youth and resource families**

(R.C. 2151.011, 2151.316, 5103.02, and 5103.163)

The bill requires JFS to adopt rules, in accordance with R.C. Chapter 119, to establish and enforce a Foster Youth Bill of Rights and a Resource Family Bill of Rights.

The Foster Youth Bill of Rights is for individuals who are: (1) in the temporary or permanent custody of a PCSA or planned permanent living arrangement or (2) in the Title IV-E eligible care and placement responsibility of a juvenile court or other governmental agency and who are subject to out-of-home care or placed with a kinship caregiver.

The Resource Family Bill of Rights serves resource families providing care for individuals who are in the custody or care and placement of an agency that provides Title IV-E reimbursable services under existing law.

The bill defines a “resource caregiver” as a foster caregiver or kinship caregiver. A “resource family” is defined as a foster home or the kinship caregiver family. A kinship caregiver is defined as it is in existing law, which is any of the following who is 18 or older and is caring for a child in place of the child’s parents:

1. The following individuals related by blood or adoption to the child:

- a. Grandparents, including grandparents with the prefix “great,” “great-great,” or “great-great-great”;
  - b. Siblings;
  - c. Aunts, uncles, nephews, and nieces, including such relatives with the prefix “great,” “great-great,” “grand,” or “great-grand”;
  - d. First cousins and first cousins once removed.
2. Stepparents and stepsiblings of the child;
  3. Spouses and former spouses of individuals named in (1) and (2) above;
  4. A legal guardian of the child;
  5. A legal custodian of the child;

Any nonrelative adult that has a familiar and long-standing relationship or bond with the child or the family, which relationship or bond will ensure the child’s social ties.

### **Preemption**

The bill specifies that if the rights of an individual under the Foster Youth Bill of Rights conflict with the rights of a resource family or resource caregiver, the rights of the individual under the Foster Youth Bill of Rights preempt the rights of the resource family or resource caregiver under the Resource Family Bill of Rights.

### **Immunity**

The bill also provides that the rights established in the Foster Youth Bill of Rights and Resource Family Bill of Rights do not create grounds for a civil action against JFS, the recommending agency, or custodial agency.

### **Notification for sibling of adopted person**

(R.C. 3107.11 and 3107.15)

The bill provides that the legal parents of an adopted person may be notified that a sibling of the adopted person has been placed into out-of-home care. This notification is an exception to the requirement that when an adoption is finalized, the biological or other legal parents of the adopted person are relieved of all parental rights and responsibilities and all legal relationships between the adopted person and the adopted person’s relatives are terminated so that the adopted person becomes a stranger to the adopted person’s former relatives.

The bill defines “sibling” as a former biological sibling, former legal sibling, or any person who would have been considered a sibling if not for a termination or other disruption of parental rights.

### **Criminal records check for individuals overseeing a child**

(R.C. 109.572)

The bill adds several crimes to those for which the Bureau of Criminal Identification and Investigation must check when conducting background checks required for persons responsible

for out-of-home child care and members of a household for a family hosting a child under a host family agreement. The Superintendent of the Bureau must conduct a criminal records check to determine whether any information exists that indicates that the person has previously been convicted or pleaded guilty to any of the following additional crimes:

- Reckless homicide;
- Aggravated vehicular homicide, vehicular homicide, and vehicular manslaughter;
- Aggravated vehicular assault and vehicular assault;
- Extortion;
- Trafficking in persons;
- Commercial sexual exploitation of a minor;
- Unlawful possession of a dangerous ordnance and illegally manufacturing or processing explosives;
- Improperly furnishing firearms to a minor;
- Participating in a criminal gang;
- Illegal assembly or possession of chemicals for the manufacture of drugs;
- Permitting drug abuse;
- Deception to obtain a dangerous drug;
- Illegal processing of drug documents;
- Tampering with drugs;
- Abusing harmful intoxicants;
- Trafficking in harmful intoxicants and improperly dispensing or distributing nitrous oxide;
- Illegal dispensing of drug samples;
- Possession of counterfeit controlled substances, trafficking in counterfeit controlled substances, aggravated trafficking in counterfeit controlled substances, promoting and encouraging drug abuse, and fraudulent drug advertising.

## **Background checks for institutions and associations**

(R.C. 5103.0310)

### **Requirement to obtain information**

The bill requires an “institution or association,” which is a public or private organization, society, association, or agency that receives or cares for children for two or more consecutive weeks, to comply with the following:

- If it is a residential facility, obtain certain background information before employing a person or engaging a subcontractor, intern, or volunteer.

- If it is *not* a residential facility, obtain the same background information before hiring a person or engaging a subcontractor, intern, or volunteer, but only if the individual will have access to children.

For this purpose, a “residential facility,” is a group home for children, children’s crisis care facility, children’s residential center, residential parenting facility that provides 24-hour child care, county children’s home, or district children’s home. A foster home is not a residential facility.

### **Background information obtained**

The bill requires an institution or association described above, regarding the background information, to (1) *obtain* a search (instead of *conduct* a search as current law requires) of the U.S. Department of Justice’s National Sex Offender Public Website and (2) *obtain* a summary report (instead of *request* a summary report as current law requires) of a search of the uniform statewide automated child welfare information system (SACWIS).

### **Further action**

The bill allows an institution or association described above to refuse to employ (instead of “hire” as current law requires) the person or to engage the subcontractor, intern, or volunteer based solely on the search and summary report or findings of the summary report if it contains an abuse or neglect determination.

The bill also requires an institution or association described above to obtain the search and summary report for a person, subcontractor, intern, or volunteer if that information has not yet been obtained by the effective date of this provision.

### **Background – current law**

Current law requires any institution or association that is a public or private organization, society, association, or agency that receives or cares for children for two or more consecutive weeks to *conduct* a search of the National Sex Offender website and *request* a summary report of a search of SACWIS for a person that an institution or association plans to employ – it does not apply to a subcontractor, intern, or volunteer. The law also does not distinguish between residential facilities and those that are not, and does not limit the requirement to obtain the search and summary report to individuals who will have access to children if the institution or association is not a residential facility.

### **Federal foster care assistance for emancipated young adults**

Under continuing law, an “emancipated young adult” (EYA) is a person:

- Who was in the temporary or permanent custody of a PCSA, a planned permanent living arrangement, or in the Title IV-E eligible care and placement responsibility of a juvenile court or other governmental agency that provides Title IV-E reimbursable placement services;
- Whose custody, arrangement, or care and placement was terminated on or after the person’s 18<sup>th</sup> birthday; and

- Is not yet 21.<sup>73</sup>

## **Jurisdiction**

(R.C. 2151.451)

The bill expands the juvenile courts that may exercise jurisdiction over an EYA receiving federal foster care payments pursuant to Ohio's Title IV-E state plan to include the court of the county where the EYA resided when the EYA's custody, planned permanent living arrangement, or care and placement terminated. Under current law, only the juvenile court of the county where an EYA currently resides may exercise jurisdiction.

## **Voluntary participation agreements**

(R.C. 5101.1412)

An EYA who receives Title IV-E payments may enter a "voluntary participation agreement" (VPA) with JFS or its representative regarding the EYA's care and placement. As part of the process, JFS or its representative must seek periodic determinations from the court concerning the young adult's best interests. The bill revises the statutory terms of the judicial interactions, as follows:

1. The bill rewords the mandate to require JFS or its representative to "petition for and obtain a judicial determination" – rather than merely than "seek approval from the court" as under current law – that the EYA's best interest is served by continuing his or her care and placement.
2. It makes explicit that the requirement to seek the judicial determination is tied to maintaining the EYA's Title IV-E eligibility.

## **Best interest determination**

(R.C. 2151.452)

The bill eliminates the remedy that an emancipated young adult (EYA) loses eligibility for continued care and placement with JFS or its representative (JFS/Rep) if a court finds, not later than 180 days after a VPA effective date, it is not in the EYA's best interest. Under continuing law, the court must still make a best-interest determination not later than those 180 days regarding an EYA's continued care and placement with JFS/Rep, but there is no remedy if the court determines it is not in the EYA's best interest.

## **Reasonable efforts determination**

(R.C. 2151.452)

The bill revises the timing of the court's determination whether JFS/Rep has made reasonable efforts to prepare the EYA for independence, as follows:

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<sup>73</sup> R.C. 5101.141, not in the bill.

1. It requires the court to make the determination not later than 12 months after the VPA's effective date, rather than 12 months after the VPA was signed as under current law; and
2. It requires determinations "at least once every 12 months" thereafter, rather than merely "annually" as under current law.

### **Payment suspension**

(R.C. 2151.453)

The bill requires the suspension of federal payments for foster care for the EYA if the best interest and reasonable efforts determinations described above are not timely made. Under current law, only if the reasonable efforts determination regarding preparing the EYA for independence is not timely made, will the federal foster care payments be suspended. Under continuing law, the payments will resume upon a subsequent determination that reasonable efforts have been made to prepare the EYA for independence. Under the bill, a subsequent best interest determination will not result in the resumption of payments.

### **Reimbursement for federal juvenile court programs**

(R.C. 2151.152)

The bill adds prevention services costs under the federal Family First Prevention Services Act to the list of costs for which a juvenile judge may enter into an agreement with JFS to receive reimbursement on behalf of a child in certain circumstances. Under continuing law, JFS may seek federal financial participation for costs incurred by any public entity with authority to implement a program that JFS administers. This includes programs operated under Title IV-E, such as the Family First Prevention Services Act. The funds that JFS collects must be distributed to the entity that incurred the costs.

The bill also adds to the list of approved circumstances of a child on whose behalf the judge seeks reimbursement a child who: (1) is at the imminent risk of removal from the home and (2) is a sibling of a child in the temporary or permanent custody of the court.

### **Streamlining County Level-Information Access Task Force**

(Section 751.10)

#### **Task Force creation**

The bill creates the Task Force on Streamlining County Level-Information Access to make recommendations on how county departments of job and family services, child support enforcement agencies, public children services agencies, and county OhioMeansJobs centers can streamline access to information across information technology systems.

#### **Membership**

The Task Force must consist of 16 members:

1. Two members of the House, appointed by the Speaker, one from each party;
2. Two members of the Senate, appointed by the President, one from each party;
3. The JFS Director, or the Director's designee;

4. The Medicaid Director, or the Director's designee;
5. The Director of Administrative Services, or the Director's designee;
6. Three representatives of the Ohio Job and Family Services Director's Association, appointed by the Association, with one representative each from a small, medium, and large county, respectively;
7. Three representatives of the Public Children Services Association of Ohio, appointed by the Association, with one representative each from a small, medium, and large county, respectively;
8. Three representatives of the Ohio Child Support Enforcement Agency Director's Association, appointed by the Association, with one representative each from a small, medium, and large county, respectively.

## **Meetings**

The Task Force must hold its first meeting by October 8, 2021. Members must elect a chairperson at the first meeting. For each meeting, each Director or Director's designee must select an appropriate subject matter expert from their departments, as necessary, to attend the meetings and inform the discussions. A majority of the members constitutes a quorum for the conduct of meetings. The Task Force must comply with public records and open meetings requirements in continuing law.

## **Duties**

The Task Force must:

1. Identify barriers to efficient operations between information technology systems that affect both department and agency operations and services to clients;
2. For each identified barrier, explore the feasibility of allowing county employees access to more than one information technology system to provide better service to clients, including by analyzing the flexibility provided and prohibitions under federal law, regulation, guidance, and waivers;
3. Prioritize which barriers should be addressed first based on the outcomes and efficiencies to be gained by improved streamlining processes and information sharing; and
4. Submit a report detailing its findings and recommendations to the General Assembly by February 1, 2022.

The Task Force ceases to exist when it submits the report.

## **Publicly funded child care**

(R.C. 5104.34)

The bill makes three changes to the law governing eligibility for publicly funded child care.

1. Specifies that the eligibility period is to be at least 12 months. Existing law contains several references to a 12-month period;

2. Provides that the child of a caretaker parent who is no longer eligible for publicly funded child care may continue to receive publicly funded child care for at least three months, rather than for 13 weeks as under current law; and

3. Removes an obsolete reference to part-time child care programs participating in the Step Up to Quality Program.

## **Step Up to Quality**

(R.C. 5104.29)

Under current law, ODJFS must ensure that the following percentages of early learning and development programs providing publicly funded child care are rated in the Step Up to Quality Program's third highest tier or above:

- 25% by June 30, 2017;
- 40% by June 30, 2019;
- 60% by June 30, 2021;
- 80% by June 30, 2023;
- 100% by June 30, 2025.

The bill eliminates each date and percentage required, except for the mandate that ODJFS ensure that, by June 30, 2025, all providers are rated in the third highest tier or above.

## **Type A family day-care homes**

(R.C. 5104.017)

The bill eliminates the requirement that JFS, when adopting rules governing the operation of type A family day-care homes, include standards for preparing and distributing a roster of parents, guardians, and custodians. It also removes an obsolete reference to school-age child type A family day-care homes. Type A providers can generally care for 7-12 children at one time and must be licensed by JFS.

## **Child care resource and referral services**

(R.C. 5104.07)

The bill eliminates the requirement that the JFS Director adopt rules for funding child care resource and referral service organizations. Rather than address the eliminated topics in rule, the bill instead requires them to be made a part of the statewide plan for child care resource and referral services that JFS must develop under current law. The topics currently specified in statute include or address the following:

1. A description of the services that a child care resource and referral service organization is required to provide to families who need child care;
2. The qualifications for a child care resource and referral service organization;

3. A description of the procedures for providing federal and state funding for county or multicounty child care resource and referral service organizations;
4. A timetable for providing child care resource and referral services to all communities in the state;
5. Uniform information gathering and reporting procedures that are designed to be used in compatible computer systems;
6. Procedures for establishing statewide nonprofit technical assistance services to coordinate uniform data collection and to publish reports on child care supply, demand, and cost and to provide technical assistance to communities that do not have child care resource and referral service organizations and to existing child care resource and referral service organizations;
7. Requirements governing contracts, which may include limits on the percentage of funds distributed by the department that may be used for the contracts.

## **Head Start program definition**

(R.C. 5104.01)

The bill revises the “head start program” definition used in the law governing the licensure and regulation of child care providers, including by:

1. Specifying that Head Start is a school-readiness program serving children from low-income families, rather than a comprehensive child development program as under current law; and
2. Updating citations to the federal statutes.

## **Ohio Commission on Fatherhood**

(R.C. 5101.341)

The bill extends the timeline for appointing the chairperson of the Ohio Commission on Fatherhood to every other year, occurring in odd-numbered years. Current law requires the chairperson to be appointed every year.

## **Elderly Simplified Application Project**

(R.C. 5101.545)

The bill requires the JFS Director to submit an application to the U.S. Department of Agriculture for participation in the Elderly Simplified Application Project within the Supplemental Nutrition Assistance Program (SNAP). The Elderly Simplified Application Project is a demonstration project within SNAP, under which participating states may waive the recertification interview requirement and extend the certification period for certain eligible elderly households to 36 months.

## Unemployment compensation review commission

(R.C. 4141.21 and 4141.22)

### Confidentiality

The Unemployment Compensation Review Commission (UCRC) hears appeals from the JFS Director's determinations involving unemployment benefit claims and other issues under the Unemployment Compensation Law. The bill expands a current confidentiality requirement by making information maintained by, or furnished to, the UCRC by an employer or employee pursuant to the law confidential and, with one exception relating to a nonrefundable tax credit for eligible employee training costs, inadmissible in cases unrelated to the law. Under existing law, information maintained by, or furnished to, the JFS Director is confidential, with the same exception noted above.

### Prohibitions

The bill prohibits a person from disclosing, unless permitted under continuing law, any information maintained by, or furnished to, the UCRC by an employer or employee pursuant to the law. Existing law applies this prohibition to information maintained by, or furnished to, the JFS Director. The bill also prohibits a current or former UCRC employee from divulging, except to specific entities during the course of employment, employer business operation information maintained by, or furnished to, the UCRC. Currently, this prohibition applies to employees of the JFS Director, a county family services agency, or a workforce development agency with respect to information maintained by, or furnished to, the JFS Director or those agencies.

A person who violates these disclosure prohibitions is disqualified under continuing law from holding any appointment or employment with the JFS Director, a county family services agency, or a workforce development agency, and from an appointment or employment with the UCRC, as added by the bill.

### SharedWork

(R.C. 4141.51, 4141.53, and 4141.55)

"SharedWork Ohio" is a voluntary program in which a participating employer reduces the number of hours worked by the employer's employees in lieu of layoffs. To participate in the program, an employer must submit a shared work plan to the JFS Director. The plan, among other requirements, must identify affected employees and describe the proposed percentage that their hours will be reduced. If the Director approves the plan, an affected employee works the reduced hours, and the Director provides the employee with a shared work benefit. The benefit is equal to the employee's regular weekly benefit amount for a period of total unemployment as described in continuing law multiplied by the reduction percentage specified in the shared work plan.

The bill increases the maximum percentage a participating employer may reduce an affected employee's hours. Currently, the proposed reduction percentage permitted in a shared work plan must be between 10% and 50%. Under the bill, the reduction must be between 10% and 60%.

The bill also reduces the time period for the JFS Director to approve or deny a shared work plan. Under the bill, the Director must approve or deny the plan and send written notice of the determination to the employer no later than ten days after receiving the plan. Currently, the Director has 30 days.

Under the bill, if Ohio receives reimbursement for shared work benefits from the federal government under any federal law, the portion of benefits being reimbursed is charged to the mutualized account and not to a participating employer's experience during the period of reimbursement. Currently, shared work benefits can be charged to the mutualized account only if they are being reimbursed under the federal "Layoff Prevention Act of 2012." That federal law no longer appears to be reimbursing shared work benefits.<sup>74</sup>

The mutualized account is a separate account within the state Unemployment Compensation Fund. It is primarily used to pay benefits when an employer's account cannot be charged for those benefits for a variety of reasons. Charging benefits that would otherwise be charged to an employer's account to the mutualized account may result in the employer paying lower unemployment contributions.<sup>75</sup>

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<sup>74</sup> Section 2162 of the "Layoff Prevention Act of 2012," Pub. L. No. 112-96.

<sup>75</sup> See R.C. 4141.25, not in the bill.

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## JUDICIARY/SUPREME COURT

### Jefferson County County Court

- Effective January 1, 2022, removes the requirement that the presiding judge of the Jefferson County County Court determine areas of separate jurisdiction for the judges of that court and that the judges hold court in Wintersville or Cross Creek, Dillonvale, and Toronto.

### Indigent drivers alcohol treatment fund

- Expands the authorized uses a court may make of surplus money in an indigent drivers alcohol treatment fund to allow expenditure for the costs of staffing, equipment, training, drug testing, supplies, and other expenses of any specialized docket program established within the court and certified by the Supreme Court.

### Probation Workload Study Committee

- Creates the Probation Workload Study Committee within the Ohio Supreme Court to study and discuss probation caseload principles, education standards for probation officers, workload capacity principles, and any other additional subject determined by the Study Committee to be relevant.
- Requires the Study Committee to provide its recommendations to the Governor and legislative leaders by December 31, 2021.

### Jefferson County County Court

(R.C. 1907.15; Section 812.10)

The bill removes, effective January 1, 2022, the requirement that the presiding judge of the Jefferson County County Court determine areas of separate jurisdiction for the judges of that court and that the judges hold court in Wintersville or Cross Creek, Dillonvale, and Toronto.

### Indigent drivers alcohol treatment fund

(R.C. 4511.191)

The bill expands the authorized uses a court may make of surplus money in an indigent drivers alcohol treatment fund. Under the bill, a court may expend any of the surplus amount for the cost of staffing, equipment, training, drug testing, supplies, and other expenses of any specialized docket program established within the court and certified by the Supreme Court. Under continuing law, in specified circumstances, a court may: (1) expend any of the surplus amount for alcohol and drug abuse assessment and treatment and for the cost of transportation related to assessment and treatment, (2) expend any of the surplus amount to pay all or part of the cost of purchasing alcohol monitoring devices, (3) transfer to another court in the same county any of the surplus amount, and (4) transfer to the alcohol and drug addiction services board or the board of alcohol, drug addiction, and mental health services that serves the alcohol,

drug addiction, and mental health service district in the which the court is located any of the surplus amount.

## **Probation Workload Study Committee**

(Section 725.10)

The bill establishes the Probation Workload Study Committee within the Supreme Court of Ohio. The Committee is tasked with studying and discussing probation caseload principles, education standards for probation officers, workload capacity principals, and any other additional subjects it determines to be relevant.

The Committee consists of nine members, with the Chief Justice of the Supreme Court, the Executive Director of the Ohio Judicial Conference, and the President of the Ohio Chief Probation Officers Association each appointing three members.

Members of the Committee receive no compensation for their service and will not be reimbursed for expenses incurred through participation on the Committee.

By December 31, 2021, the Committee must provide its recommendations to the Governor, the President of the Senate, and the Speaker of the House. The Committee is abolished when it submits the recommendations.

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## DEPARTMENT OF MEDICAID

### Medicaid waiver component definition

- Specifies that the definition of a “Medicaid waiver component” does not include services delivered under a prepaid inpatient health plan.

### Duties of area agencies on aging

- Requires the Department of Medicaid, if it adds to the Medicaid managed care system during FYs 2022 and 2023 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.

### Hospital Care Assurance Program, franchise permit fee

- Continues, for two additional years, the Hospital Care Assurance Program and the franchise permit fee imposed on hospitals under Medicaid.

### Voluntary community engagement program

- Requires the Medicaid Director to establish a voluntary community engagement program for medical assistance recipients.
- Requires the program to encourage work among able-bodied medical assistance recipients of working age, including providing information about the benefits of work on physical and mental health.
- Provides that the program is in effect through FY 2022 and FY 2023, or until Ohio is able to implement the waiver component establishing work requirements and community engagement as a condition of enrolling in the Medicaid expansion eligibility group (also known as “Group VIII”).

### Medicaid Cost Assurance Pilot Program

- Establishes the Medicaid Cost Assurance Pilot Program to be available to the Medicaid expansion eligibility group population during FY 2022 and FY 2023.
- Requires the Department to implement the pilot program initially to the expansion eligibility group population, with future expansion to be determined based on success criteria.
- By December 31, 2022, requires the Department to submit a report to the Speaker of the House, the Senate President, and the Joint Medicaid Oversight Committee (JMOC) outlining clinical outcome data and cost impacts of the program.

### Care Innovation and Community Improvement Program

- Requires the Medicaid Director to continue the Care Innovation and Community Improvement Program for the FY 2022-FY 2023 biennium.

## **Ohio Invests in Improvements for Priority Populations**

- Establishes the Ohio Invests in Improvements for Priority Populations Program as a directed payment program for inpatient and outpatient hospital services provided to Medicaid managed care recipients.
- Provides that, under the program, state university-owned hospitals with fewer than 300 beds can directly receive payment for program services.
- Requires participating hospitals to remit to the Department, through intergovernmental transfer, the nonfederal share of payment for those services.

## **Medicaid rates for community behavioral health services**

- Permits the Department to establish Medicaid rates for community behavioral health services provided during FYs 2022 and 2023 that exceed the Medicare rates paid for the services.

## **Adult day care service payment rates**

- Earmarks \$5 million in each fiscal year to increase the payment rates during FY 2022 and FY 2023 for adult day care service providers under the home and community-based waivers administered by the Department of Developmental Disabilities and the PASSPORT program.
- Requires the Departments of Developmental Disabilities and Medicaid to establish a methodology for calculating the rate increase from those funds.

## **Value-based purchasing supplemental rebate**

- Requires the Department of Medicaid to submit a federal state plan amendment to permit the Department to enter into value-based purchasing supplemental rebate agreements with pharmaceutical manufacturers.

## **Nursing facilities**

### **Critical access nursing facilities**

- For calculating the occupancy and utilization rates to determine if a nursing facility is a critical access nursing facility, provides that “as of the last day of the calendar year” refers to the rates for the entire cost reporting period for which the nursing facility participated in the Medicaid program during the applicable calendar year.

### **Medicaid payment rate formula**

- Removes provisions that require the Department, when determining a nursing facility’s occupancy rate, to include any beds that the facility removes from its Medicaid certified capacity, unless also removed from its licensed capacity.

## **Resident assessment data**

- Requires rules relating to the resident assessment data that nursing facilities must compile quarterly for each resident to specify any resident assessment data that is excluded from the facility's case mix score calculated quarterly by the Department.

## **Special Focus Facility Program**

- Modifies the nursing facility Special Focus Facility (SFF) Program, which requires the Department to terminate a nursing facility's Medicaid participation if the facility is placed on the SFF list and fails to make improvements or graduate from the program within certain periods of time.
- As part of the modifications, requires nursing facilities to take all necessary steps to improve its quality of care to avoid having its license terminated under the SFF program, and permits appeals relating to the amount of time a facility has been on an SFF list.

## **Quality payments**

- Repeals the quality payments nursing facilities receive under current law for meeting at least one of five quality indicators.

## **Quality incentive payments**

- Modifies the nursing facility's base rate calculation to include the subtraction of \$1.79, included as part of the calculation for the nursing facility's per Medicaid day quality payment.
- Provides that a nursing facility receives zero quality points if (1) its total number of points for FY 2022 for the quality metrics is less than the total equal to the bottom 33% of all nursing facilities or (2) its total points for FY 2023 for all of the quality metrics is less than its total number of points for FY 2022.
- Modifies the calculation used to determine the total amount to be spent on quality incentive payments in a fiscal year by (1) adding \$1.79 to the calculation for 5.2% of each nursing facility's base rate and (2) including a \$108.5 million add-on to the total in each fiscal year.
- Clarifies that if a nursing facility undergoes a change of operator during FY 2022 or FY 2023, the quality incentive payment paid to the entering operator for that fiscal year beginning on the date of the change is the same rate in effect for the outgoing operator.

## **Nursing Facility Payment Commission**

- Requires the Department to establish the Nursing Facility Payment Commission to analyze the efficacy of the current nursing facility quality incentive payment formula, base rate calculation, and cost centers and submit a report of its findings to the General Assembly by August 31, 2022.

## **Nursing facility rebasing**

- Requires the Department to conduct its next nursing facility rebasing by June 30 2022, using nursing facility calendar year 2019 data.

## **Medicaid waiver component definition**

(R.C. 5166.01)

The bill specifies that the current law definition of a “Medicaid waiver component” does not include services that are delivered under a prepaid inpatient health plan.<sup>76</sup> Medicaid waiver component means a component of the Medicaid program authorized by a waiver granted by the U.S. Department of Health and Human Services and does not include the care management system.

## **Duties of area agencies on aging**

(Section 333.170)

The bill requires the Department of Medicaid, if it expands the inclusion of the aged, blind, and disabled Medicaid eligibility group or Medicaid recipients who are also eligible for Medicare (dual-eligible individuals) in the Medicaid managed care system during the FY 2022-FY 2023 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 they receive and permit Medicaid managed care organization (MCOs) to delegate to the agencies full-care coordination functions for those and other health care services; and

2. In selecting Medicaid MCOs, 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.

## **Hospital Care Assurance Program, franchise permit fee**

(Sections 601.20 and 601.21, amending Sections 125.10 and 125.11 of H.B. 59 of the 130<sup>th</sup> General Assembly)

The bill continues the Hospital Care Assurance Program (HCAP) for two additional years. The program is scheduled to end October 16, 2021. The bill extends it to October 16, 2023. Under HCAP, hospitals are annually assessed an amount based on their total facility costs, and government hospitals make annual intergovernmental transfers. The Department distributes to hospitals money generated by the assessments and intergovernmental transfers along with federal matching funds. A hospital compensated under the program must provide (without

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<sup>76</sup> Federal law defines a “prepaid inpatient health plan” as an entity that provides limited services to Medicaid enrollees through a limited-benefit risk-based plan. (42 C.F.R. 438.2.)

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 bill also continues for two additional years another assessment imposed on hospitals; that assessment is to end on October 1, 2023, rather than October 1, 2021. The assessment is in addition to HCAP, but like that program, it raises money to help pay for the Medicaid program. To distinguish the assessment from HCAP, the assessment is sometimes called a hospital franchise permit fee.

## **Voluntary community engagement program**

(Section 333.210; R.C. 5166.37, not in the bill)

As a result of the COVID-19 public health emergency, the bill requires the Medicaid Director to establish and implement a voluntary community engagement program not later than January 1, 2022. The program must be voluntary and available to all medical assistance recipients (individuals enrolled or enrolling in Medicaid, CHIP, the refugee medical assistance program, or other medical assistance program the Department administers). The program must:

- Encourage medical assistance recipients who are of working age and able-bodied to work;
- Promote the economic stability, financial independence, and improved health incomes from work; and
- Provide information about program services, including an explanation of the importance of work to overall physical and mental health.

As part of the program, the Director must explore partnerships with education and training providers to increase training opportunities for Medicaid recipients. The program is to continue through state FYs 2022 and 2023, or until the Department is able to implement the Work Requirement and Community Engagement Section 1115 Demonstration waiver, whichever is sooner.

Continuing law requires the Director to establish a Medicaid waiver component under which an individual eligible for Medicaid on the basis of being included in the expansion eligibility group (also known as “Group VIII”) – adults under age 65 with no dependents and incomes at or below 138% of the federal poverty level – must meet one of a list of enumerated criteria to enroll in Medicaid. The criteria include (1) being at least age 55, (2) being employed, (3) being enrolled in a school or occupational training program, (4) participating in an alcohol and drug addiction treatment program, or (5) having intensive physical health care needs or serious mental illness.<sup>77</sup> Pursuant to this requirement, the Department submitted a waiver request to the U.S. Centers for Medicare and Medicaid Services (CMS) to implement a Work Requirement and Community Engagement Section 1115 Demonstration waiver program. CMS approved the waiver on March 15, 2019; however, the program was never implemented because the federal Coronavirus

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<sup>77</sup> R.C. 5166.37, not in the bill.

Aid, Relief, and Economic Security (CARES) Act prohibits state Medicaid programs from imposing additional eligibility criteria on Medicaid enrollees during the COVID-19 public health emergency.

## **Medicaid Cost Assurance Pilot Program**

(Section 333.217)

The bill requires the Department to establish the Medicaid Cost Assurance Pilot Program to operate during FYs 2022 and 2023. The Department must open the program to Medicaid enrollees in the expansion eligibility group (otherwise known as “Group VIII”), initially. It may expand the program based on the program outcome data and cost findings in its report (see “**Report and subcommittee**” below).

The pilot program must do all of the following:

- Identify eligible Medicaid enrollees who are members of the expansion eligibility group to participate in the program;
- Provide Medicaid services to pilot program participants at a rate of 95% of current Medicaid managed care organization capitation rates;
- Use technology to (1) utilize automation and artificial intelligence to provide Medicaid program savings by avoiding traditional cost structures, (2) diversify care management system programs to achieve better health outcomes at better value, (3) enable seamless communication between providers and care management entities, (4) improve the Medicaid program experience for providers and enrollees;
- Develop and implement strategies to provide opportunities for pilot program participants to rise above the poverty level criteria for Medicaid eligibility;
- Enable care management entities under the program to take the risks incidental to the practice of insurance, like an insurer licensed in Ohio; and
- Include 90-day study periods to determine whether to expand, sustain, or terminate the pilot program.

### **Care management entity**

The Department must contract with a care management entity to administer Medicaid benefits under the pilot program. The care management entity must:

- Be an insurer licensed in Ohio;
- Be a start-up company domiciled in Ohio; and
- Have sufficient capital of at least \$30 million.

### **Report and subcommittee**

The Department must submit a report outlining pilot program clinical outcome data and cost impacts and submit the report to the Speaker of the House, the Senate President, and to the members of the Joint Medicaid Oversight Committee (JMOC) by December 31, 2022.

Additionally, the members of the House Health Committee must appoint a subcommittee to make determinations about the progress of the pilot program.

## **Rules**

The Medicaid Director must adopt rules as necessary to implement the pilot program, including (1) the geographic area where the program will occur, (2) program participant eligibility requirements, and (3) program demonstrated success criteria.

## **Care Innovation and Community Improvement Program**

(Section 333.60)

The bill requires the Medicaid Director to continue the Care Innovation and Community Improvement Program for the FY 2022-FY 2023 biennium. The Director was originally required to establish it for the FY 2018-FY 2019 biennium.<sup>78</sup>

Any nonprofit hospital agency affiliated with a state university and any public hospital agency may volunteer to participate if the hospital has a Medicaid provider agreement. The nonprofit and public hospital agencies that participate are responsible for the state share of the program's costs and must make or request that appropriate government entity to make intergovernmental transfers to pay for the costs. The Director must establish a schedule for making the transfers.

Rather than being required to perform specific tasks delineated for the program in prior budget acts, each participating hospital agency is required to jointly participate in quality improvement initiatives that align with and advance the goals of the Department of Medicaid's quality strategy.

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 the average commercial payment 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 maintain a process to evaluate the work done under the program by nonprofit and public hospital agencies and their progress in meeting the program's goals. The Director may terminate a hospital agency's participation if the Director determines that it is not participating in required quality improvement initiatives or making progress in meeting the program's goals.

The bill does not include the requirement that existed in prior budget acts for participating agencies to report information to JMOC; however, it includes a new requirement that, not later than December 31 of each year, the Director must submit a report to the Speaker of the House, the Senate President, and JMOC that details the efficacy, trends, outcomes, and number of hospital agencies enrolled in the program. The report must include the total amount

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<sup>78</sup> Section 333.320 of H.B. 49 of the 132<sup>nd</sup> General Assembly and Section 333.220 of H.B. 166 of the 133<sup>rd</sup> General Assembly.

of supplemental Medicaid payments made through the program. All data contained in the report is required to be aggregated.

All intergovernmental transfers made under the program must be deposited into the existing Care Innovation and Community Improvement Program Fund. Money in the fund and the corresponding federal funds must continue to be used to make the supplemental payments to hospital agencies under the program.

## **Ohio Invests in Improvements for Priority Populations**

(Section 333.175)

The bill establishes the Ohio Invests in Improvements for Priority Populations (OIPP) Program as a directed payment program for inpatient and outpatient hospital services provided to Medicaid managed care recipients receiving care at state university-owned hospitals with less than 300 inpatient beds.

Under the OIPP Program, participating hospitals receive payments directly (instead of through the contracted Medicaid managed care organization) for inpatient and outpatient hospital services provided under the program and remit to the Department of Medicaid the nonfederal share of payment for those services. The hospital must make the payment to the Department through intergovernmental transfer, with the funds deposited into the Hospital Directed Payment Fund.

In general, under federal law, states are prohibited from (1) directing Medicaid managed care organization expenditures or (2) making payments directly to providers for Medicaid managed care organization plan services (“directed payments”) unless permitted under federal law or subject to federal authorization.<sup>79</sup> The bill requires the Medicaid Director to seek approval from the Centers for Medicare and Medicaid Services, in accordance with continuing Ohio law, to operate the OIPP Program.

## **Medicaid rates for community behavioral health services**

(Section 333.160)

The bill permits the Department to establish Medicaid payment rates for community behavioral health services provided during FY 2022 and FY 2023 that exceed the authorized rates paid for the services under the Medicare Program. This does not apply, however, to services provided by hospitals on an inpatient basis, nursing facilities, or ICF/IIDs.

## **Adult day care service payment rates**

(Sections 261.170 and 333.165)

The bill earmarks \$5 million in each fiscal year to increase the payment rates during FY 2022 and FY 2023 for adult day care service providers under the home and community-based

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<sup>79</sup> Centers for Medicare and Medicaid Services, *Letter Re: Additional Guidance on State Directed Payments in Medicaid Managed Care*, January 8, 2021, <https://www.medicare.gov/Federal-Policy-Guidance/Downloads/smd21001.pdf>.

waivers administered by the Department of Developmental Disabilities and the PASSPORT program. It provides that the payment increase applies to waiver-funded and state-funded providers under those waivers and programs. The Departments of Developmental Disabilities and Medicaid must establish a methodology for calculating the rate increase from those funds.

## **Value-based purchasing supplemental rebate**

(Section 333.215)

Not later than 60 days after the bill's effective date, the bill requires the Department of Medicaid to submit to CMS a Medicaid state plan amendment to authorize the Department to enter into value-based purchasing supplemental rebate agreements with pharmaceutical manufacturers. The agreements must establish criteria for the Department to make supplemental rebate payments to drug manufacturers. The rebates can be calculated and paid in a single year or over multiple years.

The Department must use its best efforts to ensure that the agreement form submitted to CMS permits rebates to be calculated on many different bases at the discretion of the Department with the approval of the drug manufacturer, including under (1) outcome-based models, (2) shared savings models, (3) subscription or modified subscription models, (4) risk-sharing models, or (5) guarantees.

The bill provides that the Department is not required to enter into these supplemental rebate agreements.

## **Nursing facilities**

### **Critical access nursing facilities**

(R.C. 5165.01)

The bill clarifies terminology relating to the critical access incentive payment received by nursing facilities that qualify as critical access nursing facilities. Under current law, to qualify as a critical access nursing facility, the nursing facility must meet certain occupancy and Medicaid utilization rate metrics. For purposes of calculating the occupancy and utilization rates, the bill clarifies that "as of the last day of the calendar year" refers to the rates for the entire cost reporting period for which the nursing facility participated in the Medicaid Program during the calendar year and identified in its annual cost report filed with the Department.

### **Medicaid payment rate formula**

(R.C. 5165.01, 5165.15, and 5165.17)

In definitions, the bill provides that inpatient days include all days during which a resident, regardless of payment source, occupies a licensed bed in a nursing facility, instead of a bed in a nursing facility that is included in the facility's Medicaid certified capacity. It also provides that a nursing facility's occupancy rate refers to the percentage of licensed beds that, regardless of the payer source, are either reserved for use or are actually being used.

The bill also removes provisions of law, under the ancillary and support costs and capital cost center components of the nursing facility payment rate, that require the Department, when

determining a nursing facility's occupancy rate, to include any beds that the facility removes from its Medicaid certified capacity, unless the facility also removes them from its licensed capacity.

### **Resident assessment data**

(R.C. 5165.191)

Relating to the resident assessment data nursing facilities must compile quarterly for each resident, the bill requires the associated rules to specify any resident assessment data that is excluded from the facility's case mix score calculated quarterly by the Department for each nursing facility.

### **Special Focus Facility Program**

(R.C. 5165.771)

The bill modifies the Special Focus Facility (SFF) Program, which requires the Department to terminate a nursing facility's Medicaid participation if the facility is placed on the federal SFF list and fails to make improvements or graduate from the SFF Program within certain periods of time. The SFF list is part of the SFF Program that federal law requires the U.S. Department of Health and Human Services to create for nursing facilities identified as having substantially failed to meet federal requirements.<sup>80</sup>

#### **SFF tables**

The SFF has different tables. Table A identifies nursing facilities that are newly added to the list. Table B identifies nursing facilities that have not improved. Table C identifies nursing facilities that have shown improvement. Table D identifies nursing facilities that have recently graduated from the SFF Program.

The bill makes nonsubstantive changes to current law regarding the SFF tables, which requires the Department to terminate a nursing facility's Medicaid participation if:

1. The nursing facility was listed in Table A or Table B on September 29, 2013, and failed to be placed on Table C by September 29, 2014 (12 months after the provision's effective date);
2. The nursing facility was listed in Table A, Table B, or Table C on September 29, 2013, and failed to be placed on Table D by September 29, 2015 (24 months after the provision's effective date);
3. The nursing facility is placed on Table A after September 29, 2013, and fails to be placed in Table C not later than 12 months after the placement in Table A;
4. The nursing facility is placed in Table A after September 29, 2013, and fails to be placed in Table D not later than 24 months after the placement in Table A.

The bill removes the effective date references. Instead, under the bill, the Department must terminate a nursing facility's Medicaid participation if:

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<sup>80</sup> 42 U.S.C. 1396r(f)(10).

1. The nursing facility is placed in Table A or Table B and fails to be placed in Table C not later than 12 months after being placed in Table A or Table B;
2. The nursing facility is placed in Table A, Table B, or Table C and fails to be placed in Table D not later than 24 months after being placed in Table A, Table B, or Table C;
3. The nursing facility is placed in Table A and fails to be placed in Table C not later than 12 months after being placed in Table A;
4. The nursing facility is placed in Table A and fails to be placed in Table D not later than 24 months after the nursing facility is placed in Table A.<sup>81</sup>

The bill requires a nursing facility to take all necessary steps to avoid having its Medicaid participation terminated. As part of that requirement, the bill provides that technical assistance and quality improvement initiatives to help a nursing facility avoid having its Medicaid participation terminated are available through the Nursing Home Quality Initiative (NHQI) and through a quality improvement organization under the NHQI. Current law requires the Department of Aging to provide assistance through the NHQI at least four months before ODM would be required to terminate the facility's Medicaid participation.

The bill permits nursing facilities to appeal, under the Administrative Procedure Act, the length of time a facility is listed on a SFF table. The Director may adopt rules to provide for an expedited appeal process for those appeals, notwithstanding the Administrative Procedure Act's time limits. Under current law, an order terminating a nursing facility's Medicaid participation is not subject to appeal under the Administrative Procedure Act (R.C. Chapter 119).

## **Quality payments**

(R.C. 5165.25, repealed)

The bill repeals the quality payments nursing facilities receive under current law. Those payments are made to nursing facilities for meeting at least one of five quality indicators. The largest quality payment is to be paid to nursing facilities that meet all of the quality indicators for the measurement period (the calendar year preceding the year in which the fiscal year begins). The following are the quality indicators used to determine the payment:

- Not more than a target percentage of short-stay residents (those residing in a nursing facility for less than 100 days) at high risk for pressure ulcers had new or worsening pressure ulcers and not more than a target population of long-stay residents (those residing in a nursing facility for at least 100 days) at high risk for pressure ulcers had pressure ulcers for the measurement period;
- Not more than the target percentage of the nursing facility's short-stay residents newly received antipsychotic medication and not more than a target percentage of the nursing facility's long-stay residents received an antipsychotic medication for the measurement period;

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<sup>81</sup> Under the bill, numbers (3) and (4) appear to be included in (1) and (2).

- Not more than the target percentage of the nursing facility's long-stay residents had an unplanned weight loss for the measurement period;
- The nursing facility's employee retention rate is at least a target rate that the Department is to specify;
- The nursing facility obtained a target score determined by the Department on the Department of Aging's most recently published resident or family satisfaction survey.

The bill repeals the quality payments; after FY 2021, nursing facilities will no longer receive quality payments.

### **Quality incentive payments**

(R.C. 5165.26 and 5165.15)

The bill modifies the calculations for quality incentive payments that are added to nursing facility's Medicaid payment rates based on the score the facility receives for meeting certain quality metrics regarding its residents who have resided in the nursing facility for at least 100 days (long-stay residents).

First, the bill extends the payments for FY 2022 and FY 2023. Under current law, the payments end after FY 2021. Second, the bill modifies the base rate used as part of the calculation for a nursing facility's quality incentive payment to include a subtraction of \$1.79, so the base rate is calculated by determining the sum of the following:

1. The nursing facility's per Medicaid day payment rate for each of the four cost centers (ancillary and support costs, capital costs, direct care costs, and tax costs) and, if the nursing facility qualifies as a critical access nursing facility, its critical access incentive payment;
2. To that sum, add \$16.44;
3. From that sum, subtract \$1.79.

Current law does not include step (3) as part of the base rate calculation.

Third, the bill clarifies that a nursing facility receives zero quality points if either of the following is the case:

- The nursing facility's total number of points for FY 2022 for all of the quality metrics is less than the total equal to the bottom 33% of all nursing facilities;
- The nursing facility's total points for FY 2023 for all of the quality metrics is less than its total number of points for FY 2022.

Fourth, the bill modifies the calculation used to determine the total amount to be spent on quality incentive payments in a fiscal year. Under the bill, the total to be spent is calculated as follows:

1. For each nursing facility, determine the amount that is 5.2% of the nursing facility's base rate on the first day of the fiscal year plus \$1.79;

2. Multiply that amount by the number of the nursing facility's Medicaid days for the calendar year preceding the fiscal year for which the rate is determined;

3. Determine the sum of (1) and (2) above for all nursing facilities for which the product was determined for the state fiscal year;

4. To that sum, add \$108.5 million.

Current law does not add \$1.79 as part of the calculation in (1) above or include the \$108.5 million add-on to the total to be spent on the payments in each fiscal year (number 4 above).

Finally, the bill clarifies that if a nursing facility undergoes a change of operator during FY 2022 or FY 2023, the quality incentive payment paid to the entering operator for services provided beginning on the date of the change of operator and ending on the last day of that fiscal year is the same rate in effect for the outgoing operator. For the following fiscal year, the rate for the entering operator is determined under the regular calculation. These provisions are similar to the provisions relating to the repealed quality payments made to nursing facilities.

### **Nursing Facility Payment Commission**

(R.C. 5165.261)

The bill requires the Department to establish the Nursing Facility Payment Commission comprised of various nursing facility stakeholders. The Commission consists of the following members:

- Two members appointed by the Governor;
- Two members appointed by the Speaker of the House;
- Two members appointed by the Senate President; and
- One public member, well-versed and with experience in the long-term care and nursing home industry, appointed by the Governor.

Appointments must be made by December 31, 2021. In the event of a vacancy, a replacement member must be appointed in the same manner as initial appointments. Members serve without compensation.

The Commission must analyze the efficacy of the following:

1. The current quality incentive payment formula;
2. The nursing facility base rate calculation; and
3. The nursing facility cost centers, which are used to calculate a nursing facility's per Medicaid day payment rate and are redetermined as part of rebasing.

By August 31, 2022, the Commission must submit a report to the General Assembly with its recommendations and determinations on whether the quality measures under the quality incentive payment formula are sufficient or whether the measures need to be changed.

## **Nursing facility rebasing**

(R.C. 5165.36)

The bill requires the Department to conduct its next nursing facility rebasing by June 30, 2022 (FY 2021), using data provided by nursing facilities for calendar year 2019. Current law requires the Department to conduct a rebasing at least once every five state fiscal years. The Department conducted its last rebasing in FY 2017. A rebasing is a redetermination of the four cost components used to calculate a nursing facility's per Medicaid day payment rate.<sup>82</sup>

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<sup>82</sup> 42 U.S.C. 1396r(f)(10).

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## MEDICAL BOARD

- Creates the Massage Therapy Advisory Council to make recommendations to the State Medical Board regarding issues affecting the practice of massage therapy.

### Massage Therapy Advisory Council

(R.C. 4731.152)

The bill requires the State Medical Board to appoint a Massage Therapy Advisory Council to advise the Board on issues relating to the practice of massage therapy. The advisory council must consist of not more than seven individuals knowledgeable in the area of massage therapy, including at least one physician who is a member of the State Medical Board, one massage therapy educator, and one individual who is not a member of any health care profession to represent consumers. The American Massage Therapy Association and the Associated Bodywork and Massage Professionals, or their successor organizations, may each nominate up to three individuals for consideration by the Board. A majority of the council members must be licensed massage therapists engaged in active practice.

The Board must make initial appointments to the advisory council within 90 days. Initial members serve one-, two-, or three-year terms as selected by the Board. Subsequent members serve three-year terms. Members serve without compensation but may be reimbursed for expenses incurred while performing official duties.

The advisory council must meet at least four times a year and may submit recommendations to the Board regarding issues affecting the practice of massage therapy, including requirements for licensure and renewal, the administration and enforcement of the laws governing the practice of massage therapy, standards for approval of educational programs, standards of practice and ethical conduct, and the safe and effective practice of massage therapy, including scope of practice and minimal standards of care.

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## **DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES**

### **Suspending admissions and taking action against a license**

- Authorizes the Ohio Department of Mental Health and Addiction Services (OhioMHAS) Director to suspend admissions at the following facilities without a hearing if the licensee has demonstrated a pattern of serious noncompliance or the violation creates a substantial health and safety risk: residential facilities, certain community addiction services providers, and hospitals for mentally ill persons.
- Specifies a process for appeals when admissions are suspended without a prior hearing.
- Regarding suspending admissions, denying an application, or refusing to renew or revoking a license or certification, (1) authorizes OhioMHAS to take action regardless of whether the deficiencies have been corrected at the time of the hearing and (2) prohibits it from permitting an opportunity for submitting a plan of correction.

### **Certifiable services and supports**

- Specifies reasons the OhioMHAS Director may refuse to certify, renew, or revoke certifiable services and supports provided by a community mental health or addiction services provider.
- Eliminates requirements that the Director (1) identify areas of noncompliance for an applicant who does not satisfy certification standards and (2) provide applicants with reasonable time to demonstrate compliance.

### **Licensing boards and confidential treatment and monitoring programs**

- Supports new or existing confidential treatment and monitoring programs offered by occupational licensing boards for healthcare workers with mental health or substance use disorders, including by allowing boards to contract with certain monitoring organizations to administer the programs.

### **Confidentiality of substance use disorder records**

- Modifies existing requirements for maintaining confidentiality of records regarding drug treatment programs and services that are licensed or certified by OhioMHAS.
- Establishes confidentiality requirements based on federal law and applies them to federally assisted programs for substance use disorder treatment.
- Requires that the disclosure of any confidential information comply with the federal requirements.

### **Opioid treatment programs**

- Lengthens the term of a license to operate an opioid treatment program (OTP) to two years, from one year under current law.

- Requires OhioMHAS to inspect all community addiction services providers licensed to operate OTPs at least biennially, as opposed to annually under current law.
- Permits a community addiction services provider to employ an individual who receives medication-assisted treatment if the individual is a certified peer recovery supporter.

### **Substance use disorder treatment in drug courts**

- Continues a medication-assisted drug court program to provide addiction treatment to persons with substance use disorders.
- Modifies the program by authorizing services to be included for withdrawal management or detoxification, including drugs used in providing those services.
- Requires community addiction services providers to provide specified treatment to the participants in the program based on the individual needs of each participant.

### **County jails reimbursed for substance use treatment drugs**

- Establishes a program to reimburse counties for the costs of drugs used in medication-assisted treatment, withdrawal management, or detoxification among inmates of county jails.

### **Pilot to dispense controlled substances in lockable containers**

- Requires OhioMHAS to operate a two-year pilot program to dispense schedule II controlled substances in lockable or tamper-evident containers.

### **ADAMHS board composition and appointment**

- Authorizes boards of county commissioners, within three years, to reduce the membership of existing alcohol, drug addiction, and mental health services (ADAMHS) boards, alcohol and drug addiction services boards, and community and mental health boards from 18 or 14 members to between five and nine members.
- Requires newly established boards to consist of five to nine members.
- Modifies the appointment authority for board members so that 80% of members are appointed by the board of county commissioners and 20% by the OhioMHAS Director.
- Eliminates requirements that the OhioMHAS Director ensure that the boards have a number of members with specified experiences and qualifications.

### **ADAMHS board duties**

- Requires an ADAMHS board to work with government programs that provide public health benefits for the purpose of coordinating public health benefits and improving the administration and management of those government programs.
- Requires ADAMHS boards to comply with health information privacy standards under the federal “Health Insurance Portability and Accountability Act of 1996” (HIPAA).

## **Stabilization centers**

- Continues the requirement that ADAMHS boards establish and administer, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, six mental health crisis stabilization centers.
- Requires the establishment and administration, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, acute substance use disorder stabilization centers.

## **Family and children first council 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.

## **Suspending admissions and taking action against a license**

(R.C. 5119.33, 5119.34, and 5119.36)

### **Suspending admissions**

Current law authorizes the Ohio Department of Mental Health and Addiction Services (OhioMHAS) to suspend admissions at the following: hospitals that receive mentally ill persons, residential facilities, and community addiction services providers that provide overnight accommodations. The bill specifies that proceedings initiated to suspend admissions and appeals are generally governed by the Administrative Procedure Act (R.C. Chapter 119). However, if the OhioMHAS Director determines that the facility has demonstrated a pattern of serious noncompliance or that a violation creates a substantial risk to the health and safety of patients or residents, the Director may suspend admissions without a hearing. The order suspending admissions must be lifted if the Director determines the violation that formed the basis for the order has been corrected.

When admissions are suspended without a hearing, all of the following apply to an appeal of that order:

- The facility may request a hearing not later than ten days after receiving the notice;
- If a timely request for a hearing is made, the hearing must commence within 30 days;
- After commencing, the hearing must continue uninterrupted on business days unless the parties agree otherwise;
- If the hearing is conducted by a hearing examiner, the examiner must file a report and recommendations with OhioMHAS within ten days after the later of the hearing ending, a transcript being received, or briefs being received, as applicable;
- A written copy of the report and recommendations must be sent by certified mail to the facility or the facility's attorney, if applicable, within five days of the report being filed with OhioMHAS;

- The facility may file objections within five days of receiving the report;
- OhioMHAS must issue an order approving, modifying, or disapproving the report and recommendations within 15 days of it being filed by the hearing examiner;
- OhioMHAS must lift the order suspending admissions if it determines that the violation that formed the basis for the order has been corrected.

## **Procedures**

The bill specifies that in proceedings to suspend admissions, or to deny an application, refuse to renew, or revoke a license or certification, OhioMHAS may take those actions regardless of whether some or all of the deficiencies that prompted the proceedings have been corrected at the time of the hearing. When OhioMHAS issues an order related to those proceedings or actions it may not permit an opportunity for submitting a plan of correction.

The bill also makes changes regarding hospitals that receive mentally ill persons, residential facilities, and community mental health and addiction services providers, to specify that proceedings initiated to deny applications for licenses or certification, to refuse to renew, or to revoke those licenses or certifications are governed by the Administrative Procedure Act. If an order suspending admissions has been issued, it remains in effect during the pendency of the proceedings.

## **Certifiable services and supports**

(R.C. 5119.36 and 5119.99)

Under current law, OhioMHAS certifies certifiable services and supports provided by community mental health services providers and community addiction services providers. The bill specifies that the OhioMHAS Director may refuse to certify certifiable services and supports, refuse to renew certification, or revoke certification if any of the following apply to an applicant or the holder of a certification:

- The applicant or holder is not in compliance with OhioMHAS rules;
- The applicant or holder has been cited for a pattern of serious noncompliance or repeated violations of statutes or rules during the current or any previous certification period;
- The applicant or holder submits false or misleading information as part of a certification application, renewal, or investigation.

Also regarding certification, the bill eliminates existing requirements that the Director (1) identify areas of noncompliance for an applicant who does not satisfy certification standards and (2) provide applicants with reasonable time to demonstrate compliance.

## **Licensing boards and confidential treatment and monitoring programs**

(Section 337.40)

The bill earmarks funding to be used to expand existing or support new confidential treatment and monitoring programs offered by occupational licensing boards to licensed

healthcare workers with mental health or substance use disorders. It also authorizes an occupational licensing board to contract with a monitoring organization to administer a confidential treatment and monitoring program, but only if the organization meets all of the following requirements:

1. Is organized as a not-for-profit entity and exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code;

2. Contracts with or employs to serve as the organization's medical director an individual who is an Ohio-licensed physician or has training and expertise in addiction medicine or psychiatry; and

3. Contracts with or employs one or more individuals licensed by the State Board of Psychology, the Chemical Dependency Professionals Board, and the Counselor, Social Worker, and Marriage and Family Therapist Board as necessary for the organization's operation.

## **Confidentiality of substance use disorder records**

(R.C. 5119.27)

The bill modifies requirements for maintaining confidentiality of records or information regarding drug treatment programs and services that are licensed or certified by OhioMHAS. In their place, the bill establishes confidentiality requirements based on federal law and applies those requirements to records or information regarding federally assisted programs for substance use disorder treatment. The bill requires the disclosure of any confidential information to comply with the federal requirements.

As part of updating the confidentiality requirements, when referring to programs used within the criminal justice system, the bill updates outdated references to "rehabilitation in lieu of conviction" to instead refer to "intervention in lieu of conviction."

## **Opioid treatment programs**

(R.C. 5119.37; Section 337.200)

### **License expiration**

The bill extends the license period for opioid treatment programs (OTPs) to two years, from one year under current law. In conjunction with that change, it requires OhioMHAS to inspect all community addiction services providers licensed to operate OTPs at least biennially, as opposed to annually under current law.

### **Employees**

The bill permits a community addiction services provider to employ an individual who receives medication-assisted treatment if the individual is a certified peer recovery supporter and either holds a valid peer recovery supporter certificate issued under current administrative rules, or is in the process of obtaining that certificate. Under current law, a community addiction services provider is prohibited from employing an individual who receives medication-assisted treatment from the provider.

## **Substance use disorder stabilization centers**

The bill requires ADAMHS boards to submit to the OhioMHAS Director a plan for the establishment and administration, in collaboration with the other ADAMHS boards that serve the same state psychiatric hospital region, acute substance use disorder stabilization centers. There must be at least one center in each state psychiatric hospital region.

## **Substance use disorder treatment in drug courts**

(Section 337.60)

The bill continues a requirement from previous biennia that OhioMHAS conduct a program to provide substance use disorder treatment, including medication-assisted treatment and recovery supports, to persons who are eligible to participate in a medication-assisted treatment (MAT) drug court program. OhioMHAS's program is to be conducted in a manner similar to programs that were established and funded by the previous three main appropriations acts. The bill, however, modifies the program by also permitting the program to include services for withdrawal management or detoxification, including drugs used for those services.

In conducting the program, OhioMHAS must collaborate with the Ohio Supreme Court, the Department of Rehabilitation and Correction, and any state agency that may be of assistance in accomplishing the objectives of the program. OhioMHAS 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.

OhioMHAS must conduct its program in collaboration with any counties in Ohio that are conducting MAT drug court programs. It also may conduct its program in collaboration with any other court with a MAT drug court program.

## **Selection of participants**

A MAT drug court program must select the participants for OhioMHAS's program. The participants are to be selected because of having a substance use disorder. Those who are selected must be either (1) criminal offenders, including offenders under community control sanctions, or (2) 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 or be under a community control sanction with the program's participating judge. The total number of participants in OhioMHAS's program at any time is limited to 1,500, subject to available funding. OhioMHAS 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 substance use disorder treatment, including any recovery supports, under OhioMHAS's program. The provider must:

- Provide treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the provider;

- Assess potential program participants to determine whether they would benefit from treatment and monitoring;
- Determine, based on the assessment, the treatment needs of the participants;
- Develop individualized goals and objectives for the participants;
- Provide access to the drugs that are included in the program's treatment;
- Provide other types of therapies, including psychosocial therapies, for both substance abuse disorder and any co-occurring disorders;
- Monitor program compliance through the use of regular drug testing, including urinalysis, of the participants; and
- Provide access to time-limited recovery supports that are patient-specific and help eliminate barriers to treatment, such as assistance with housing, transportation, child care, job training, obtaining a driver's license or state identification card, and any other relevant matter.

In the case of drugs that are used for substance use disorder treatment, the following conditions apply:

- A drug may be used only if the drug has been federally approved for use in treating dependence on opioids, alcohol, or both; in preventing relapse; or in providing services for withdrawal management or detoxification;
- One or more drugs may be used, but each drug that is used must constitute either or both: (1) long-acting antagonist therapy or partial or full agonist therapy or (2) alpha-2 agonist therapy for withdrawal management or detoxification;
- If a partial or full agonist therapy is used, the program must provide safeguards, such as routine drug testing of participants, to minimize abuse and diversion.

## **Planning**

To ensure that funds appropriated to support OhioMHAS's program are used in the most efficient manner, with a goal of enrolling the maximum number of participants, the bill requires the Medicaid Director to develop plans in collaboration with major Ohio health care plans. However, there can be no prior authorizations or step therapy for program participants to have access to any drug included in the program's substance use disorder treatment. The plans must ensure:

- The development of an efficient and timely process for review of eligibility for health benefits for all program participants;
- A rapid conversion to reimbursement for all health care services by the participant's health care plan following approval for coverage of health care benefits;
- The development of a consistent benefit package that provides ready access to and reimbursement for essential health care services, including primary health care, alcohol and opioid detoxification services and drugs used in providing them, appropriate

psychosocial services, and drugs used in providing long-acting injectable antagonist therapies and partial or full agonist therapies; and

- The development of guidelines that require the provision of all treatment services, including medication, with minimal administrative barriers and within time frames that meet the requirements of individual patient care plans.

## **County jails reimbursed for substance use treatment drugs**

(R.C. 5119.191)

The bill creates an OhioMHAS-administered program to reimburse counties for the costs of drugs used in medication-assisted treatment (MAT), withdrawal management, or detoxification among inmates of county jails. OhioMHAS must allocate funds to each county for reimbursement based on factors it considers appropriate. The drugs used must be approved by the U.S. Food and Drug Administration for use in MAT, mitigating opioid withdrawal symptoms, or assisting with detoxification. These drugs include oral, injectable, long-acting, or extended-release forms of full agonists, partial agonists, antagonists, and alpha-2 adrenergic agonists. Under the program, each county must ensure that inmates have access to any such prescribed drugs that are covered under Medicaid's fee-for-service component. The OhioMHAS Director may adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119) as necessary to implement the program.

## **Pilot to dispense controlled substances in lockable containers**

(Sections 337.205 and 337.40)

The bill requires OhioMHAS to operate a pilot program under which participating pharmacies will dispense schedule II controlled substances in pill form in lockable containers or tamper-evident containers. The pilot is to be operated for the earlier of two years or until appropriated funds – \$1 million in each fiscal year – are expended.

The bill defines "lockable container" as a container that (1) has "special packaging," which is generally defined under federal law as packaging designed to be significantly difficult for children to open, but not difficult for normal adults to use,<sup>83</sup> and (2) can be unlocked physically using a key, or physically or electronically using a code or password. "Tamper evident container" is defined by the bill as a container that has special packaging and displays a visual sign in the event of unauthorized entry or displays the time the container was last opened.

### **Pharmacy participation and reimbursement**

Any pharmacy may volunteer to participate in the pilot program. Participating pharmacies are required to dispense schedule II controlled substances in lockable or tamper-evident containers unless the patient or an individual acting on the patient's behalf requests otherwise.

OhioMHAS must reimburse pharmacies for expenses incurred in participating in the pilot program, including a dispensing fee to be determined by OhioMHAS. Expenses a pharmacy incurs

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<sup>83</sup> "Poison Prevention Packaging Act of 1970," 15 U.S.C. 1471.

for the containers cannot be charged to a patient, an individual acting on behalf of the patient, or a health insurer or other third-party payer.

## **Report**

The bill requires OhioMHAS to prepare a report at the conclusion of the pilot program and submit it to the General Assembly. In preparing the report, OhioMHAS must contract with a third-party research organization to assess whether a measured decrease in diversion of schedule II controlled substances occurred regarding drugs dispensed through the program as compared to those dispensed outside of the program.

## **Qualified immunity**

The bill grants immunity from liability to pharmacists, pharmacist delegates, and pharmacies for actions taken in good faith in accordance with the bill. The qualified immunity applies to damages in a civil action, criminal prosecution, and professional disciplinary action.

## **Rules**

OhioMHAS may adopt rules to administer the pilot program. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

## **ADAMHS boards**

### **Composition and appointment**

(R.C. 340.02 and 340.021)

The bill modifies the composition and appointment requirements for the following boards:

1. Alcohol, drug addiction, and mental health services (ADAMHS) boards;
2. Alcohol and drug addiction services boards; and
3. Community mental health boards.

Current law requires ADAMHS boards to consist of 18 or 14 members. But the law authorized a board, if it elected by September 30, 2013, and received approval of the board of county commissioners and notified the OhioMHAS Director by January 1, 2014, to reduce from 18 to 14 members. Similarly, current law requires an alcohol and drug addiction services board and a community mental health board to consist of 18 or 14 members, with an option to reduce from 18 to 14 members by notice to the Director by January 1, 2014.

The bill requires or permits the above-mentioned boards to reduce to between five and nine members, as follows:

- Boards established on or after the bill's effective date must consist of between five and nine members.
- At the election of the board of county commissioners, boards existing on the bill's effective date may be reduced from 18 or 14 members to between five and nine members. The board of county commissioners has three years after the bill's effective

date to make an election to reduce the board size. The reduction may occur by attrition as board members' terms expire.

The bill also modifies the percentage of board seats appointed by the board of county commissioners and by the OhioMHAS Director, reducing the percentage of board seats the Director appoints. The bill requires the board of county commissioners to appoint 80% of board members and the Director to appoint 20%. Current law requires that for 18-member ADAMHS boards, the board of county commissioners appoints ten members and the Director appoints eight members. For 14-member boards, the board of county commissioners appoints eight members and the Director appoints six members. Current law requires that for 18-member alcohol and drug addiction services boards and community mental health boards, the board of county commissioners appoints 12 members and the Director appoints six members.

Finally, the bill also eliminates law requiring the OhioMHAS Director to ensure that the boards have a number of members with specified experiences and qualifications. For example, an ADAMHS board's membership currently must include a mental health clinician, a mental health service recipient and a relative of a recipient, an addiction services clinician, and an addiction services recipient and a relative of a recipient.

## **Duties**

(R.C. 340.03)

The bill makes two changes to current law governing the duties of ADAMHS boards. First, it requires them – in serving as the community addiction and mental health planning agencies for counties under each board's jurisdiction – to work with government programs that provide public health benefits for the purpose of coordinating public health benefits and improving their administration and management. This is in addition to working with judicial agencies and other social agencies, as provided under current law.

Second, it requires ADAMHS boards to comply with health information privacy standards as covered entities under the federal "Health Insurance Portability and Accountability Act of 1996" (HIPAA).<sup>84</sup>

## **Mental health crisis stabilization centers**

(Sections 337.40 and 337.130)

The bill continues a requirement, first established for the FY 2019-FY 2020 biennium, that OhioMHAS allocate among the ADAMHS boards, in each of FY 2022 and FY 2023, \$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. At least one center must be located in each of the six state psychiatric hospital regions.

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<sup>84</sup> Additional information about HIPAA can be found at the following link: Centers for Disease Control and Prevention, *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*, <https://www.cdc.gov/php/publications/topic/hipaa.html>.

ADAMHS boards must ensure that each center complies with the following:

- It must admit individuals before and after they receive treatment and care at hospital emergency departments or freestanding emergency departments.
- It must admit individuals before and after they are confined in state correctional institutions, local correctional facilities, or privately operated and managed correctional facilities.
- It must have a Medicaid provider agreement.
- It must admit individuals who have been identified as needing the stabilization services provided by the center.
- It must connect individuals when they are discharged from the center with community-based continuum of care services and supports.

## **Family and children first council flexible funding pool**

(Section 337.160)

The bill permits a county family and children first council 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 council 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 state Family and Children First Cabinet Council.
- The county council must produce an annual report on its use of the pooled funds. The report must conform to guidance issued by the state council.
- Unless otherwise restricted, the pool may receive transfers of state general revenue funds 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.

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## DEPARTMENT OF NATURAL RESOURCES

### Division of Wildlife

- Eliminates the nonresident Lake Erie Sport Fishing District permit.
- Removes the \$500,000 cap on annual expenditures from the Wildlife Boater Angler Fund that the Division of Wildlife may make to pay for equipment and personnel costs associated with boating access improvements.
- Alters the requirements for a veteran to receive free fishing and hunting licenses and permits, which administratively benefits the Ohio Department of Veterans Services, but will not affect the number or status of eligible veterans who may receive the benefit.
- Reduces, from \$11.50 to \$11.00, the fees for a senior deer permit and senior wild turkey permit, available to Ohio residents 66 and older.
- Removes superfluous definitions of “resident” and “nonresident” in the law governing deer and wild turkey permits.
- Reduces multi-year hunting license fees and senior multi-year fishing license fees.
- Increases adult multi-year fishing license fees.

### Division of Mineral Resources Management

#### Performance security for coal mining operations

- Requires a coal mining and reclamation permittee to submit full performance security instead of using partial security and money from the existing Reclamation Forfeiture Fund for purposes of land reclamation if:
  - Ownership and operational control of the permittee has been transferred, assigned, or sold; and
  - The transferee has not held a mining permit in Ohio for at least five years.
- Specifies that this restriction applies even if the status and name of the permittee otherwise remain the same.

#### Deputy mine inspector eligibility requirements

- Allows an applicant for the position of deputy mine inspector of underground coal mines or underground noncoal mines to have experience in any underground mine located anywhere as long as the total experience equals six years.
- Allows an applicant for the position of deputy mine inspector of surface mines to have experience in surface mines located anywhere as long as the total experience equals six years.

## **Reciprocity for mine personnel**

- Authorizes the Chief of the Division of Mineral Resources Management to issue a certificate to work as a mine foreperson, foreperson, or mine electrician to an out-of-state applicant if:
  - The applicant holds a valid certification or other authorization from a state with which the Department of Natural Resources has a reciprocal agreement; and
  - The applicant passes an examination on Ohio mining law or other topics determined by the Chief.
- Allows an out-of-state mine foreperson, foreperson, or mine electrician (working under a reciprocal agreement) who has been issued a temporary certificate to act as a foreperson or mine electrician in Ohio prior to the provision's effective date to continue to work under that temporary certificate until it expires.

## **Division of Oil and Gas Resources Management**

### **Oil and gas well plugging**

- Authorizes the holder of a valid well drilling permit to obtain approval from the Division of Oil and Gas Resources Management to plug that well without obtaining a permit to plug and abandon it if an oil and gas inspector approves it and either of the following apply:
  - The well was drilled to total depth and the well cannot or will not be completed; or
  - The well is a lost hole or a dry hole.
- Requires the plugging of a well drilled to total depth that cannot or will not be completed to be completed within 30 days of the inspector's approval.
- Requires the plugging of a lost hole or dry hole to be completed immediately after determining that the well is a lost hole or dry hole in accordance with rules.
- Clarifies that the Chief of the Division may plug and abandon wells without a permit to do so.
- Specifies that the \$250 application fee for a permit to plug and abandon it is nonrefundable and applies even if oil or gas has not been produced from the well.
- Requires any person undertaking plugging, other than a well owner already required to maintain an insurance policy under current law, to obtain \$1 million in bodily injury and property damage insurance coverage (or \$3 million if the well is in an urbanized area).
- Requires a person to electronically submit proof of that insurance to the Chief on the Chief's request.

### **Defective well casing and plugging requirements**

- Prohibits any person (rather than only the owner of a well, as in current law) from constructing a well that causes damage to other permeable strata, underground sources

of drinking water, or the surface of the land or that threatens the public health and safety or the environment.

- Prohibits any person or an owner of a well from operating a well in a way that causes the damage specified above or threatens the public health and safety or the environment.
- Retains current law prohibiting the owner of a well from allowing defective casing in a well to leak fluid or gases, but eliminates the requirement that the leak must:
  - Cause the damages specified above; or
  - Threaten the public health and safety or the environment.
- Requires either a person who constructed a well or the owner of that well to notify the Chief of well or casing defects within 24 hours of discovering the defect, rather than only requiring the owner of the well to do so, as in current law.
- Requires either the person who constructed that well or the owner of that well to immediately repair any defects or to plug it, rather than only requiring the owner of the well to do so, as in current law.
- Requires the Chief to issue a plugging order to either the person that constructed the well or the owner of the well when the Chief determines the well should be plugged, rather than only requiring the owner of the well to do so, as in current law.

## **Oil and Gas Leasing Commission**

- Renames the Oil and Gas Leasing Commission the Oil and Gas Land Management Commission.
- Specifies that the state's policy is to promote exploration for, development of, and production of oil and natural gas resources owned or controlled by the state, rather than to provide access and support for those activities, as in current law.
- Revises the membership of the Commission.
- Requires the Commission to hire at least one person to provide clerical and other services.
- Requires all money received by a state agency in exchange for the lease of state agency-owned land for oil and gas development to be deposited into the Oil and Gas Land Management Fund, to be used for Commission administration purposes.
- Accordingly eliminates all of the following funds, which would have consisted of signing fees, rentals, and royalty payments received by a state agency in exchange for the lease of state agency-owned land for oil and gas development:
  - State Land Royalty Fund;
  - Forestry Minerals Royalty Fund; and
  - Parks Mineral Royalty Fund.

- Eliminates signing fees, rentals, and royalty payments received by the Division of Wildlife in ODNR for leases of its land as a source of revenue for the Wildlife Habitat Fund.
- Eliminates a requirement that 30% of proceeds from a lease for oil and gas development under a state park be deposited into the fund that supports that state park.
- Requires each state agency to lease state agency-owned land (until the Commission adopts rules specifying leasing procedures) for oil and gas development on terms that are just and reasonable, as determined by the custom and practice of the oil and gas industry.
- Adds new elements to the required standard lease form that must be used by a state agency when leasing state agency-owned land for oil and gas development.
- Requires the Commission to establish a standard surface use agreement form that must be used by a state agency to authorize the use of the surface of a parcel of leased land.
- Revises requirements and procedures concerning the nomination of state agency-owned land to the Commission for lease for oil and gas development.
- Specifies that the Commission is not subject to certain administrative rulemaking requirements.

## **Division of Water Resources**

- Revises the amount of the surety bond that an applicant for a dam or levee construction permit must obtain and bases the amount on the estimated costs of construction.
- Authorizes the Chief of the Division of Water Resources to reduce the required surety amount for specified reasons.
- Authorizes the Chief to assess a civil penalty of up to \$5,000 per day for each day of each violation of the laws governing dams and levees and water diversions and withdrawals or any term or condition of a permit issued under them.
- Disburses money derived from costs and civil penalties to either the Dam Safety Fund or the Water Management Fund, depending on whether violations are committed under the law governing dam safety or the law governing water diversions and withdrawals.
- Requires criminal fines collected from violators of laws governing water well constructions logs and water diversions and withdrawals to be credited to the Water Management Fund, rather than the Dam Safety Fund as under current law.

## **Division of Parks and Watercraft**

- Prohibits a person from operating a watercraft in Ohio if it displays an identification number or registration decal that: (1) is fictitious, (2) is counterfeit or an unlawfully made copy, or (3) belongs to another watercraft.
- Increases the damage threshold that triggers a required watercraft accident report from \$500 to \$1,000.

## **Division of Forestry**

### **Forestry projects on federal land**

- Allows the Chief of the Division of Forestry to enter into agreements with the federal government for forest management projects, including timber sales, pursuant to federal law.
- Allows the Chief to sell timber and other forest products from federal lands in accordance with the terms of an agreement with the federal government.
- Requires the Chief to deposit money received from timber sales from federal lands into the existing State Forest Fund.
- Allows the money derived from those timber sales to be used for forest management projects associated with federal lands.

### **Wildfire reimbursement to firefighting agencies**

- Allows the Director of Natural Resources to reimburse firefighting agencies and private fire companies for costs associated with certain fire assistance activities if those costs are eligible in accordance with an agreement between the Division and the federal government.

### **State employees aid in out-of-state wildfires**

- Specifies that all state employees whom the Chief sends to another state to assist with forest fires are eligible for regular employment benefits and are immune from civil liability when performing duties within the scope of employment.

## **Division of Geological Survey**

- Eliminates the Ohio Geology license plate (which is not currently issued by the BMV).
- Correspondingly, eliminates the \$15 contribution for each license plate, which is deposited in the Geological Mapping Fund and must be used to award grants to graduate-level educational institutions for geology-related research activities and providing geology kits to primary and secondary schools.
- Instead, allows the Chief of the Division of Geological Survey to spend any money deposited in the Geological Mapping Fund (not just money from license plate proceeds) for the grants and kits.
- Adds to the purposes for which money in the fund may be used by allowing the Chief to issue grants to collegiate geology departments for undergraduate geological research.

## **Division of Wildlife**

### **Lake Erie Sport Fishing District permit**

(R.C. 1533.38, repealed; conforming changes in R.C. 1531.01, 1533.01, and 1533.101)

The bill eliminates the Lake Erie Sport Fishing District permit that:

1. The Division of Wildlife issues to non-Ohio residents to fish in Lake Erie, its embayments, and other specified areas connected to Lake Erie; and
2. Allows permittees to fish in the District between January and April.

Currently, each applicant must pay a \$10 annual fee for the permit, which is deposited into the Wildlife Fund. A nonresident who wishes to fish in the district must obtain this permit in addition to the nonresident annual fishing license. Thus, under the bill, a nonresident need to obtain only a nonresident fishing license to fish in the District.

### **Wildlife Boater Angler Fund**

(R.C. 1531.35)

The bill removes the \$500,000 cap on annual expenditures from the Wildlife Boater Angler Fund that the Division of Wildlife may make for equipment and personnel costs associated with boating access improvements. Under current law, the fund generally consists of money derived from a portion of the motor fuel excise tax. Money in the fund is used primarily for the acquisition, development, and maintenance of boating access areas.

### **Veterans fishing and hunting benefits**

(R.C. 1533.12)

The bill alters the requirements for a veteran to receive free fishing and hunting licenses and permits. Specifically, it allows an honorably discharged Ohio resident who is entitled to benefits under the Dependent's Education Assistance Program administered by the U.S. Department of Veterans Affairs to receive free fishing and hunting licenses and permits. Current law, instead, allows an honorably discharged Ohio resident who receives a pension or compensation from the Veterans Administration (VA) and who has a disability that has been determined by the VA to be permanently and totally disabling to receive those benefits.

According to the Department of Natural Resources (ODNR), this change does not affect the number or status of eligible veterans who may receive this benefit, but it will make the process of approving veterans who are eligible for free hunting and fishing licenses and permits easier. Under the current method, the Ohio Department of Veterans Services reviews eligibility for these benefits every five years to make sure the veteran receives a pension or compensation from the VA. Under the new method, the Department will determine whether the veteran is entitled to benefits under the Education Assistance Program, which is a lifetime membership in the program. A veteran must be totally and permanently disabled to qualify for the program. Therefore, instead of reviewing a veteran's eligibility for free hunting and fishing licenses and permits every five years, the Department only needs to approve the veteran once.

## Senior deer and wild turkey fees

(R.C. 1533.11)

The bill reduces, from \$11.50 to \$11.00, the fees for a senior deer permit and senior wild turkey permit, available to Ohio residents 66 and older.

It also removes superfluous definitions of “resident” and “nonresident” in the law governing deer and wild turkey permits (those definitions already exist in R.C. 1531.01 and 1533.01 and apply to the laws governing hunting and fishing).

## Lifetime and multi-year hunting and fishing fees

(R.C. 1533.321)

The bill decreases the following hunting and fishing fees:

Hunting and fishing fee decreases		
License	Current law	H.B. 110
Senior 3-year hunting or fishing license	\$27.50	\$26.00
Senior 5-year hunting or fishing license	\$45.75	\$43.34
Youth 3-year hunting license	\$27.50	\$26.00
Youth 5-year hunting license	\$45.75	\$43.34
Youth 10-year hunting license	\$91.50	\$86.67
Adult 5-year hunting license	\$86.75	\$86.67
Adult 10-year hunting license	\$173.50	\$173.34
Adult lifetime hunting license	\$450.00	\$432.00

It increases the following fishing fees:

Fishing fee increases		
License	Current law	H.B. 110
Adult 3-year fishing license	\$52.00	\$69.34
Adult 5-year fishing license	\$86.75	\$115.56
Adult 10-year fishing license	\$173.50	\$231.12
Adult lifetime fishing license	\$450.00	\$576.00

## **Division of Mineral Resources Management**

### **Performance security for coal mining operations**

(R.C. 1513.08)

Current law requires a coal mining and reclamation permit applicant to provide their own performance security in a specified amount or a combination of their own performance security and reliance on the Reclamation Forfeiture Fund. If the applicant relies partly on the fund, it must pay an additional coal severance tax, which is credited to the fund. The performance security options are available to any coal mining and reclamation permittee, no matter how long the permittee has held a permit.

The bill requires a coal mining and reclamation permittee to submit full performance security instead of using partial security and money from the Reclamation Forfeiture Fund for purposes of land reclamation if:

1. Ownership and operational control of the permittee has been transferred, assigned, or sold; and
2. The transferee has not held a mining permit in Ohio for at least five years.

It also specifies that this restriction applies even if the status and name of the permittee otherwise remain the same.

### **Deputy mine inspector eligibility requirements**

(R.C. 1561.12)

Current law requires an applicant for the position of deputy mine inspector of underground mines with the Division of Mineral Resources Management to have six years practical experience, at least two of which must have been in underground mines in Ohio. In the case of an applicant who would inspect coal mines, the two years must be in coal mines in Ohio. The bill does the following:

1. Eliminates the requirement that two of the six years of experience be in Ohio underground coal mines for an underground coal mine inspector;
2. Eliminates the requirement that two of the six years of experience be in Ohio underground noncoal mines for an underground noncoal mine inspector; and
3. Allows the experience for either type of inspector to be in *any* underground mine, rather than in specific mining operations as under current law.

Thus, the applicant can have experience in any underground mine located anywhere as long as the total experience equals six years.

Regarding the six years of work experience required for the position of deputy mine inspector of surface mines, the bill eliminates the requirement that two of the six years be in Ohio surface mines. Thus, the applicant can have experience in surface mines located anywhere as long as the total experience equals six years.

## **Reciprocity for mine personnel**

(R.C. 1561.23)

The bill authorizes the Chief of the Division of Mineral Resources Management to issue a certificate to work as a mine foreperson, foreperson, or mine electrician to an out-of-state applicant if:

1. The applicant holds a valid certification or other authorization from a state with which ODNR has a reciprocal agreement for the certification or authorization; and
2. The applicant passes an examination on Ohio mining law or other topics determined by the Chief.

Under continuing law, a mine foreperson is the person whom the operator or superintendent of a mine places in charge of the mine. A foreperson assists the mine foreperson in the immediate supervision of a mine.

The bill also allows an out-of-state mine foreperson, foreperson, or mine electrician (working under a reciprocal agreement) who has been issued a temporary certificate to act as a mine foreperson, foreperson, or mine electrician in Ohio prior to the bill's effective date to continue to work under that temporary certificate. The person may continue to operate under the temporary certificate until it expires or the Chief suspends or revokes it.

Current law allows an out-of-state mine foreperson, foreperson, and mine electrician who holds a valid certificate or other authorization for the position to work under a temporary certificate in an emergency. To be eligible for a temporary certificate, the foreperson or electrician must give the Chief a copy of the certificate or other authorization from their home state. A temporary certificate is valid for six months.

## **Division of Oil and Gas Resources Management**

### **Oil and gas well plugging**

(R.C. 1509.13)

The bill authorizes the holder of a valid permit to drill a well to obtain approval from the Division of Oil and Gas Resources Management to plug that well without obtaining a permit to plug and abandon it, if an oil and gas inspector approves it and one of the following apply:

1. The well was drilled to total depth and the well cannot or will not be completed; or
2. The well is a lost hole or a dry hole.

The bill requires the permit holder plugging a well that was drilled to a total depth and that cannot or will not be completed to do so within 30 days of the inspector's approval. A permit holder plugging a lost hole or dry hole must do so immediately after determining that the well is a lost hole or dry hole in accordance with rules. The bill clarifies that the Chief of the Division need not obtain a permit to plug and abandon or follow these procedures in order to plug and abandon a well.

Under current law, a person is generally required to obtain a permit to plug and abandon a well. But a well owner with a valid permit to drill the well may do so without a permit to plug and abandon it if an inspector approves the plugging so that it can be completed without undue delay. Current law does not impose the conditions or the timeframe for plugging specified by the bill. The bill eliminates this process for plugging and abandoning a well without a permit.

The bill specifies that the \$250 application fee for a permit to plug and abandon is nonrefundable and applies even if oil or gas has not been produced from the well. Under current law, an applicant generally must pay this application fee only if the well has produced oil or gas.

Finally, the bill requires any person undertaking plugging a well under a permit to obtain \$1 million in bodily injury and property damage insurance coverage (\$3 million if the well is located in an urbanized area), including for damages caused by the plugging of the well. The person must submit proof of insurance electronically to the Chief on the Chief's request. The bill specifies that a well owner already required to obtain an insurance policy for purposes of a well drilling permit does not need to obtain insurance under this requirement.

## **Defective well casing and plugging requirements**

(R.C. 1509.12)

The bill prohibits any person from constructing a well that causes damage to other permeable strata, underground sources of drinking water, or the surface of the land or that threatens the public health and safety or the environment. It also prohibits any person or an owner of a well from *operating* a well in a way that causes those damages or threatens the public health and safety or the environment. Current law prohibits only the owner of a well from constructing a well in this manner and does not specifically prohibit those damages or threats to the public health and safety or the environment caused by well operation.

The bill retains current law that prohibits the owner of a well from allowing defective casing in a well to leak fluid or gases, but it eliminates the requirement that the leak must:

1. Cause the damages specified above; or
2. Threaten the public health and safety or the environment.

Under the bill, either a person who constructed a well or the owner of that well must notify the Chief of well or casing defects within 24 hours of discovering the defect. Further, either the person who constructed the well or the owner of the well must correct the defects or plug the well. Current law requires the notification and corrective action to be completed solely by the owner of the well.

When the Chief finds that a well should be plugged, the bill requires the Chief to order either the person who constructed the well or its owner to plug it. The bill prohibits any person from failing to comply with that order. Under current law, the Chief can only issue the order to the owner.

## Oil and Gas Leasing Commission

(R.C. 155.29, 155.30, 155.31, 155.32, 155.33, 155.34, 155.35, 155.36, 1509.28, and 1531.33; repealed R.C. 131.50, 1503.012, 1509.76, 1509.78, and 1546.24; Section 715.10)

The Oil and Gas Leasing Commission is responsible for overseeing the lease of state agency-owned land for oil and gas development. Initial appointments to the Commission were required to occur in 2011, but were not made until 2018. To date, the Commission has not adopted rules specifying nomination and leasing procedures as required by current law.

### Renaming and membership

The bill renames the Commission as the Oil and Gas Land Management Commission. It also specifies that it is the state's policy to promote exploration for, development of, and production of oil and natural gas resources owned or controlled by the state, rather than to provide access and support for those activities, as in current law.

The bill also revises the membership of the Commission by doing both of the following:

- Replacing the Chief of the Division of Geological Survey with the Director of Natural Resources or the Director's designee and applying the current requirement that that member serve as chairperson of the Commission;
- Eliminating a requirement that the two members currently required to be recommended by a statewide organization representing the oil and gas industry be selected from a list of at least four people with that background, but specifying that those two members must have knowledge or experience in the oil and gas industry.

The bill specifies that the replacement of the Chief of the Division of Geological Survey with the Director of Natural Resources or the Director's designee as chairperson is intended to occur on the bill's effective date.

The bill requires the Commission to hire at least one person to provide clerical and other services not later than 90 days after the provision's effective date. Under current law, the Department of Natural Resources must furnish those services and legal and technical services.

### Funding

The bill requires all money received by a state agency in exchange for the lease of state agency-owned land be deposited into the existing, but renamed, Oil and Gas Land Management Fund. The Commission must use money in the fund for administration purposes. Under current law, only nomination fees and bid fees collected by the Commission are required to be deposited into that fund. In accordance with this change, the bill eliminates all of the following funds, which would have consisted of signing fees, rentals, and royalty payments received by a state agency in exchange for the lease of state agency-owned land for oil and gas development:

- State Land Royalty Fund (required to be used by state agencies to acquire land and to pay capital costs, including equipment and renovations and repairs of facilities);
- Forestry Minerals Royalty Fund (if the lease pertains to land owned or controlled by the Division of Forestry);

- Parks Mineral Royalty Fund (if the lease pertains to land owned or controlled by the Division of Parks and Watercraft).

This revenue stream is also eliminated for the Wildlife Habitat Fund if the lease pertains to land owned or controlled by the Division of Wildlife. The bill further eliminates a requirement that 30% of proceeds from a lease for oil and gas development under a state park be deposited into the fund that supports that state park.

### **Leasing and nomination procedures**

Until the Commission adopts rules specifying nomination and leasing procedures, the bill **requires** each state agency to lease state agency-owned land for oil and gas development. Each agency must lease the land on terms that are just and reasonable, as determined by the custom and practice of the oil and gas industry. Current law specifies that an agency *may* lease a formation within a parcel of land, in consultation with the Commission (until the date on which rules are adopted). In addition, current law specifies that the state agency must determine bid fees, signing fees, rentals, and at least a  $\frac{1}{8}$  landowner royalty.

The Commission must adopt rules concerning leasing and nomination procedures no later than 270 days after the provision's effective date. Under current law, the rules were required to be adopted by June 26, 2012 (270 days after September 30, 2011), but were never adopted.

The bill adds two new elements to the required standard lease form that the Commission must establish by rule and that must be used by a state agency when leasing state agency-owned land for oil and gas development. The form must include both of the following (in addition to at least a  $\frac{1}{8}$  landowner royalty, required by current law):

- A prohibition against the use of the surface of the parcel of land for oil and gas development without the execution by the state agency of a standard surface use agreement; and
- A limited warranty of title by the state agency to the lessee.

The bill also requires the Commission to establish by rule the standard surface use agreement form a state agency must use to authorize the use of the surface of a parcel of land it leases.

The bill revises requirements and procedures concerning the submission of nominations of state agency-owned land to the Commission for lease for oil and gas development by:

- Shortening the timeframe (from 120 to 90 days after nomination) in which the Commission must have a meeting regarding a nominated parcel of land;
- Requiring a state agency to submit any special terms or conditions it believes should apply to a lease of a parcel of land because of specific conditions related to that land that exist at the time of submission of comments and objections (rather than post-nomination, as in current law);
- Eliminating certain classification requirements and procedures (classes 1 through 4) regarding the nomination and lease of state agency-owned land (property is classified according to its amenability to oil and gas development);

- Authorizing any person or state agency (rather than only an owner with the right to drill for oil and gas) to nominate parcels of state agency-owned land to the Commission for lease;
- Requiring a person nominating a parcel to also submit the opinion of an attorney (prepared not earlier than one year immediately preceding the nomination date) explaining the status of the mineral rights of the parcel;
- Requiring the Commission to establish procedures and requirements for publishing notice of nominated parcels on the Commission’s website, rather than requiring the Director of Natural Resources to do so on the Department’s website; and
- Requiring the Commission, rather than the Department of Natural Resources, to advertise bids for leases and post the deadline for bids on its website.

The bill exempts the Commission requirements that a state agency must review existing rules and identify regulatory restrictions. Until June 30, 2023, that law prohibits a state agency from adopting a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions.

## **Division of Water Resources**

### **Dams and levees enforcement**

(R.C. 1521.06, 1521.061, and 1521.40)

The Division of Water Resources regulates dams and levees, water well logs, and water diversions and withdrawals from state waters. The bill alters the law governing these topics by doing both of the following:

1. Revising the application and financial responsibility requirements for dam or levee construction permits; and
2. Revising the Division Chief’s enforcement authority, including authorizing the Chief to assess civil penalties for specified violations.

The table below discusses each of these changes in more detail by comparing the changes made by the bill to current law requirements.

Current law	H.B. 110
<b>Financial responsibility – initial</b>	
<p>Requires an applicant for a dam or levee construction permit to file a surety bond equal to 50% of the estimated construction project costs.</p> <p>No provision.</p>	<p>Instead, generally requires an applicant to submit a surety bond equal to:</p> <ol style="list-style-type: none"> <li>1. \$50,000 for the first \$500,000 of the estimated cost of the project; plus</li> <li>2. 25% of the estimated cost for the next \$4.5 million; plus</li> <li>3. 10% of the estimated cost that exceeds \$5 million.</li> </ol> <p>Authorizes the Chief to reduce the above amount to the cost estimate for construction activities that would be necessary to render the dam nonhazardous if the estimate is provided by the applicant and approved by the Chief.</p>
<b>Civil penalties</b>	
<p>No provision.</p>	<p>Authorizes the Chief to assess (and the Attorney General to recover) a civil penalty of up to \$5,000 per day for each day of violation of the laws governing dams and levees and water diversions and withdrawals, any rule adopted or issued under those laws, or any term or condition of a permit issued under those laws.</p>
<b>Civil penalties – disbursement</b>	
<p>No provision.</p>	<p>Requires civil penalties recovered by the Attorney General to be disbursed to the following funds:</p> <ol style="list-style-type: none"> <li>1. For violations of the law governing dams and levees, the Dam Safety Fund. (The Chief uses the fund to administer that Dam Safety Law.)</li> <li>2. For violations of the law governing water diversions and withdrawals, the Water Management Fund. (The Chief uses the fund to make loans and grants to governmental agencies for water management, water supply improvements, and planning.)</li> </ol>

Current law	H.B. 110
<b>Recovery of costs incurred by the Division – disbursement</b>	
Requires money recovered by the Attorney General, for costs incurred by the Division in investigating, mitigating, or removing a violation of <i>any</i> law enforced by the Division, to be credited to the Water Management Fund.	Instead, requires money recovered by the Attorney General for costs to be disbursed to the following funds: <ol style="list-style-type: none"> <li>1. For a violation of the law governing dams and levees, the Dam Safety Fund;</li> <li>2. For a violation of the law governing water diversions and withdrawals, the Water Management Fund.</li> </ol>
<b>Criminal fine – disbursement</b>	
Requires all criminal fines collected from violators of the laws governing dams and levees, water well construction logs, and water diversions and withdrawals to be credited to the Dam Safety Fund.	Instead, requires criminal fines collected under those laws to be credited as follows: <ol style="list-style-type: none"> <li>1. For fines collected for violations of the laws governing water well construction logs and water diversions and withdrawals, the Water Management Fund;</li> <li>2. For fines collected for violations of the law governing dams and levees, the Dam Safety Fund.</li> </ol>

## Division of Parks and Watercraft

### Fraudulent watercraft identification

(R.C. 1547.533; 1547.99, not in the bill)

The bill prohibits a person from operating a watercraft in Ohio if it displays an identification number or registration decal that:

1. Is fictitious;
2. Is counterfeit or an unlawfully made copy; or
3. Belongs to another watercraft.

A person who violates this prohibition is guilty of a minor misdemeanor.

### Boat accident reporting threshold

(R.C. 1547.59)

The bill increases the damage threshold that triggers a required watercraft accident report from \$500 to \$1,000. Under current law, a watercraft operator must submit the report to the Chief of the Division of Parks and Watercraft after an accident, collision, or other casualty involving a vessel that results in one of the following:

1. Loss of life;
2. Personal injury requiring medical treatment beyond first aid;
3. Damage to property (in excess of \$500 currently and in excess of \$1,000 under the bill); or
4. Total loss of a vessel.

## **Division of Forestry**

### **Forestry projects on federal land**

(R.C. 1503.05 and 1503.271)

The bill allows the Chief of the Division of Forestry to enter into agreements with the federal government for forest management projects, including timber sales, pursuant to specified federal laws. One such federal law authorizes the U.S. Secretary of Agriculture to enter into “good neighbor agreements.” A good neighbor agreement is a cooperative agreement or contract entered into between the Secretary and a state to carry out forest, rangeland, and watershed restoration.

The bill allows the Chief to sell timber and other forest products from federal lands in accordance with the terms of an agreement with the federal government. Currently, the Chief may sell timber and forest products from state forests and state forest nurseries. The Chief must deposit money received from timber sales from federal lands into the existing State Forest Fund.

In addition to fund uses allowed under current law, the bill allows money derived from the timber sales from federal lands to be used for forest management projects associated with those lands.

### **Wildfire reimbursement to firefighting agencies**

(R.C. 1503.141)

The bill allows the ODNR Director to reimburse firefighting agencies and private fire companies for costs associated with wildfire suppression, prescribed fire assistance, or emergency response support to federal agencies. However, the Director may provide the reimbursement only if those costs are eligible in accordance with an agreement between the Division and the federal government.

Under current law, the Director may annually designate up to \$200,000 in the State Forest Fund for wildfire suppression payments and reimbursement to firefighting agencies and private fire companies for their costs incurred in wildfire suppression. The payments must be made in specified amounts from money in the fund derived from the sale of standing timber taken from state forest lands. The bill allows money for the new reimbursement authorization to support federal agencies to be drawn from the \$200,000 allocation.

## **State employees aid in out-of-state wildfires**

(R.C. 1503.33)

The bill specifies that all state employees whom the Chief sends to another state to assist with forest fires are eligible for regular employment benefits (i.e., compensation, pension, indemnity fund rights, and workers' compensation). Additionally, they are immune from civil liability when performing duties within the scope of employment.

Under current law, only Division employees are eligible for those benefits and immunity.

## **Division of Geological Survey**

### **Elimination of Ohio Geology license plate**

(R.C. 4503.515, repealed and 1505.09)

The bill eliminates the Ohio Geology license plate (which is not currently issued by the BMV). Correspondingly, it eliminates the \$15 contribution for each license plate, which is deposited in the Geological Mapping Fund and must be used for the following purposes:

1. Allowing the ODNR Director to award grants at least annually to geology departments at state colleges and universities for graduate level research conducted at locations of geological interest in the state; and
2. Providing materials such as rock and mineral kits to state elementary and secondary schools to assist students in the study of geology.

The bill allows the Chief of the Division of Geological Survey to expend *any* money deposited in the Geological Mapping Fund (not just money from license plate proceeds) for the above two purposes. Additionally, it adds to those purposes by allowing the Chief to use fund money for grants to collegiate geology departments for undergraduate geological research.

Currently, mineral severance tax money and any fees collected by the Division for geological record archives and other geological purposes are also deposited in the fund. In addition to the purposes specified above, the fund may be used to perform certain tasks related to geology, geological hazards, and energy and mineral resources, and for funding the Oil and Gas Commission.

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## OHIO CONSUMERS' COUNSEL

- Allows members of the governing board of the Ohio Consumers' Counsel to attend meetings virtually without affecting their eligibility for compensation during the declared COVID-19 period of emergency.

### Compensation of OCC governing board

(Section 749.20)

The bill allows members of the governing board of the Ohio Consumers' Counsel to be compensated for their attendance at meetings regardless of whether they attend in person or virtually, but only during the period of emergency declared by Executive Order 2020-01D, issued on March 9, 2020. Current law requires members to attend meetings in person to be compensated. Continuing law compensates members of the governing board for up to eight meetings per year.

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## OPPORTUNITIES FOR OHIOANS WITH DISABILITIES AGENCY

- Requires the Governor to present an award each October, during National Disability Employment Awareness Month, to employers who meet the criteria for having a workplace inclusive of individuals with disabilities.
- Requires the Opportunities for Ohioans with Disabilities Agency to determine the criteria to be used to recommend employers for the award.

### **Employer inclusive workplace award**

(R.C. 3304.24)

The bill requires the Governor to present an award each October, during National Disability Employment Awareness Month, to employers who meet the criteria for having a workplace inclusive of individuals with disabilities. The Opportunities for Ohioans with Disabilities Agency must determine the inclusive workplace criteria to be used to recommend employers for the award.

Congress dedicated October as National Disability Employment Awareness Month to recognize the accomplishments of individuals with disabilities in the workplace and reaffirm support for employment opportunities for individuals with disabilities.<sup>85</sup>

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<sup>85</sup> 36 U.S.C 121 and Library of Congress, *National Disability Employment Awareness Month*, available [here](#).

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## **OHIO OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETIC TRAINERS BOARD**

### **Board vacancies**

- Extends to 90 days (from 60) the maximum transition period that may occur between an expired term of office and the Governor's appointment of a person to fill a vacancy on the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board.

### **Occupational therapy licensing procedures**

- Eliminates limited permits for occupational therapists and occupational therapy assistants.
- Eliminates the option to have an occupational therapist's or occupational therapy assistant's license placed in escrow when the person is not in active practice.

### **Physical therapy licensing procedures**

- Eliminates the requirement that a person applying for a physical therapist or physical therapist assistant license submit a physical description and photograph.
- Specifies that a physical therapy license applicant must graduate from a professional physical therapy program and that the program be accredited by an agency acceptable to the Board's Physical Therapy section.

### **Orthotists, prosthetists, and pedorthists – enforcement**

- Authorizes the Board to discipline orthotists, prosthetists, and pedorthists for denial, revocation, suspension, or restriction of authority to practice any health care occupation in any jurisdiction.
- Allows the Board to impose a fine or a requirement to take corrective action courses.
- Requires a person who is sanctioned to pay the actual cost of the administrative hearing.
- Transfers the duty to investigate violations to the full OTPTAT Board, in place of the Board's secretary.
- Permits the Board to share confidential investigatory information with any relevant law enforcement, prosecutorial, or regulatory agency.

### **Discipline based on intervention in lieu of conviction**

- Permits the Board to take disciplinary action due to a judicial finding of eligibility for intervention in lieu of conviction for any crime that would otherwise be reason for disciplinary action against the various professionals the Board regulates.

## **Discipline based on sexual interactions with patients**

- Includes sexual conduct with a patient among the other sex-related behaviors for which the Board may take disciplinary action against a physical therapist or physical therapist assistant.
- Allows the Board, in its regulation of all other professionals under its jurisdiction, to take disciplinary action due to sexual conduct, sexual contact, and sexually demeaning verbal behavior with a patient.

## **Jurisdiction for appeals**

- Establishes the Franklin County Court of Common Pleas as the jurisdiction for all appeals from orders issued by the Board.

## **Board vacancies**

(R.C. 4755.01)

The Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers (OTPTAT) Board consists of 16 members appointed by the Governor with the advice and consent of the Senate. Members serve for three-year terms, but a member also must serve until a successor is appointed or a period of 60 days has elapsed, whichever is first. The bill extends this transition period to 90 days.

## **Occupational therapist licensing procedures**

### **Limited permits**

(R.C. 4755.08 (primary) and 121.22, 4755.01, 4755.02, 4755.04, 4755.05, 4755.06, 4755.11, and 4755.12)

The bill eliminates provisions regarding the issuance of limited permits for occupational therapists and occupational therapy assistants. Under current law, if a person has taken the required licensing examination, a limited permit may be issued by the OTPTAT Board's Occupational Therapy Section. The permit authorizes the person to practice under the supervision of a licensed occupational therapist until the results of the examination are public.

### **Inactive licenses**

(R.C. 4755.12 (primary) and 4755.06)

The bill eliminates the option to have an occupational therapist or occupational therapy assistant license placed in escrow. Under current law, this option allows an occupational therapist or occupational therapy assistant who is not in active practice to register as such with the Occupational Therapy Section for a biennial fee.

## **Physical therapy licensing procedures**

### **Applications with physical identification**

(R.C. 4755.42 and 4755.421)

The bill eliminates the requirement that a person seeking a license as a physical therapist or physical therapist assistant submit a physical description and photograph. Currently, this is required with every application.

### **Acceptable programs**

(R.C. 4755.42, 4755.421, and 4755.48)

Current law requires an applicant for licensure as a physical therapist to have completed a master's or doctorate in a program of physical therapy education that is accredited by a national physical therapy accreditation agency recognized by the U.S. Department of Education. The bill, instead, requires graduation from a professional physical therapy program, without specifying the degree that must be obtained. It also establishes the OTPTAT Board's Physical Therapy Section as the entity that must approve of the agency that accredits the professional program.

The bill removes related provisions specifying that any approved physical therapy program include (1) a minimum of 120 academic semester credits and (2) a course with instruction in basic sciences, clinical sciences, and physical therapy theory and procedures.

## **Orthotists, prosthetists, and pedorthists – enforcement**

### **Authorized Board actions**

(R.C. 4779.28)

In regulating orthotists, prosthetists, and pedorthists, the OTPTAT Board's existing disciplinary options include limiting, revoking, or suspending a practitioner's license. The Board also may reprimand a license holder, place a license holder on probation, or refuse to issue a license to an applicant. The bill allows the Board to impose a fine or a requirement that a licensee take corrective action courses.

The bill also allows the Board to take disciplinary action against a licensee or applicant who has experienced denial, revocation, suspension, or restriction of authority to practice any health care profession in Ohio, another state, or any other jurisdiction. This provision does not include people who were sanctioned for failing to renew a license.

### **Fee for administrative hearing costs**

(R.C. 4779.2810)

The bill requires any orthotist, prosthetist, or pedorthist who is sanctioned for any reason to pay the cost of the administrative hearing. This includes the cost of the court reporter, hearing officer, transcripts, and any witness fees for lodging and travel.

## **Responsibility for investigations**

(R.C. 4779.33)

The secretary of the OTPTAT Board is currently responsible for investigating violations by an orthotist, prosthetist, or pedorthist. The bill transfers this duty to the full Board.

## **Sharing of investigatory information**

(R.C. 4779.33)

The bill specifies that any information and records received or generated by the OTPTAT Board during an investigation regarding an orthotist, prosthetist, or pedorthist are not public records. However, the Board may disclose information to local, state, or federal law enforcement, prosecutorial, or regulatory agencies if an investigation is within their jurisdiction. The agency receiving the information must comply with the same confidentiality requirements as the Board.

Under the bill, information from a Board investigation may be entered as evidence in a criminal trial or administrative hearing. Appropriate measures, such as sealing records or redacting specific information, must be taken to protect the confidentiality of patients, complainants, and others specified by the board.

## **Discipline based on intervention in lieu of conviction**

(R.C. 4755.11, 4755.47, 4755.64, and 4779.28)

When a professional licensed by the OTPTAT Board is convicted of a crime, the Board is authorized to take disciplinary action. The bill permits the Board to take action not only based on conviction, but also if the licensee has been subject to a judicial finding of eligibility for intervention in lieu of conviction.

The specifics of the disciplinable crimes vary by profession. For occupational therapists and occupational therapy assistants, disciplinary action may be taken in response to a felony, a crime of moral turpitude, or a misdemeanor reasonably related to the practice of occupational therapy. The same applies to physical therapists and physical therapist assistants, except the misdemeanor must have occurred during the practice of physical therapy. Athletic trainers may be disciplined only for a felony or a crime of moral turpitude. Orthotists, prosthetists, and pedorthists may be disciplined for felonies or misdemeanors involving moral turpitude.

## **Discipline based on sexual interactions with patients**

(R.C. 4755.11, 4755.47, 4755.64, and 4779.28)

The OTPTAT Board currently has some disciplinary power concerning sexual contact between licensees and patients. The Physical Therapy Section may discipline a licensee for sexual contact with a patient or for verbal behavior that is sexually demeaning. Sexual contact refers to vaginal or anal intercourse and oral sex. Verbal behavior that is sexually demeaning includes any communication that may be reasonably interpreted by the patient as sexually demeaning. The bill adds sexual conduct with a patient as a disciplinable action for physical therapists and physical therapist assistants. Sexual conduct is defined as contact with an erogenous zone of another person with the intent to sexually arouse or gratify either person.

The Board currently does not have the authority to discipline other licensees for sexual interactions with patients, including occupational therapists, occupational therapy assistants, athletic trainers, orthotists, prosthetists, and pedorthists. In the same manner described above for physical therapists, the bill prohibits the other professionals regulated by the Board from engaging in sexual contact, sexual conduct, or verbal behavior that is sexually demeaning with a patient. This applies even if the sexual interaction is consensual. These restrictions do not apply if the patient is the licensee's spouse.

## **Jurisdiction for appeals**

(R.C. 119.12)

An order issued by the OTPTAT Board, such as denying an applicant admission to an exam, denying the issuance or renewal of a license, or revoking or suspending a license, may be appealed by the person affected. The bill establishes the Franklin County Court of Common Pleas as the jurisdiction for all appeals from orders issued by the Board. This change is consistent with the appeal process for orders issued by several other occupational licensing boards, including the State Medical Board and the Board of Nursing. Current appeals of OTPTAT Board orders go to the common pleas court of the licensee's county of residence or the county where the licensee's place of business is located.

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## DEPARTMENT OF PUBLIC SAFETY

- Reallocates 10¢ of the \$15 motor vehicle certificate of title fee from deposit in the Motor Vehicle Sales Audit Fund to deposit in the Highway Operating Fund.
- Authorizes a Department of Public Safety enforcement agent to investigate and enforce the law related to illegally selling and distributing cigarettes and tobacco without the offense occurring at a liquor permit premises or otherwise being associated with a Liquor Law violation.
- Specifies that a political subdivision employee who renders aid in another state in accordance with the Emergency Management Assistance Compact is considered a state employee for immunity purposes.
- Waives one year of vehicle and trailer registration taxes and fees for amusement ride owners that were unable to operate their amusement rides in 2020.
- Regarding U.S. Power Squadron license plates, requires U.S. Power Squadron District 7 to equally distribute the contributions for the plates to all Ohio Power Squadron Districts in Ohio, rather than requiring the Registrar to do so as under current law.

### Certificate of title fee allocation

(R.C. 4505.09)

The bill reallocates 10¢ of the \$15 motor vehicle certificate of title fee from deposit in the Motor Vehicle Sales Audit Fund to deposit in the Highway Operating Fund. The amount of the certificate of title fee to be deposited in the Motor Vehicle Sales Audit Fund, to assist the Tax Commissioner's investigations of motor vehicle sales and use tax returns to ensure any tax liability has been satisfied, is reduced from 25¢ to 15¢. Additionally, the amount deposited into the Highway Operating Fund, managed by the Department of Transportation for its highway projects, is increased from 21¢ to 31¢. The overall \$15 motor vehicle certificate of title fee is not altered by the bill.

### Enforcement of illegal tobacco distribution

(R.C. 5502.14)

The bill authorizes a Department of Public Safety (DPS) enforcement agent to investigate and enforce the law related to illegally selling and distributing cigarettes and tobacco,<sup>86</sup> without the offense occurring at a liquor permit premises or otherwise being associated with a Liquor Law violation. Under current law, a DPS enforcement agent may investigate and enforce most laws only if the violation occurs while the agent is on, immediately adjacent to, or across from a

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<sup>86</sup> R.C. 2927.02, not in the bill.

retail liquor permit premises while the agent is investigating that premises or while investigating another Liquor Law violation.<sup>87</sup>

## **Emergency Management Assistance Compact immunity**

(R.C. 5502.30)

The bill specifies that a political subdivision employee who renders aid in another state in accordance with the Emergency Management Assistance Compact (EMAC) is considered a state employee for immunity purposes under Article VI of the Compact. Therefore, the employee is:

1. Considered an agent of the requesting state for tort liability and immunity purposes; and

2. Not liable for any act or omission done in good faith while engaged or on account of the maintenance or use of any equipment or supplies in connection with the engagement.

It also specifies that this provision does not entitle a political subdivision employee to any other right or benefit of a state employee.

The EMAC is law in all 50 states. Through it, states may provide mutual assistance in managing any emergency or disaster.<sup>88</sup>

## **Vehicle registration waiver for amusement ride owners**

(Section 745.10)

The bill waives one year of vehicle and trailer registration taxes and fees for amusement ride owners that were unable to operate their amusement rides in 2020. The waiver applies starting on the effective date of the authorization, and continues for one year after that effective date. Amusement rides are any mechanical, aquatic, or inflatable device (or combination thereof) that carry or convey passengers on, along, around, over, or through a fixed or restricted course or defined area for amusement, pleasure, or excitement. In the midst of the COVID-19 pandemic, many amusement rides and events or facilities that host amusement rides were not able to operate or remain open.

The registration taxes and fees waived for amusement ride owners include the following:

1. The annual registration tax (amount varies according to type of vehicle registered);
  2. The Bureau of Motor Vehicles fee (\$11 or \$30) and, if applicable, any alternative-fuel vehicle fees (\$100 or \$200);
  3. Any local motor vehicle taxes (amount varies according to jurisdiction up to \$30);
  4. Any standard license plate fees (\$6.50 for single license plate or \$7.50 for two plates);
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<sup>87</sup> R.C. 5502.13, not in the bill.

<sup>88</sup> See <https://www.emacweb.org/>.

5. The BMV/deputy registrar service fee (\$5).

If the amusement ride owner registers the vehicles or trailers under a multi-year registration plan, the Registrar must credit the owner for one year of registration taxes and fees. The owner must still pay any additional years' worth of registration taxes and fees for the multi-year registration.<sup>89</sup>

## **U.S. Power Squadron License Plate distribution**

(R.C. 4501.21)

The bill requires U.S. Power Squadron District 7 (located in Mansfield) to annually distribute the contributions received for U.S. Power Squadron license plates in equal amounts to all U.S. Power Squadrons in Ohio. Current law requires the Registrar to distribute the contributions in equal amounts. U.S. Power Squadrons is a nonprofit boating club and educational organization that provides classes on maritime safety and seamanship.

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<sup>89</sup> R.C. 993.01, 4503.038, 4503.04, 4503.042, 4503.10, 4503.103, and 4503.19, and Chapter 4504, not in the bill.

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## PUBLIC UTILITIES COMMISSION

- Removes the requirement that the Public Utilities Commission (PUCO) office be open during specific business hours.
- Allows the Power Siting Board, subject to Controlling Board approval, to contract for the services of outside experts and analysts and fund the expense through certificate or amendment application fees imposed under existing law.
- Changes the requirement that basic local exchange service provide for a telephone directory in any reasonable format to include, at the telephone company's option, an internet-accessible database of directory listings.
- Requires a telephone company that no longer offers a printed directory to provide reasonable customer notice of available options to obtain directory information.
- Requires PUCO to amend its rules, no later than 90 days after the internet-accessible database format option takes effect, as necessary to bring the rules into conformity with that new format option.

### Hours of operation

(R.C. 4901.10)

The bill removes the requirement that the office of the Public Utilities Commission be open from 8:30 a.m. to 5:30 p.m., Monday through Friday, with the result that the office must be open simply "throughout the year, Saturdays, Sundays, and legal holidays excepted."

### PSB contract for expert or analyst

(R.C. 4906.02)

The bill allows the Power Siting Board (PSB) to contract with experts or analysts (other than employees of the Environmental Protection Agency or Departments of Natural Resources, Agriculture, Health, or Development who may be called temporarily to provide assistance to Chairperson of the Public Utilities Commission) for the purposes of carrying out PSB's powers and duties under current law. Contracts for such experts and analysts are subject to Controlling Board approval, and any expert or analyst must be compensated from the PSB certificate application fee, or if necessary, supplemental application fees, assessed under existing law.<sup>90</sup>

### Internet telephone directories

(R.C. 4927.01; Section 749.10)

The bill changes the requirement that basic local exchange service (BLES) provide for a telephone directory in any reasonable format to include, at the telephone company's option, an

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<sup>90</sup> R.C. 4906.06, not in the bill.

internet-accessible database of directory listings. Continuing law still requires a listing in that directory, for no additional charge, with reasonable accommodations made for private listings.

The bill further requires a telephone company providing BLES that no longer offers a printed telephone directory to provide reasonable customer notice of the available options to obtain such directory information.

PUCO must amend its rules, no later than 90 days after the internet-accessible database format option takes effect, as necessary to bring the rules into conformity with that new format option.

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## **DEPARTMENT OF REHABILITATION AND CORRECTION**

### **Local confinement for fifth degree felony prison terms**

- Requires that a person sentenced by the common pleas court of any county to a prison term for a fifth degree felony may not serve the term in a DRC institution, subject to exclusions for certain offenses and categories of offenders.
- Requires that each county must submit a memorandum of understanding to DRC for its approval, unless the county has already entered into a memorandum of understanding.

### **Post-release control sanctions**

- Modifies current law regarding post-release control (PRC) by:
  - Changing the duration of mandatory PRC to “up to five years, but not less than two years” for a first degree felony that is not a felony sex offense; “up to three years, but not less than 18 months” for a second degree felony that is not a felony sex offense; and “up to three years, but not less than one year” for a third degree felony that is an offense of violence and is not a felony sex offense;
  - Changing the duration of discretionary PRC to “up to two years” for a third, fourth, or fifth degree felony that is not subject to mandatory PRC;
  - Removing juvenile court delinquent child adjudications as items that must be considered by the Parole Board or court in determining PRC sanctions;
  - Changing from mandatory to discretionary the use of active GPS monitoring for the first 14 days of a prisoner on PRC who is released before the expiration of the prisoner’s term and who earned over 60 days of earned credit;
  - Modifying the mechanism for shortening or terminating PRC of an offender who is complying with the PRC sanctions;
  - Specifying that if, during the period of PRC, the offender serves as a sanction for violating PRC conditions and the maximum prison sanction time available as a PRC sanction, the PRC terminates;
  - Providing rules for determining the manner in which PRC operates when an offender is simultaneously subject to a period of parole and a period of PRC or is subject to two simultaneous periods of PRC; and
  - Specifying that a period of PRC must not be imposed consecutively to any other period of PRC.

### **Sacramental wine in specified governmental facility**

- Exempts small amounts of sacramental wine from the offense of “illegal conveyance of intoxicating liquor onto the grounds of a specified governmental facility” when the person conveying, delivering, or attempting to convey or deliver the wine is a cleric.

## **Notification of possible prison term for community control violation**

- Specifies that the notice a court must give to an offender it sentences to a community control sanction for a felony regarding a possible prison term as a violation sanction must indicate “the range from which the term may be imposed.”

## **Community-based substance use disorder treatment**

- Extends eligibility for the community-based substance use disorder treatment program.
- Removes a restriction that prevents those with certain prior offense of violence convictions from participating in the program.

## **Subsidies for community-based corrections programs**

- Modifies the requirements for the program of subsidies for community-based corrections programs.

## **Administrative releases**

- Expands the Adult Parole Authority’s ability to grant an administrative release to include: (1) a “releasee” who is serving another felony sentence in a prison within or outside Ohio for the purpose of consolidating the records or if justice would best be served, or (2) a “releasee” who has been deported from the U.S.

## **Sealing of records related to an unconditional pardon**

- Allows the Governor to include as a condition of an unconditional pardon that the records related to conviction be sealed, and generally provides that the records are not subject to public inspection unless directed by the Governor.

## **Internet access for prisoners**

- Provides greater flexibility for prisons to provide internet access to prisoners.

## **Removing outdated law about the Ohio River Valley Facility**

- Removes outdated provisions of the Revised Code that allowed Lawrence County to place inmates in the Ohio River Valley Facility.

## **Local confinement for fifth degree felony prison terms**

### **Mandatory local confinement**

(R.C. 2929.34 with conforming changes in R.C. 5149.311 and 5149.38)

Current law provides, subject to exclusions for certain offenses and categories of offenders, that a person sentenced in a “voluntary county” to a prison term of 12 months or less for a fifth degree felony may not serve the term in a DRC institution.

Under the bill, there are no longer “voluntary counties,” and instead the requirement applies to all counties. On or after September 1, 2022, the bill specifies that no person sentenced by the common pleas court of any county to a prison term 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.

### **Exceptions**

The provisions do not apply to any person to whom any of the following apply: (1) the fifth degree felony was an offense of violence, sex offense, drug trafficking offense, 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, or (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.

### **Mandatory memorandum of understanding**

(R.C. 5149.38)

Current law requires that a memorandum of understanding must be submitted to DRC for its approval.

Under current law, the requirement only applies to “voluntary counties.” Not later than October 29, 2017, each voluntary county was required to submit a memorandum of understanding to DRC for its approval. Also, two or more affiliating voluntary counties may jointly establish a memorandum of understanding to be submitted to DRC for its approval.

Under the bill, the requirement applies to all counties. Not later than September 1, 2022, each county is required to submit a memorandum of understanding to DRC for its approval. Also, two or more affiliating counties may jointly establish a memorandum of understanding to be submitted to DRC for its approval.

The bill provides that if a county submitted a memorandum of understanding prior to September 1, 2022, or if affiliating counties submitted a joint memorandum of understanding prior to September 1, 2022, and the memorandum of understanding remains in effect, the county or affiliating counties are not required to submit a new memorandum of understanding. The persons signing the memorandum of understanding prior to September 1, 2022, or their successors in office, may revise the memorandum of understanding as they determine necessary.

The memorandum of understanding must be agreed to and signed by the following: (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.

The memorandum of understanding must both: (1) set forth the plans by which the county will use grant money provided to it in FY 2023 and succeeding fiscal years under the targeting community alternatives to prison program (T-CAP), and (2) 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 bill's provisions described above.

## **Post-release control sanctions**

(R.C. 2967.28)

### **Background**

The bill modifies some of the provisions regarding post-release control (PRC). PRC is a period of supervision by the Adult Parole Authority (APA) after a prisoner's release from imprisonment, other than under a term of life imprisonment, that includes one or more post-release control sanctions. "Post-release control sanction" means a residential sanction, nonresidential sanction, or financial sanction authorized for a felony under R.C. 2929.16 to 2929.18 and that is imposed on a prisoner upon the prisoner's release from a prison term other than a term of life imprisonment.<sup>91</sup>

Under current law, when an offender convicted of a felony is released from prison, in some circumstances the offender must be placed under a period of PRC, and in other circumstances, the PRC is discretionary. When an offender is placed under a PRC period, specified procedures apply regarding the offender, the PRC period, and supervision of the offender. The Parole Board (or court in certain circumstances) imposes PRC sanctions and conditions on the offender that apply during the PRC period.

### **Mandatory PRC**

If an offender is sentenced to prison for a first or second degree felony, for a felony sex offense, or for a third degree felony that is an offense of violence and is not a felony sex offense, the Parole Board is required to impose a period of PRC of a specified duration on the offender after the offender's release from imprisonment. The bill changes the duration of mandatory PRC:

1. From five years to "up to five years, but not less than two years" for a first degree felony that is not a felony sex offense;
2. From three years to "up to three years, but not less than 18 months" for a second degree felony that is not a felony sex offense; and
3. From three years to "up to three years, but not less than one year" for a third degree felony that is an offense of violence and is not a felony sex offense.

The period for a felony sex offense remains five years.

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<sup>91</sup> R.C. 2967.01, not in the bill.

## **Discretionary PRC**

If an offender is sentenced to a prison term for a third, fourth, or fifth degree felony that is not subject to the mandatory PRC provisions described above, the Parole Board, in accordance with specified procedures, is authorized to impose a PRC period on the offender if it determines that PRC is necessary for the offender. The bill changes the duration of discretionary PRC from up to three years to “up to two years” for a third, fourth, or fifth degree felony that is not subject to mandatory PRC.

## **Consideration of delinquent child adjudications**

Prior to the release of an offender for whom it will impose PRC sanctions, the Parole Board (or court) must review certain information in determining which PRC sanctions are reasonable under the circumstances. The bill removes juvenile court delinquent child adjudications as items that the Board (or court) must consider in determining PRC sanctions. The bill does not change the other information that must be considered, including the offender’s criminal history, results from the single validated risk assessment tool, and the record of the offender’s conduct while imprisoned.

## **Use of active GPS monitoring**

Currently, if an offender who is placed on PRC is released from prison before the expiration of the offender’s prison term and the offender earned 60 or more days of credit, the APA must supervise the offender with an active GPS device for the first 14 days after the offender’s release from imprisonment. The bill changes from mandatory to discretionary the use of active GPS monitoring for supervising the offender in the specified circumstances.

## **Shortening or terminating PRC**

At any time after a prisoner is released from imprisonment and during the PRC period, the APA (or court) may review the releasee’s behavior under the PRC sanctions. The APA (or court) may take specified actions after its review. The bill modifies the actions that the APA (or court) may take. Under the bill, if the APA (or court), based on the review and in accordance with specified standards, determines that the releasee has satisfactorily complied with the sanctions imposed, it may recommend a less restrictive sanction, reduce the PRC period, or, no sooner than a minimum period of time, recommend that the Parole Board (or court) terminate the PRC period. In no case may the Board (or court) reduce the PRC duration imposed for a felony sex offense, described above with regard to mandatory PRC.

Related to the bill’s changes, the bill expands a provision that currently requires the DRC to adopt rules that establish standards for certain PRC-related purposes to also require that the rules establish standards to be used by the Parole Board in terminating (or reducing, as currently authorized) the PRC duration when authorized as described in the preceding paragraph or in imposing a less restrictive sanction on a releasee based on results from the single validated risk assessment tool (and, as currently specified, on the releasee’s activities, including remaining free from criminal activity and from the abuse of alcohol or other drugs, successfully participating in approved rehabilitation programs, maintaining employment, and paying restitution or meeting the terms of other financial sanctions).

The current provisions regarding the actions the APA (or court) currently may take, repealed by the bill, specify that: (1) if it determines that a more restrictive or a less restrictive sanction is appropriate it may impose a different sanction, (2) the APA may recommend that the Parole Board (or court) increase or reduce the PRC duration, (3) if the APA recommends that the PRC duration be increased, the Board (or court) must review the releasee's behavior and may increase the PRC duration up to eight years, (4) if the APA recommends that the PRC duration be reduced, the Board (or court) must review the releasee's behavior and generally may reduce the PRC duration or, in certain cases, reduce the PRC duration or terminate the PRC, and (5) in no case may the Board (or court) reduce the PRC duration for a felony sex offense to a period less than the length of the prison term included in the prison term originally imposed on the offender, consider any reduction or termination of the PRC duration imposed on a releasee prior to the expiration of one year after the commencement of the PRC period for certain types of indefinite sentences, or permit the releasee to leave Ohio without permission of the court or the releasee's supervising officer.

### **Termination of PRC, if maximum prison time available expires**

If the Parole Board (or court) at a hearing finds that a releasee under a PRC sanction violated the sanction or condition, it may increase the PRC duration up to the maximum authorized duration or impose a more restrictive PRC sanction. When appropriate, the Board (or court) may impose as a PRC sanction a residential sanction that includes a prison term. Subject to one limited exception, a prison term imposed as a PRC sanction under this provision may not exceed nine months, and the maximum cumulative prison term for all violations under this provision may not exceed one-half of the prison term that was originally imposed on the offender. The period of a prison term imposed as a PRC sanction under this provision does not count as, or may not be credited toward, the remaining PRC period. The bill adds a provision specifying that if, during the releasee's PRC period, the releasee serves as a PRC sanction the maximum prison time available as a sanction, the PRC terminates.

### **Simultaneous parole and PRC; ban on consecutive PRC periods**

The bill replaces several provisions that pertain to calculating service of a PRC period. Under the bill:

1. If an offender is simultaneously subject to a period of parole and a PRC period, or is simultaneously subject to two PRC periods, the period of supervision that expires last determines the length and form of supervision for all the periods and related sentences.
2. An offender is to receive credit for PRC supervision during the period of parole, and is not eligible for final release under a separate provision of law<sup>92</sup> until the PRC period otherwise would have ended.
3. If the period of parole ends prior to the end of the PRC period, the requirements of parole supervision are to be satisfied during the PRC period.

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<sup>92</sup> R.C. 2967.16, not in the bill.

The bill retains a provision specifying that a PRC period may not be imposed consecutively to any other PRC period (although the bill does not include the express statement under existing law that PRC periods are to be served concurrently).

The replaced provisions specify that: (1) a PRC period commences upon an offender's actual release from prison, (2) if a PRC period is imposed and the offender also is subject to a period of parole, and if the PRC period ends prior to the period of parole, the offender is to be supervised on parole and receives credit for PRC supervision during the period of parole and is not eligible for final release until the PRC period otherwise would have ended, (3) if an offender is under a PRC period and also is subject to a period of parole, and if the period of parole ends prior to the PRC period, the offender is to be supervised on PRC and the requirements of parole supervision are to be satisfied during the PRC period, and (4) if an offender is subject to more than one PRC period, the PRC period for all of the sentences is the PRC period that expires last, as determined by the Parole Board (or court).

### **Sacramental wine in specified governmental facility**

(R.C. 2921.36)

The bill exempts from the offense of "illegal conveyance of intoxicating liquor onto the grounds of a specified governmental facility" small amounts of wine conveyed or attempted to be conveyed into the facility, or delivered or attempted to be delivered to a person in the facility, when the person engaging in the conduct with the sacramental wine is a "cleric." As used in the exemption, a "cleric" is a member of the clergy, rabbi, priest, Christian Science practitioner, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect.

The prohibitions under the offense prohibit a person from knowingly: (1) conveying, or attempting to convey, onto the grounds of a detention facility or of an institution, office building, or other place under the control of the Department of Mental Health and Addiction Services (OhioMHAS), the Department of Developmental Disabilities (DODD), the Department of Youth Services, or the Department of Rehabilitation and Correction, any intoxicating liquor, as defined in R.C. 4301.01, or (2) delivering, or attempting to deliver, to any person confined in a detention facility, to a child confined in a youth services facility, to a prisoner temporarily released from confinement for a work assignment, or to a patient in an institution under the control of OhioMHAS or DODD, any such intoxicating liquor. The prohibition currently does not apply to a person who conveys or attempts to convey an item onto the grounds of a detention facility or of an institution, office building, or other place under the control of one of the specified Departments with the written authorization of the person in charge of, and in accordance with the written rules of, the detention facility, institution, office building, or other place. A violation of the prohibition is a second degree misdemeanor.

## **Notification of possible prison term for community control violation**

(R.C. 2929.19 and 2929.15)

Currently, a court that sentences an offender to a community control sanction for a felony must notify the offender that, if the offender violates the sanction conditions, commits a violation of any law, or leaves Ohio without permission of the court or the offender's probation officer, the court may impose any of several types of sanctions. The notice must identify the specified types of sanctions.

The bill changes the reference to one of the types of sanctions, which is a possible prison term. Under the bill, instead of indicating "the specific prison term" that may be imposed for the violation out of the range of terms available for the offense under the Felony Sentencing Law, as required under current law, the notice must indicate the "range from which" the prison term may be imposed for the violation, which must be the range of terms available for the offense under that Law. The bill does not change the references that must be included in the notice to the other types of sanctions that may be imposed, which are a longer time under the same community control sanction or a more restrictive community control sanction. The bill also conforms a cross-reference to that notification in the existing provision governing the imposition of a prison term for such a violation or leaving of the state.

## **Community-based substance use disorder treatment**

(R.C. 5120.035)

The bill extends eligibility for the community-based substance use disorder treatment program to nonviolent third degree felony offenders, and removes a restriction that prevents those with any prior conviction of a felony offense of violence or a prior conviction of a misdemeanor offense of violence within the preceding five years from participating in the program.

Continuing law requires DRC to operate a program for community-based substance use disorder treatment of qualified nonviolent fourth and fifth degree felony offenders who are in their final year of imprisonment.

## **Subsidies for community-based corrections programs**

(R.C. 5149.31)

The bill modifies the requirements for the program of subsidies for community-based corrections programs by also making the subsidies contingent upon the outcomes of any performance-based standards established by DRC. It requires DRC's standards for community-based corrections programs to be designed to support evidence-based policies and practices, as defined by DRC.

## Administrative releases

(R.C. 2967.17)

The bill expands an existing provision that allows the Adult Parole Authority (APA) to grant an administrative release to certain categories of convicted offenders under specified conditions to also allow the APA, in its discretion, to grant an administrative release to a “releasee” who is: (1) serving another felony sentence in a prison within or outside Ohio for the purpose of consolidation of the records or if justice would best be served, or (2) taken into custody by the U.S. Immigration and Naturalization Service and deported from the U.S. An “administrative release” is a termination of jurisdiction over a particular sentence or prison term by the APA for administrative convenience. A “releasee” is an inmate who has been released from confinement at the expiration of a prison term under a period of post-release control that includes one or more post-release control sanctions.<sup>93</sup>

The existing conditions regarding an administrative release, unchanged by the bill, specify that: (1) the APA may not grant an administrative release except upon concurrence of a majority of the Parole Board and approval of the APA’s Chief, (2) an administrative release does not restore for the recipient rights and privileges forfeited by conviction, and (3) a recipient may subsequently apply for a commutation of sentence to regain the rights and privileges forfeited by conviction, except that specified election-related privileges may not be restored and the privilege of holding a position of honor, trust, or profit may not be restored under this provision to a recipient convicted of specified offenses in certain circumstances.

The categories of offenders for whom the APA currently may grant an administrative release are: (1) parole violators or release violators serving another felony sentence in a prison within or outside Ohio for the purpose of consolidation of the records or if justice would best be served, (2) parole violators at large or release violators at large whose case has been inactive for at least ten years following the declaration of the violation, and (3) parolees taken into custody by the U.S. Immigration and Naturalization Service and deported from the U.S.

## Sealing of records related to unconditional pardon

(R.C. 2967.04)

The bill allows the Governor to include as a condition of an unconditional pardon that the records related to conviction be sealed, and generally provides that the records are not subject to public inspection unless directed by the Governor. Inspection of the records or disclosure of information contained in them may be made pursuant to the Sealing Law regarding the inspection of sealed records or as the Governor may direct. A disclosure of records sealed under a writ issued by the Governor is not a criminal offense.

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<sup>93</sup> R.C. 2967.01, not in the bill.

## **Internet access for prisoners**

(R.C. 5120.62 and 5145.31)

The bill provides greater flexibility for prisons to provide internet access to prisoners by replacing existing law that allows prisoner internet access while “participating in an approved educational program with direct supervision that requires the use of the internet for training or research purposes,” with a provision that allows prisoner access to the internet for uses or purposes approved by the prison’s managing officer or the managing officer’s designee.

## **Removing outdated law about the Ohio River Valley Facility**

(R.C. 307.93 and 341.12; repealed R.C. 341.121)

The bill removes outdated portions of the Revised Code that allowed Lawrence County to use the Ohio River Valley Facility, located in Franklin Furnace, to house inmates pursuant to an agreement. These sections are no longer necessary.

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## SECRETARY OF STATE

- Removes from the statement that a foreign nonprofit corporation must submit to the Secretary of State in order to obtain a certificate of authority the statutory requirement that the statement set forth the location of the corporation's principal office in Ohio.
- Specifies that the \$5 fee the Secretary of State may charge for service of process is per address served.
- Requires grants the Secretary of State receives from the U.S. Election Assistance Commission, other than through the Help America Vote Act, to be deposited in the Miscellaneous Federal Grants Fund and spent in accordance with the grant agreement.

### Foreign nonprofit corporation certificate of authority

(R.C. 1703.27)

Under current law, a foreign nonprofit corporation is prohibited from exercising its corporate privileges in Ohio until it receives a certificate authorizing it to do so from the Secretary of State. In applying for the certificate, the foreign nonprofit corporation must provide a statement setting forth specified information, including the location of its principal office in Ohio and the appointment of a designated agent. The bill removes the requirement to list an Ohio office and clarifies that the appointment of the agent must comply with the designated agent provisions that apply to foreign nonprofit corporations.

### Service of process fees

(R.C. 111.16)

The bill specifies that the \$5 fee the Secretary of State may charge for service of process is charged per address served. All Ohio businesses are required to have an agent for receiving official and legal documents, and that agent's contact information is required to be registered with the Secretary of State. If a person sues a business, notice of that fact is served to the agent at the registered address. If the agent cannot be reached, the person seeking to sue can deliver the notice to the Secretary of State, who will serve the notice to various last-known addresses of the business (such as the address in the business's most recent tax filings). The bill clarifies that the charge for this service is \$5 for each of these addresses.

### Federal grants

(R.C. 111.28)

The bill requires any federal grants the Secretary of State receives from the U.S. Election Assistance Commission (EAC), other than for purposes established under the federal Help America Vote Act (HAVA), to be deposited in the Miscellaneous Federal Grants Fund instead of the HAVA Fund.

Currently, any federal grants from the EAC are placed in the HAVA Fund, even if they are not related to HAVA. The HAVA Fund is used for activities conducted pursuant to HAVA, while the Miscellaneous Federal Grants Fund is used according to the applicable federal grant agreements under other federal programs.

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## DEPARTMENT OF TAXATION

### Income tax

- Reduces nonbusiness income tax rates by 2%.
- Authorizes a full or partial income tax deduction for capital gains received by investors in certain Ohio-based venture capital operating companies (VCOCs) for taxable years beginning in and after 2026, provided the VCOC is certified by the Director of Development.
- Beginning with the 2026 taxable year, allows an income tax deduction for taxpayers with capital gains from the sale of an ownership interest in a business equal to the lesser of the capital gain or a percentage of the business's payroll over a specified period based on the taxpayer's proportionate interest in the business.
- Explicitly authorizes an income tax deduction for all railroad retirement benefits that are exempt from state taxation under federal law.
- Clarifies that nonresident income not subject to personal income tax based on a reciprocity agreement between Ohio and another state may be deducted on a taxpayer's Ohio return.
- Clarifies that a taxpayer may claim a credit for any income tax withheld on behalf of the taxpayer, including from a taxpayer's wages, retirement income, or lottery and casino winnings.
- Extends the amount of time within which a taxpayer must report to the Tax Commissioner a change in the amount of the taxpayer's resident credit for income that is taxed in another state or the District of Columbia.
- Declares that the state does not intend to impose income tax on unemployment compensation reported to a person whose identity was fraudulently used by a third party to collect unemployment compensation.

### Sales and use taxes

- Exempts the sale or use of investment bullion and coins from state and local sales and use taxes.
- Allows certain county sales and use taxes to be levied for the operation of jail facilities, in addition to the construction, acquisition, equipping, or repair of the facilities.
- Repeals several inoperable provisions of use tax law that would have applied only in the event that an act of Congress authorized states to compel sellers that do not have a physical presence in the state ("remote sellers") to collect and remit use tax.

## Lodging taxes

- Authorizes the convention facilities authority (CFA) of a county with a 2000 population between 130,000 and 150,000, and that includes a city with a 2000 population of more than 50,000 (Clark County) to increase the rate of an existing lodging tax from 3% to 4%.

## Commercial activity tax

- Requires that a taxpayer's preceding year's taxable gross receipts be used to calculate the commercial activity tax owed on its first \$1 million in gross receipts, instead of its current year's receipts.
- Reduces the percentage of commercial activity tax (CAT) revenue devoted to offset the Department of Taxation's administrative expenses from 0.65% to 0.5% beginning July 1, 2021.

## Kilowatt-hour tax

- Clarifies eligibility criteria for a kilowatt-hour tax exemption available under continuing law to certain end users that generate their own electricity.

## Estate tax

- Makes several administrative changes to the state's repealed estate tax.

## Property tax

- Authorizes a municipal corporation or township to permanently impose, with voter approval, a combined levy for fire, emergency medical, and police services.
- Modifies an existing property tax exemption for property used as housing for individuals with developmental disabilities.
- Authorizes a property tax exemption for certain housing used by individuals diagnosed with mental illness or substance use disorder.
- Extends, by two years, the deadline by which an owner or lessee of a renewable energy facility may apply for existing law's property tax exemption for such facilities.
- Authorizes a county with a population of between 400,000 and 450,000 (Lucas County) to designate "urban agricultural areas" and allow qualifying urban farmers to apply for a full or partial exemption from county property taxes.
- Imposes a charge against any property that improperly received the homestead exemption if the property owner or occupant fails to notify the county auditor that the owner or occupant no longer qualifies for the exemption.

## Tangible personal property tax reimbursements

- Between FY 2022 and 2026, requires that the tangible personal property (TPP) supplement payment to be paid to joint fire districts and school districts that have a

nuclear power plant in their territory be no less than the amount that was paid to them in FY 2017.

## **Tax cross-references**

- Updates and corrects several cross-references in state tax law.

## **Tax administration**

- Extends the time allowed for the Tax Commissioner to approve or deny a political subdivision's request to transfer money between certain funds of the subdivision.
- Allows the Department of Taxation to disclose to the State Racing Commission confidential taxpayer information to assist the Commission with administering horse racing permits and taxes on horse racing.
- Explicitly authorizes the Tax Commissioner to review additional information provided by an applicant for a state tax refund and to adjust the amount of the refund multiple times before issuing a final refund determination.
- Adds resort area and tourism development gross receipts taxes to the list of tax obligations respecting which the Tax Commissioner must periodically verify the compliance of liquor permit holders.
- Requires the monthly disbursements made by the Tax Commissioner from the Wireless 9-1-1 Government Assistance Fund to county treasurers to be made in the same proportion distributed to that county in the corresponding calendar month of the previous year, instead of basing them on 2013 distributions made by the Public Utilities Commission (PUCO).
- Requires any shortfall in distributions resulting from the timing of funds received in a previous month to be distributed in the following month, instead of calculating the county's share of the fund by proportionally reducing the distributions to be equivalent to the amount available in the fund.

## **Income tax**

### **Rate reduction**

(R.C. 5747.02; Section 803.97)

The bill reduces the tax rates for all nonbusiness income brackets by 2% for taxable years beginning in or after 2021. (Business income remains subject to a 3% flat tax.) Previously, the rates in those brackets ranged from 2.850% to 4.797%. Under the bill, those rates will range from 2.793% to 4.701%. The bill also adjusts the income amounts of each bracket to reflect inflation-indexing adjustments for the 2021 taxable year, as required under continuing law.

## **Deduction for venture capital gains**

(R.C. 122.851, 5703.21(C)(16), and 5747.01(A)(35))

The bill allows an income tax deduction for all or a portion of capital gains received by investors in certain Ohio-based “venture capital operating companies,” or VCOCs. The deduction is available only for taxable years beginning in or after 2026 for an investor’s capital gains attributable to investments by a VCOC certified by the Director of Development. The amount of gains that may be deducted depends upon whether or not they are attributable to the VCOC’s investments in certain Ohio businesses.

### **Eligible VCOC certification**

Under the bill, the deduction is only available for the gains from investments by an eligible Ohio-based VCOC (referred to in the bill as an “Ohio VCOC”), which must be certified as such by the Director of Development. The bill employs the definition of a VCOC used in federal pension rules, pursuant to which a VCOC is an investment fund that invests at least 50% of its assets in operating companies or derivative investments in which the fund has direct contractual management rights. Additionally, the fund must actually exercise “management rights” with respect to at least one operating company, i.e., substantially participate in, or substantially influence the conduct of, its management.<sup>94</sup>

To qualify its investors for the capital gains deduction, a VCOC must apply to the Director of Development to be certified as meeting both of the following requirements: (1) the VCOC must manage, or maintain capital commitments of, at least \$50 million in active assets and (2) at least two-thirds of its managing and general partners must be Ohio residents.

After receiving an application, the Director has 60 days to review it and notify the applicant VCOC of the Director’s determination. Certification as an Ohio VCOC is valid for as long as the company continues to meet all necessary qualifications. A company that no longer qualifies as an Ohio VCOC must notify the Director of its ineligibility, and the Director is required to revoke the VCOC’s certification, subject to contest and appeal by the VCOC.

### **Reporting and administrative requirements**

A certified Ohio VCOC must annually provide information identifying and describing its investors and investments to both the Director and Tax Commissioner, as well as any other information that the Director requires to administer the deduction. This information must include all of the following:

- The name, Social Security or federal employer identification number, and ownership percentage of each investor with a qualifying interest in the VCOC, i.e., a direct or indirect ownership interest in the VCOC acquired through an investment of cash in, or provision of services to the VCOC while it was certified as an Ohio VCOC.

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<sup>94</sup> 28 C.F.R. 2510.3-101.

- The amount of capital gains generated during the portion of the previous calendar year during which the VCOC was certified.
- A description of the VCOC's investments that generated the capital gains, including the date of sale and whether the investment was in an Ohio business. An Ohio business is a business with its headquarters in Ohio that employs over 50% of its full-time equivalent employees in this state, based on more than 50% of an employee's compensation being subject to Ohio income tax withholding.
- The amount of, and basis in, any business's equity interests or securities distributed to an investor while the VCOC was certified, including reporting whether the business is an Ohio business.

The Director must review the information submitted by the Ohio VCOC, and, if the VCOC either generates capital gains that qualify for the deduction or distributes equity interests or securities that, when sold, would qualify for the deduction once the income is recognized from their disposition, the Director must issue a certificate to the VCOC that includes all of the following information:

- The total amount of capital gains generated during the portion of the year that the VCOC was certified and the portion attributable to investments in Ohio businesses.
- The total amount of, and basis in, any equity interests or securities distributed during the time that the VCOC was certified and the portion of those interests and securities attributable to the VCOC's investments in Ohio businesses.
- The portion of the reported capital gains attributable to each individual with a qualifying interest in the VCOC.

The Ohio VCOC must provide each person with a qualifying interest in the company a copy of this certificate as well as any other documents necessary for computing the income tax deduction.

### **Deduction amounts; business income deduction**

The amount of the deduction is based on the capital gains earned by a taxpayer from the sale of an investment in a certified Ohio VCOC. The deduction equals 100% of the capital gains attributable to the certified Ohio VCOC's investments in Ohio businesses and 50% of the gains attributable to its investments in other businesses.

The taxpayer must deduct any such capital gains that qualify as business income under the bill's deduction before applying any excess towards continuing law's business income deduction.

A taxpayer must add back any gains that were previously deducted but actually realized after the Ohio VCOC failed to qualify for the Director's certification described above or any gains that did not otherwise qualify for the deduction.

## **Deduction for capital gains from sale of business**

(R.C. 5747.01(A)(34) and 5747.79)

The bill authorizes an income tax deduction for taxpayers with capital gains from the sale of an ownership interest in a business. Such capital gains could include, for example, a partner's income from the sale of a stake in a partnership or an owner's income from the sale of an interest in a limited liability company (LLC).

The deduction is allowed for taxable years beginning in and after 2026. To qualify, the business must, for at least five years before the sale, be both headquartered in Ohio and incorporated, registered, or organized in Ohio. In addition, the taxpayer must either:

1. Have "materially participated" in the business for the five years preceding the sale under IRS rules, which generally consider the number of hours the taxpayer spent participating in the business, either on their own or in relation to other business participants.

2. Have directly or indirectly made a venture capital investment of at least \$1 million in the business.

### **Deduction amount**

The amount of the deduction equals the lesser of the taxpayer's capital gain or a percentage of the business' Ohio payroll over a specified period equal to the percentage of the entity's interest that the taxpayer sold. If the taxpayer qualifies under the "material participation" requirement, that period is the five years preceding the sale. If the taxpayer qualifies under the venture capital investment requirement, it is the period of up to five years preceding the sale during which the investment was made. Amounts paid to the taxpayer or the taxpayer's close relatives are not included in the payroll calculation.

As an example: A taxpayer that materially participated in an LLC sells their ownership interest, which equals 10% of the total interests in the LLC, and realizes a capital gain of \$10 million. During the five years preceding the sale, the Ohio payroll of the business' employees and owners (other than the taxpayer) was \$1 million per year, for a total of \$5 million. Consequently, the taxpayer may claim a \$500,000 deduction (10% of \$5 million).

If a taxpayer has capital gains from the sale of interests in multiple businesses during a taxable year, the capital gains and payroll from each business will be considered separately, then the deductible amounts attributable to each business will be aggregated to determine the total deduction.

### **Relationship to business income deduction**

If a capital gain is also eligible to be deducted under continuing law's business income deduction, the taxpayer must claim the bill's deduction first, before deducting any remaining amount under the business income deduction. (Generally, capital gains from the sale of an ownership interest in a business are not considered "business income," so are not eligible for the business income deduction.)

## **Taxation of railroad retirement benefits**

(R.C. 5747.01(A)(5))

The bill explicitly authorizes an income tax deduction for all railroad retirement benefits that are exempt from state taxation under federal law. Current Ohio law allows a deduction for Tier I railroad retirement benefits, but does not specifically allow a deduction for other types of railroad retirement benefits that are exempted from state taxation under federal law, i.e., any railroad retirement annuities and supplemental annuities.<sup>95</sup>

## **Deduction for certain nonresident income**

(R.C. 5747.01(A)(33) and 5747.10; Section 803.60)

Continuing law authorizes the Tax Commissioner to enter into an agreement with the Commissioner's counterparts in another state or the District of Columbia pursuant to which residents of that state are exempted from Ohio's income tax on income earned or received in Ohio, as long as the other state provides the same tax treatment for Ohio residents. In the absence of such a reciprocity agreement, Ohio's income tax generally applies to the income of nonresidents earned in Ohio. Currently, Ohio has entered into such agreements with its bordering states – Indiana, Kentucky, West Virginia, Michigan, and Pennsylvania.<sup>96</sup>

The bill clarifies that income not subject to state income tax because of one of these reciprocity agreements may be deducted on the nonresident taxpayer's annual Ohio income tax return.

## **Income tax credit for tax withholdings**

(R.C. 5747.08(H); Section 803.70)

The bill clarifies that any income tax withheld, including from a taxpayer's wages, retirement income, or lottery and casino winnings, entitles the taxpayer who is required to report the income on the taxpayer's annual return to claim a credit for those withheld amounts. Under continuing law, employers, public retirement systems, the state lottery commission, casino operators, and video lottery sales agents are required to withhold state income tax and school district income tax on a taxpayer's wages, retirement income, or lottery and casino winnings, as applicable.

The bill states that the provision is intended to clarify existing law and applies to taxable years beginning on and after January 1, 2016.

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<sup>95</sup> 45 U.S.C. 231m.

<sup>96</sup> See Ohio Department of Taxation, Employer Withholding – Reciprocity FAQs, <https://tax.ohio.gov/wps/portal/gov/tax/help-center/faqs/employer-withholding-reciprocity/employer-withholding-reciprocity>.

## **Resident credit amended return period**

(R.C. 5747.05(B))

The bill extends, from 60 days to 90 days, the time within which a resident taxpayer must report to the Tax Commissioner a change in the amount of the taxpayer's credit for income that is taxed in another state or the District of Columbia. Likewise, the bill extends, from 60 days to 90 days, the time for a resident taxpayer to request a refund due to a change in that credit.

Continuing law allows an income tax credit for a resident Ohio taxpayer for any income that is subject to both Ohio income tax and income tax in another state or the District of Columbia. The credit equals the lesser of the income tax liability owed on that income in the other jurisdiction or the Ohio income tax liability that would otherwise be owed on that income if not for the credit. In essence, the resident credit prevents the double taxation of the same income by Ohio and another jurisdiction. If there is a change in the taxpayer's taxable income or tax liability that impacts the amount of the taxpayer's resident credit, then the taxpayer is required to report the change by filing an amended return.

## **Tax on fraudulent unemployment compensation**

(Sections 757.10 and 812.23)

The bill declares that the state does not intend to collect tax on unemployment compensation benefits reported to a person whose identity was fraudulently used by a third party to collect those benefits. Under continuing law, unemployment benefits are subject to federal, state, and school district income tax.

The Internal Revenue Service (IRS) requires the Department of Job and Family Services (JFS) to issue IRS Form 1099-G to every person who was issued unemployment benefits. The bill strongly encourages any taxpayer who receives a Form 1099-G that includes fraudulent unemployment benefits to report the fraud to JFS for the purpose of receiving a corrected Form 1099-G. Although the IRS, in Information Release 2021-24, instructs taxpayers who are victims of identity theft to only report actual unemployment benefits received, the IRS warns that a corrected Form 1099-G is required to avoid receiving an unexpected federal tax bill for unreported income.<sup>97</sup>

The bill also requires the Director of JFS and the Tax Commissioner to publish information on the websites of their respective agencies to educate residents about unemployment compensation fraud, including information on measures to help prevent such fraud, recommended actions when a resident suspects or detects such fraud, and the penalties under continuing law for engaging in such fraud. This information must remain on the websites of both agencies until June 30, 2023.

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<sup>97</sup> See Internal Revenue Service, "IRS Offers Guidance to Taxpayers on Identity Theft Involving Unemployment Benefits," January 28, 2021, available at <https://www.irs.gov/newsroom/irs-offers-guidance-to-taxpayers-on-identity-theft-involving-unemployment-benefits>.

## Sales and use taxes

### Investment bullion and coin exemption

(R.C. 5739.02)

The bill reinstates the sales and use tax exemption for the sale of investment metal bullion and coins. The exemption was repealed the preceding biennial budget act (H.B. 166 of the 133<sup>rd</sup> General Assembly). Investment metal bullion is gold, silver, platinum, or palladium bullion in excess of the minimum fineness required by a contract market for delivery in satisfaction of a commodity futures contract. (The definition is derived from federal law governing whether the purchase of something by an individual retirement account is a “collectible,” and therefore considered a distribution from the IRA; bullion satisfying the federal law definition is not considered a collectible.) An investment coin is any coin composed primarily of gold, silver, platinum, or palladium.<sup>98</sup>

The reinstated exemption applies to the sale or use of investment bullion and coins beginning on or after the first day of the first month that begins after the provision’s effective date.<sup>99</sup>

### County sales and use taxes for jail operations

(R.C. 5739.021)

The bill allows for certain county sales and use taxes to be levied for the operation of jail facilities, in addition to the construction, acquisition, equipping, or repair of such facilities. Under continuing law, any county, except for one that has adopted a charter (currently only Cuyahoga and Summit counties) may levy up to a 0.5% sales and use tax to be used exclusively for detention purposes, i.e., the construction, acquisition, equipping, or repairing of detention facilities. The bill expands this list of purposes to which proceeds from the 0.5% sales and use tax can be applied to include the operation of jail facilities.<sup>100</sup>

Under continuing law, a county is only able to levy this detention services tax to the extent the rate of the tax, when added to the rate of a transit authority sales and use tax levied in the county, does not exceed 1.5%. Thus, for example, if the county’s transit authority levies a 1.25% sales and use tax, then the county could only levy a 0.25% jail facility sales and use tax.

### Remote sellers

(R.C. 5741.01 and 5741.03; R.C. 5741.032, repealed; Section 757.50 of H.B. 59 of the 130<sup>th</sup> General Assembly, repealed)

The bill repeals several inoperable provisions of use tax law that would have applied only in the event that an act of Congress authorized states to compel sellers that do not have a physical presence in the state (“remote sellers”) to collect and remit use tax on internet and catalog

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<sup>98</sup> R.C. 5739.02(B)(57) and 26 U.S.C. 408(m)(3).

<sup>99</sup> Section 803.93.

<sup>100</sup> R.C. 5739.021.

transactions. The repealed provisions expressed the General Assembly's intent, upon the enactment of such a federal act, to enact conforming legislation, earmarked a small portion of new collections for administrative costs and the remainder for the Income Tax Reduction Fund, and exempted remote sellers with annual sales of \$1 million or less.

In 2018, the U.S. Supreme Court struck down a long-standing interpretation of the Commerce Clause (Article 1, Section 8 of the U.S. Constitution) that prevented states from compelling remote sellers to collect and remit state sales or use taxes.<sup>101</sup> Following that decision, many states (including Ohio) began requiring remote sellers with sufficient local "contacts" to collect and remit the taxes. (Continuing Ohio law requires the consumer to pay use tax directly to the state in instances where it is not remitted by the seller.) Since this extension of state tax collection authority was sanctioned by a holding of the U.S. Supreme Court rather than an act of Congress, the provisions repealed by the bill remain inoperable.

## **Lodging taxes**

### **For convention facilities**

(R.C. 351.021)

Current law authorizes a lodging tax of up to 3% for the convention facilities authority (CFA) of a county that had a 2000 population between 130,000 and 150,000, and that includes a city with a 2000 population of more than 50,000 (Clark County). This tax is in addition to the 3% lodging tax authority granted to all counties. To levy the tax, the board of directors of the CFA must have adopted a resolution imposing the tax on or before November 1, 2009. The Clark County CFA adopted the full 3% lodging tax within that period.

The bill authorizes the board of directors of the CFA to increase the rate of its lodging tax by up to an additional 1%, provided it does so before November 1, 2021, and the increase is approved by the board of county commissioners. As with the original tax, revenue derived from the rate increase must be used by the CFA to pay the costs of one or more convention facilities (including maintenance costs), the operating costs of the CFA, and the costs of administering the tax.

## **Commercial activity tax**

### **Minimum commercial activity tax computation**

(R.C. 5751.03; Section 812.20)

The bill requires the minimum commercial activity tax (CAT) to be computed based on the taxpayer's taxable gross receipts reported in the preceding year, rather than the current year. Otherwise, the minimum tax tiers remain the same.

The CAT is levied on the basis of a business's gross receipts from Ohio sales. A business with \$150,000 or less in annual taxable gross receipts pays no CAT. Otherwise, the CAT rate equals 0.26% of a business's taxable gross receipts in excess of \$1 million annually. A differently

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<sup>101</sup> See, *South Dakota v. Wayfair, Inc.*, 585 U.S. \_\_\_, 138 S. Ct. 2080 (2018).

calculated “minimum tax” applies to the taxpayer’s first \$1 million of taxable gross receipts. The amount of minimum tax owed varies according to the business’s total taxable gross receipts received, under current law, in the year for which the tax is being calculated, as follows:

CAT minimum tax	
If taxpayer’s total taxable gross receipts are . . .	The CAT minimum tax is . . .
Greater than \$150,000, but not over \$1 million	\$150
Greater than \$1 million, but not over \$2 million	\$800
Greater than \$2 million, but not over \$4 million	\$2,100
Greater than \$4 million	\$2,600

### **Administrative expense earmark**

(R.C. 5751.02)

The bill reduces the percentage of commercial activity tax (CAT) revenue to be credited to the Revenue Enhancement Fund from current law’s 0.65% to 0.5%, beginning July 1, 2021. The fund is used to defray the Department of Taxation’s expenses in administering the CAT and “implementing tax reform measures.” The percentage credited to the fund was previously reduced in July of 2019, from 0.75% to the current 0.65%.

### **Kilowatt-hour tax**

#### **Exemptions**

(R.C. 5727.80 and 5727.81; Section 803.100)

The bill clarifies eligibility criteria for a kilowatt-hour tax exemption available under continuing law to certain end users that generate their own electricity. The kilowatt-hour tax is imposed on the distribution of electricity to end users in Ohio, at varying rates depending on the kilowatt-hour consumption of the end user. Most revenue from the kilowatt-hour tax is credited to the GRF.

Current law exempts end users that generate their own electricity and use it on the same site where the electricity was generated. The bill instead specifies that the exemption applies to both of the following:

- Electricity distributed or obtained by an end user if the electricity is generated by a facility that is (1) primarily dedicated to providing electricity to the end user, (2) interconnected and integrated with the end user’s electric-consuming facilities, (3) located on the same property as the end user’s electric-consuming facilities or on property contiguous to those facilities, and (4) sized to produce an amount of electricity that did not, at the time of interconnection, exceed the end user’s electricity needs.

- Electricity generated by an end user primarily for its own consumption on the same premises, including electricity provided by the end user to other entities, so long as the electric generating facility is sized to produce an amount of electricity that did not, at the time of interconnection, exceed the end user's electricity needs.

The bill states that these changes to the exemption criteria are intended to clarify the meaning of existing law.

## **Estate tax**

(R.C. 319.54, 321.27, 5731.21, 5731.24, 5731.28, and 5731.41)

The bill makes several administrative changes to the state's repealed estate tax. The estate tax was repealed on January 1, 2013, but currently continues to apply to newly discovered property of individuals who died before that date.

### **Newly discovered property and refunds**

First, the bill provides that no estate tax will be due for property that is first discovered after December 31, 2021, or property discovered before that date, but not yet disclosed or reported by that date. Similarly, an executor or similar official may no longer file an application for an estate tax refund after that date.

### **Administrative fees**

The bill modifies fees paid to county auditors and treasurers for the administration of the estate tax. Under current law, such fees are tiered based on countywide collections. The bill instead provides for a flat fee equal to 2% of the net tax collected.

The bill also fixes additional compensation paid to county auditors to enforce real property, manufactured home, and estate tax law.<sup>102</sup> Under current law, auditors are compensated based on a sliding per capita scale that varies according to the county's population based on the most recent census, up to \$3,000 annually. The bill prohibits the fee from varying with future censuses by fixing the compensation according to the county's 2010 census population.

## **Property tax**

### **Emergency and police services combined levy**

(R.C. 5705.19; Section 803.90)

The bill authorizes a municipal corporation or a township to permanently impose, with voter approval, a combined levy for fire and emergency medical services (EMS) and police

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<sup>102</sup> This compensation appears to apply to any agent of the Tax Commissioner appointed in that enforcement capacity, but county auditors do fulfill that role and appear to be the actual recipients of the compensation. See, e.g., David Yost, "Compensation Increase Legislation pertaining to Nonjudicial County Elected Officials, Judges and Boards of Elections Members (House Bill Number 64)," Auditor of State Bulletin 2016-001 (April 20, 2016), available [here](#).

services. Under current law, such a combined levy is limited to a five-year term, but a levy for either fire and EMS or police services, but not both, may be permanent, i.e., levied for a “continuing period of time.”

Under continuing law, a municipal corporation or a township may also adopt a resolution to terminate or decrease a fire and EMS or a police services levy if the tax is no longer necessary or if the amount levied is more than needed. Such a levy imposed for a continuing period of time may also be reduced by voters, under certain circumstances, through ballot initiative. The bill extends this authority to terminate or decrease a levy to include an emergency and police services combined levy.

The bill’s modifications to combined emergency and police services levies apply to property tax questions considered at any election held on or after the 100<sup>th</sup> day after the provision’s effective date.

### **Developmental disability housing exemption**

(R.C. 5709.121(E); Section 803.30)

The bill modifies an existing property tax exemption for property used as housing for individuals with developmental disabilities. To qualify for exemption under continuing law, the property must be owned by a charitable organization whose primary purpose is to provide such housing. Under current law, the organization must also receive at least part of its funding from a county board of developmental disabilities (county BDD).

The amendment waives the county BDD funding requirement if at least 75% of the individuals who lease the property for housing are eligible for Medicaid-funded “home and community-based care” services administered by the Department of Developmental Disabilities. Such services are provided to encourage individuals to receive care at home and in their communities, rather than at care facilities, and include services like employment training, assistive technology, and transportation.<sup>103</sup>

These changes apply to tax year 2021 and thereafter.

### **Supportive housing exemption**

(R.C. 5709.121; Section 803.30)

The bill authorizes a property tax exemption for housing used by individuals diagnosed with mental illness or substance use disorder and their families. To qualify:

1. The owner of the property must be a tax-exempt 501(c)(3) organization, or a pass-through entity whose controlling member either is a 501(c)(3) organization or is owned by one or more 501(c)(3) organizations, for which providing such housing is a primary purpose.

2. At least one of those 501(c)(3) organizations must receive some of its funding from the Department of Mental Health and Addiction Services; a county board of alcohol, drug addiction, and mental health services; or a local continuum of care – a regional or local planning body that

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<sup>103</sup> R.C. 5123.01.

coordinates housing and services funding for homeless families and qualifies for federal funding from the U.S. Department of Housing and Urban Development.

In addition, the property owner must either (a) use the property to provide such housing, (b) lease the property to individuals with mental illness or substance use disorder and make supportive service available to such individuals, or (c) lease the property to a charitable institution that uses the property for charitable purposes.

Under continuing law, property owned by a charitable organization and used exclusively for charitable purposes is exempt from taxation. Courts have generally not favored extending the charitable use exemption to residential properties. In fact, in May 2020, the Board of Tax Appeals (BTA) reversed an exemption for a property that would meet the bill's requirements. The BTA found that, based on Supreme Court precedent, the use of the property primarily for private residential purposes could not be considered a charitable use.<sup>104</sup>

The new exemption applies to tax year 2021 and thereafter, as well as to exemption applications or appeals pending on the provision's effective date.

### **Renewable energy facility exemption extension**

(R.C. 5727.75)

The bill extends, by two years, the deadline to apply for existing law's property tax exemption for qualified renewable energy facilities.

Under continuing law, a renewable energy facility may qualify for a real and tangible personal property (TPP) tax exemption. When an exemption is approved, the owner or lessee of the facility is required to make "payments-in-lieu-of-taxes" (PILOTs) to the local governments in whose territory the facility is located. Currently, the owner or lessee of the facility must apply for the exemption and begin construction on the facility by January 1, 2023. The bill extends this deadline to January 1, 2025.

### **Urban agricultural area exemption**

(R.C. 319.302, 323.155, and 323.161)

The bill authorizes a county with a population of between 400,000 and 450,000 (Lucas County) to designate one or more areas within the county's municipal territory as "urban agricultural areas" and to allow qualifying urban farmers located within an area to apply for a full or partial exemption from county property taxes.

An urban agricultural area must be contiguous and within both the territory of the county and a municipality. In the resolution designating the area, the county must specify the area's boundaries, include procedures by which urban farmers can apply for a tax exemption, and designate a county officer to review applications.

To qualify for exemption, an urban farm must not be enrolled in the current agricultural use valuation (CAUV) program or the forest land tax exemption program, and the urban farmer

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<sup>104</sup> *Columbus City Schools Dis. Bd. of Edn. v. McClain, et al.* (May 28, 2020), BTA No. 2018-649.

must provide substantial day-to-day labor and management of the farm and meet one of the following eligibility criteria:

1. Be a member of a socially disadvantaged group (American Indian or Alaskan Native, Asian or Asian American, Black or African American, Native Hawaiian or other Pacific Islander, or Hispanic);
2. In the two preceding calendar years, have gross farm sales of \$100,000 or less and have a total household income that is either (a) at or below the national poverty level for a family of four or (b) less than 50% of the county median household income;
3. Have not operated a farm or ranch in the previous ten years; or
4. Have received a direct farm ownership microloan or direct farm operating microloan from the U.S. Department of Agriculture.

The county may, in its resolution designating the urban agricultural area, impose additional eligibility requirements.

The exemption may equal any percentage, up to 100%, of the taxes levied by the county on the urban farm. (The exemption does not apply to taxes levied by any other subdivision, such as the municipality or school district.) The exemption percentage may vary with each exemption application and is set at the discretion of the county officer eligible to accept the application. Once an exemption application is accepted, the exemption initially runs for five years, but the exemption can be continually renewed for terms of three years with the filing of a new exemption application.

### **Improper homestead exemption recovery**

(R.C. 323.153 and 4503.066)

The bill imposes a charge against property improperly receiving the homestead exemption. Continuing law authorizes two property tax incentives for owner-occupied residences, or “homesteads.” The first – often referred to as the 2.5% rollback – is a property tax credit equal to 2.5% of the tax levied on a homestead by certain levies. The second is a credit equal to the taxes on \$25,000 or \$50,000 of a homestead’s true value. This second incentive – often referred to as the homestead exemption – only applies if the homeowner or, in the case of a housing cooperative, occupant meets certain criteria, e.g., age, income, disability, or veteran status.

To receive the homestead exemption, an eligible owner or occupant must apply to the county auditor. After a homestead exemption application is approved, the applicant will generally continue to receive the exemption, without filing a new application each tax year, until the property is sold or transferred or the applicant no longer qualifies for the exemption. In the latter case, the applicant is required to inform the county auditor that the owner or occupant no longer qualifies for the exemption. An owner or occupant that fails to do so is guilty of a misdemeanor of the fourth degree, which carries a penalty of up to 30 days in jail and up to a \$250 fine.

The bill imposes a charge against any property improperly receiving the homestead exemption if the applicant fails to notify the county auditor that the applicant no longer qualifies for the exemption. The charge equals the tax savings, plus interest, for each tax year that the county auditor determines the applicant did not qualify for the exemption. A similar charge is imposed under continuing law against property improperly receiving the 2.5% rollback.

The county auditor must notify the applicant, by ordinary mail, of the charge for improperly receiving the homestead exemption and the right to appeal the charge. An applicant that wishes to do so may file an appeal with the county board of revision.

The charge for improperly receiving the homestead exemption and any related interest is treated and enforced as delinquent tax. As with the existing 2.5% rollback charge, homestead exemption charge proceeds are distributed as property taxes and paid to local taxing authorities.

## **Tangible personal property tax reimbursements**

### **Payments for subdivisions with a nuclear power plant**

(R.C. 5709.92 and 5709.93)

The bill requires that, for FYs 2022 through 2026, the tangible personal property (TPP) supplement payment to be paid to joint fire districts and city, local, exempted village, or joint vocational school districts that have a nuclear power plant in their territory be no less than the amount that was paid to them in FY 2017. If the amount a district is scheduled to receive is less than its FY 2017 payment, the district will receive an additional payment to make up the difference.

Under continuing law, local governments receive TPP supplement payments as reimbursement for their loss of tax revenue following the repeal of the TPP tax on most businesses and reductions in the tax on public utility property. The reimbursement schedule generally provides for a gradual phase-out of payments over time.

For joint fire districts, any payment required by the bill is in addition to another payment authorized for certain districts under continuing law. That payment is available to joint fire districts with a nuclear power plant that experienced an at least 30% decrease in taxable value between 2016 and 2017. The payment is made through the Local Government Fund and compensates the district for public safety-related tax revenue losses due to that reduction in value. Those payments began in FY 2018 and run through FY 2028.<sup>105</sup>

## **Cross-reference corrections**

(R.C. 5726.20, 5747.01(A)(6), (S)(5), and (GG), 5747.10, and 5751.40; Sections 803.50 and 803.60)

The bill makes several updates and corrections to cross-references in state tax law, as follows:

- Corrects an erroneous cross-reference in the financial institutions tax law;

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<sup>105</sup> R.C. 5747.50(E).

- Corrects an erroneous cross-reference in the definition of taxable business income under the business income deduction law;
- Corrects an erroneous cross-reference in the law governing the qualified distribution center exclusion used in computing taxable gross receipts for the commercial activity tax;
- Updates references to the federal “targeted jobs” tax credit in the state’s income tax law to reflect the federal credit’s new name, the “work opportunity” tax credit.

## **Tax Administration**

### **Local funds transfer approval period**

(R.C. 5705.16)

The bill extends from ten days to 30 days the Tax Commissioner’s deadline to either approve or deny the request of a political subdivision authorized to levy property tax (a “taxing authority”) to transfer money between certain of its funds, starting from the time that the request was first received.

Continuing law regulates the ability of a taxing authority to transfer revenue between its funds. Some funds may be transferred unilaterally, without obtaining approval from any official, e.g., transfers from the taxing authority’s general fund to another fund. On the other hand, some transfers are outright prohibited, such as the transfer of funds derived from a tax or license fee imposed for a specific purpose.<sup>106</sup> Any other transfer that is neither unilaterally permitted nor prohibited must first be approved by the Tax Commissioner, pursuant to an application of the taxing authority. The Commissioner may authorize the transfer of funds if the Commissioner finds that the transfer is justified or necessary and that no injury would result from the transfer.

### **Disclosing taxpayer information to State Racing Commission**

(R.C. 5703.21(C)(20))

The bill authorizes the Department of Taxation to disclose to the State Racing Commission otherwise confidential taxpayer information for the purpose of assisting the Commission with administering taxes on horse racing and its responsibilities for issuing, denying, suspending, or revoking horse racing permits. The Commission, in turn, must keep the information confidential, unless its disclosure is authorized by law.

Continuing law permits disclosure of certain taxpayer information in the Department of Taxation’s possession to other state agencies and offices under specified circumstances to aid in the implementation of Ohio law. Otherwise, the Department may not disclose such information, and any Department agent or employee that does so is subject to employment termination and a fine.

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<sup>106</sup> R.C. 5705.14 and 5705.15, not in the bill.

## **State tax refund review process**

(R.C. 5703.70)

Under continuing law, a taxpayer may apply to the Tax Commissioner for a refund of overpaid state taxes. If the Commissioner determines that the taxpayer is not entitled to the amount requested, the Commissioner must provide the taxpayer with a written notice of that preliminary determination. The taxpayer then has 60 days to provide the Commissioner with additional documentation supporting the taxpayer's request for the refund, request a hearing on the matter, or both. Then, the Commissioner may issue a final refund determination, which the taxpayer may appeal to the Board of Tax Appeals.

If the taxpayer provides additional information in response to the Commissioner's preliminary refund determination, the bill explicitly authorizes the Commissioner to review and make adjustments to the taxpayer's refund as many times as necessary before the Commissioner issues a final determination.

## **Tax obligations of liquor permit holders**

(R.C. 4303.26 and 4303.271; Section 803.20)

Continuing law requires the Division of Liquor Control, before approving the transfer or renewal of a liquor permit, to confirm with the Tax Commissioner that the applicant is not delinquent in paying, filing returns for, or providing information regarding sales taxes, withheld income taxes, horse-racing taxes, alcoholic beverage taxes, motor fuel taxes, petroleum activity taxes, cigarette and other tobacco product taxes, or casino gross receipts taxes. The Division is generally prohibited from renewing or transferring the liquor permit until the delinquency is addressed. Beginning February 1, 2022, the bill additionally requires the Division to confirm that the applicant is current on payments of resort area and tourism development district gross receipts taxes levied by certain townships and municipalities.

The Commissioner is required, under continuing law, to annually review the Department's tax records and notify the Division if any liquor permit holder is delinquent in paying, filing returns for, or providing information regarding any of the aforementioned taxes. Beginning February 1, 2022, the bill adds resort area and tourism development district gross receipts taxes to the list of taxes that are subject to this annual review.

Under continuing law, a municipality or township meeting the requirements of a "resort area" may levy a gross receipts tax on businesses for sales made in its territory to raise operating revenue. Municipalities and townships that are in a tourism development district may levy a similar gross receipts tax to foster or develop tourism. Though levied by local subdivisions, these taxes are collected and administered by the Tax Commissioner.

## **Wireless 9-1-1 Government Assistance Fund**

(R.C. 128.55)

Ongoing law requires the Tax Commissioner to make monthly disbursements, plus accrued interest, from the Wireless 9-1-1 Government Assistance Fund to county treasurers. Under the bill, the disbursements are to be made in the same proportion that the Tax

Commissioner distributed to that county in the corresponding calendar month of the previous year. If a shortfall in distributions results because of the timing of funds received in a previous month, the bill requires that the shortfall amount be distributed in the following month.

Currently, counties receive monthly disbursements from the fund based on how much the Public Utilities Commission distributed to each county in 2013. But, if the amount available in the Wireless 9-1-1 Government Assistance Fund is insufficient to make the required monthly disbursements, each county's share is proportionately reduced for the month. Shortfalls in monthly county disbursements due to insufficient funds from the previous month are remedied in the following month.

Under continuing law, Ohio wireless subscribers and purchasers of prepaid wireless service pay a charge that provides funds to support 9-1-1 systems. Wireless subscribers pay a 25¢ monthly charge, and purchasers of prepaid wireless service pay 0.5% of the sale price for the wireless service. The charges are deposited in the Wireless 9-1-1 Government Assistance Fund, the Wireless 9-1-1 Administrative Fund, the Wireless 9-1-1 Program Fund, and the Next Generation 9-1-1 Fund. The Wireless 9-1-1 Government Assistance Fund receives 97% of the charges collected, plus interest.<sup>107</sup>

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<sup>107</sup> R.C. 128.021, 128.03, 128.42, and 128.54, not in the bill.

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## DEPARTMENT OF TRANSPORTATION

### Traffic safety study

- Requires the Director of Transportation, in conjunction with the relevant chief executive officers and legislative authorities, to conduct a traffic safety study and issue a corresponding report by December 31, 2022, regarding the roads and highways through Strongsville, North Royalton, and Brunswick.
- Appropriates up to \$100,000 from the Highway Operating Fund for the study.

### Traffic safety study

(Section 755.20)

The bill requires the Director of Transportation to conduct a traffic safety study for the roads and highways within Strongsville, North Royalton, and Brunswick. The Director must work in conjunction with the chief executive officers and legislative authorities from those cities. The study must examine how the relevant highways can be improved for safety and the convenience of the traveling public. For purposes of conducting the study, the Director may appropriate up to \$100,000 from the Highway Operating Fund.

Additionally, the Director must submit a report of the study's findings, by December 31, 2022, to the Governor, the Speaker of the House, the Senate President, the chairpersons of the House and Senate transportation committees, and the chief executive officers and legislative authorities of Strongsville, North Royalton, and Brunswick. The report may include the Director's recommendations for solutions to resolve the traffic safety concerns found during the study.

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## TREASURER OF STATE

### Ohio State and Local Government Expenditure Database

- Requires the Treasurer of State, in collaboration with the OBM and DAS Directors, to establish and maintain the Ohio State and Local Government Expenditure Database that includes information about state entities' expenditures.
- Allows a political subdivision or state retirement system to agree to have information on the political subdivision's or state retirement system's expenditures included in the Database.
- Requires that the Database be free to access by the public and available on the Treasurer's website, the Office of Budget and Management's (OBM's) website, and by a prominent internet link on each state entity's website.
- Requires the Treasurer to enter into an annual agreement with the OBM and DAS Directors to ensure the proper maintenance and operation of the Database.
- Requires the Database to include certain expenditure information and a searchable database of state and school district employee salary and employment information.
- Requires the Treasurer to coordinate with the OBM Director to allow for public comment regarding the Database's utility.
- Prohibits the Database from including information that is confidential or that is not a public record under state law, but provides that the Treasurer, a state entity, and the Treasurer's and state entity's employees are not liable for disclosure of a Database record that is confidential or not a public record.

### State Board of Deposit secretary

- Requires an employee of the Treasurer of State's department appointed by the Treasurer, rather than the Cashier of the State Treasury, to serve as secretary of the State Board of Deposit.

### Ohio State and Local Government Expenditure Database

(R.C. 113.70, 113.71, 113.72, 113.73, 113.74, 113.75, 113.76, and 113.77)

#### Creation and operation of the Database

The bill requires the Treasurer of State, in collaboration with the OBM and DAS Directors, to establish and maintain the Ohio State and Local Government Expenditure Database. The Database must be free to access by the public and available on the Treasurer's website and the Office of Budget and Management's (OBM's) website. Additionally, each state entity must display a prominent internet link to the Database on its website.

The bill requires the Treasurer to enter into an annual agreement with the OBM and DAS Directors to define data storage, data handling, user interface requirements, and other

provisions considered necessary to ensure the proper maintenance and operation of the Database. State entities must assist in the development, establishment, operation, storage, hosting, and support of the Database and comply with all of the bill's requirements regarding the Database using existing resources.

### **Applicability**

The bill requires "state entities" to participate in the Database, meaning that the General Assembly, Supreme Court, Court of Claims, office of an elected state officer, or a department, bureau, board, office, commission, agency, institution, instrumentality, or other governmental entity of the state established by the Ohio Constitution or laws of Ohio for the exercise of any function of state government must participate in the Database. "State entity" does not include a political subdivision, institution of higher education, state retirement system, the City of Cincinnati Retirement System, or JobsOhio.

The "state retirement systems" are the Public Employees Retirement System, the Ohio Police and Fire Pension Fund, the State Teachers Retirement System, the School Employees Retirement System, and the State Highway Patrol Retirement System. A "political subdivision" is a county, city, village, public library, township, park district, school district, regional water and sewer district, or regional transit authority. The "school districts" that are considered political subdivisions and excluded from the definition of "state entity" are city, local, exempted village, or joint vocational school districts; science, technology, engineering, and mathematics (STEM) schools; and educational service centers. However, community (charter) schools are state entities under the bill and required to participate in the Database because they are excluded from the definition of "school districts."

Under the bill, a political subdivision or state retirement system may agree to have information on the political subdivision's or state retirement system's expenditures included in the Database. A political subdivision or state retirement system that agrees to have the information included in the Database must provide the information to the Treasurer and comply with the bill's requirements in the same manner as a state entity.

### **Database expenditure information**

The Database must include information about expenditures made in each fiscal year that commences after the provision's effective date. The Database must include the following information for each expenditure:

1. The expenditure amount;
2. The date the expenditure was paid;
3. The supplier to which the expenditure was paid;
4. The state entity that made the expenditure or requested that the expenditure be made.

An "expenditure" is a payment, distribution, loan, advance, reimbursement, deposit, or gift of money from a state entity to any supplier. A "supplier" is any person, partnership, corporation, association, organization, state entity, or other party, including any executive officer, legislative officer, judicial officer, or member or employee of a state entity that either

(1) sells, leases, or otherwise provides equipment, materials, goods, supplies, or services to a state entity pursuant to a contract between the supplier and a state entity, or (2) receives reimbursement from a state entity for any expense.

The bill does not prohibit the Treasurer from including any information in the Database not required by the bill and that is available to the public.

### **Database features**

The Database must include all of the following features:

- A searchable database of all expenditures;
- The ability to filter expenditures by the category of expense and by the Ohio Administrative Knowledge System accounting code for a specific good or service;
- The ability to search and filter by any of the factors listed in “**Database expenditure information**,” above;
- The ability to aggregate data contained in the Database;
- The ability to determine the total amount of expenditures awarded to a supplier by a state entity;
- The ability to download information obtained through the Database;
- A searchable database of state and “school district” employee salary and employment information.

The employee salary and employment information must be provided by the Department of Administrative Services or the Department of Education. However, the use of the term “school district” in this Database feature may create uncertainty about the bill’s application to community schools. Because community schools are excluded from the definition of “school district,” it appears that they are state entities subject to the bill’s expenditure reporting requirements. The reference here to “school district” apart from the definition of “state entity” suggests that the salary and employment information of employees of city, local, exempted village, joint vocational, or STEM schools, or of educational service centers, but **not** of community schools, must be provided.

### **Public comment opportunity**

Not later than one year after the Database is implemented, the Treasurer must coordinate with the OBM Director to provide an opportunity for public comment as to the Database’s utility.

### **Exclusion from liability for disclosure**

The bill prohibits the Database from including any information that is determined to be confidential or that is not a public record under state law. None of the following are liable for the disclosure of a record contained in the Database that is determined to be confidential or that is not a public record under state law:

- The Treasurer;

- The Treasurer’s employees;
- A state entity;
- Any employee of a state entity that provides information to the Database.

## **State Board of Deposit secretary**

(R.C. 135.02)

The bill requires the Treasurer of State to designate an employee of the Treasurer of State’s department to serve as the secretary of the State Board of Deposit. Under current law, the Cashier of the State Treasury serves as the Board’s secretary. The Board is responsible for approving applications for financial institutions to accept deposits of public funds that have been vetted by the Treasurer.<sup>108</sup>

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<sup>108</sup> Ohio Treasurer of State, *Board of Deposit*, available [here](#).

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## LOCAL GOVERNMENT

### City health districts

- Requires each city with a population less than 50,000 served by a board of health of a city health district to complete a study evaluating the efficiency and effectiveness of merging with the general health district that includes the city for the administration of health affairs in the merged general health district.
- Requires the Director of Health, in consultation with the Auditor of State, to develop criteria to be used in determining whether a merger is advisable and requires the city to conduct its evaluation using the developed criteria.
- Requires the city's chief executive, if the study indicates that a merger is advisable, to enter into a contract with the District Advisory Council for the general health district that includes the city for the administration of health affairs in the merged general health district, unless the applicable Advisory Council delays the merger for good cause.

### Soil and water conservation districts

- Establishes procedures by which a soil and water conservation district may accept credit cards for payment of certain goods and services.
- Authorizes a soil and water conservation district to use an "employee dishonesty and faithful performance of duty policy" in lieu of surety bonds for all officers, employees, and appointees who are required by law to give a bond.

### Regional councils of governments

- Authorizes a regional council of governments, having an educational service center as its fiscal agent and established to provide health care benefits, to acquire, establish, manage, or operate a separate business entity, and utilize its unencumbered reserve funds for the acquisition, establishment, or operation, to cover costs of those benefits.

### Agreements with animal shelters

- Allows a board of county commissioners to enter into a written agreement with an animal shelter to operate as a dog pound on behalf of the county under certain circumstances.

### Shoreline improvement district project expansion

- Allows a special improvement district to fund projects, including by assessing property within the district, to abate erosion along waters within a watershed district.

### Attorney fees and costs in inverse condemnation proceedings

- Requires courts in inverse condemnation proceedings to award amounts sufficient to reimburse a property owner for reasonable expenses in the proceeding if the property owner is successful in the proceeding or reaches a settlement.

## Use of eminent domain to provide recreational trails

- Prohibits park districts in counties with 220,000 to 240,000 residents from using eminent domain to appropriate property for recreational trails.
- Sets an expiration date of July 1, 2026, for the prohibition.

## Free library photocopies of identification

- Requires public libraries to provide an individual with a photocopy of that individual's driver's license, driver's permit, or state identification free of charge if the individual requests one.

## City health districts

(R.C. 3709.012, 3709.052, 3709.06, and 3709.07)

The bill directs each city with a population less than 50,000 that is represented by a board of health of a city health district to complete a study examining the efficiency and effectiveness of the city health district merging with the county's general health district. The study must be completed within 18 months after the official announcement of the result of a federal decennial census, including the 2020 census. As part of the study, the city must compare the merger's efficiency and effectiveness with that of remaining as a separate health district.

The Director of Health, in consultation with the Auditor of State, must develop criteria to be used by a city in determining whether a merger with the general health district is advisable. The criteria may include accreditation standards promulgated by the Public Health Accreditation Board, a nonprofit organization that assists local public health entities in obtaining accreditation. The Director also must provide technical and financial assistance to cities and oversee any efficiency and effectiveness study conducted.

Should a study indicate that a merger would be efficient and effective, the bill directs the city's chief executive to enter into a contract with the District Advisory Council for the general health district for the administration of health affairs in the former city health district and the merged general health district. If a merger is required by the bill, it must be completed not later than 30 months after the result of a federal decennial census is announced, unless either of the following acts for good cause to delay implementation of the merger:

1. In a single-county general health district, the district's District Advisory Council; or
2. In a multi-county general health district resulting from a union of general health districts, the District Advisory Council representing the county having a majority of the population to be served by the merged district.

## **Soil and water conservation districts**

(R.C. 3.061, 940.05, and 940.111)

### **Acceptance of credit cards by districts**

The bill allows a board of supervisors of a soil and water conservation district to adopt a resolution allowing payments to be made to the district by financial transaction device. It also establishes procedures for their use.

A financial transaction device includes:

1. A credit card, debit card, charge card, or prepaid or stored value card; and
2. An automated clearinghouse network credit, debit, or e-check entry that includes accounts receivable and internet-initiated, point of purchase, and telephone-initiated applications or any other device or method for making an electronic payment or transfer of funds.

### **Dishonesty and faithful performance of duty policy**

The bill authorizes a soil and water conservation district to adopt an “employee dishonesty and faithful performance of duty policy” in lieu of requiring surety bonds for all officers and employees who are entrusted with district funds.

Current law already authorizes certain political subdivisions (e.g., counties, townships, and municipal corporations) to use these policies in lieu of surety bonds. An employee dishonesty and faithful performance of duty policy is a policy of insurance to protect against losses that would otherwise be protected against under a surety bond.

## **Regional councils of governments**

(R.C. 167.03)

The bill authorizes a regional council of governments, having an educational service center as its fiscal agent and that is established to provide health care benefits, to acquire, establish, manage, or operate a separate business entity, and use its unencumbered reserve funds for that acquisition, establishment, or operation, to cover potential costs of health care benefits. The unencumbered reserve funds can only be used for the above purposes to the extent approved by the council’s governing board and so long as the council remains sufficiently reserved, in the exercise of sound and prudent actuarial judgment, to cover the potential cost of health care benefits for the council’s members’ officers, employees, and their dependents.

Under continuing law, the governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other, or of another state to the extent permissible by the other state, to establish a regional council of governments.

## Agreements with animal shelters

(R.C. 955.15)

The bill allows a board of county commissioners to enter into a written agreement with an animal shelter to operate as a dog pound on behalf of the county, provided both of the following apply to the animal shelter:

1. It is suitable to operate as a dog pound; and
2. It maintains devices for humanely destroying dogs.

Current law requires the county to either furnish its own dog pound or deliver seized dogs to an animal shelter maintained by the county humane society. The bill retains the county's ability to take both of those actions.

## Shoreline improvement district project expansion

(R.C. 1710.01)

The bill allows a special improvement district to fund shoreline improvement projects to abate erosion along water resources within a *watershed district*. The special improvement district may assess property within the district to fund the project. Watershed districts do not have independent authority to assess property for district projects.

Under current law, a special improvement district may fund shoreline improvement projects to abate erosion along the Lake Erie shoreline only.

## Inverse condemnation proceedings

(R.C. 163.62; Section 701.50)

The bill requires courts in inverse condemnation proceedings to award property owners, who are successful or reach settlements in the proceedings, funds sufficient to reimburse the owners for reasonable expenses incurred in the proceedings. An inverse condemnation proceeding is a lawsuit brought by a property owner alleging the government took the property owner's property without initiating formal proceedings to do so.<sup>109</sup> In the bill, the General Assembly finds the enactment of the above provisions to be remedial in nature.

## Use of eminent domain to provide recreational trails

(Section 715.05)

The bill prohibits park districts created under state law and located in counties with 220,000 to 240,000 residents from using eminent domain to appropriate property for recreational trails. A "**recreational trail**" is a public trail used for hiking, bicycling, horseback riding, ski touring, canoeing, or other nonmotorized forms of recreational travel. This prohibition expires on July 1, 2026.

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<sup>109</sup> *Black's Law Dictionary*, 11<sup>th</sup> Edition.

## Free library photocopies of identification

(R.C. 3375.011)

The bill requires public libraries to provide an individual with a photocopy of that individual's driver's license, driver's permit, or state identification free of charge if the individual requests one. Public libraries include the State Library of Ohio and free county, municipal, school district, public and regional libraries.<sup>110</sup>

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<sup>110</sup> R.C. 3375.404, not in the bill.

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## MISCELLANEOUS

### **COVID violations: expunge, refund fines, reinstate permits**

- Vacates violations or sanctions imposed against businesses under certain COVID-related orders or rules.
- Requires state agencies and boards of health to expunge any record of a violation, and to treat any finding of a violation as a nullity.
- Returns to businesses money collected by a state agency or board of health in civil or administrative penalties for violations.
- Requires state agencies and boards of health to cease any disciplinary action against a business for violations occurring before the bill's effective date.
- Requires state agencies and boards of health to restore rights and privileges of a business lost as a result of a violation.
- Requires the Liquor Control Commission to reinstate a revoked liquor permit if certain conditions apply, including:
  - The permit has been revoked as a result of a violation of certain rules governing COVID-19 and disorderly conduct; and
  - The permit holder pays a fine of \$2,500.
- For each permit reinstated, requires the Commission to notify certain entities, including the liquor permit holder and the Division of Liquor Control.

### **Buy Ohio preference for personal protective equipment**

- Requires state agencies to give preference to U.S. and Ohio products through the "competitive sealed bid process" when purchasing personal protective equipment with a purchase cost of less than \$50,000.

### **Open Meetings Law**

- Extends until December 31, 2021, the temporary authorization for public bodies to meet via electronic technology.

### **State Teachers Retirement Board meetings**

- Authorizes the State Teachers Retirement Board to adopt a permanent policy that allows Board members to attend Board meetings by means of teleconference or video conference.
- Requires, if the Board adopts the policy, that it require at least  $\frac{1}{3}$  of the Board members be present in person where the meeting is being held for other members to attend by teleconference or video conference, and include the number of meetings that each Board member must attend in person.

- Permits a Board member attending a meeting via teleconference or video conference to be considered present in person at the meeting, to be counted for purposes of establishing a quorum, and to vote at the meeting.

## **COVID violations: expunge, refund fines, reinstate permits**

(Sections 701.60 and 743.20)

The bill generally requires the expungement and refunding of fines in the case of a business<sup>111</sup> that violated any COVID-19-related order, rule, or directive issued by an elected state officer, a state agency, or a board of health.<sup>112</sup> It also requires state agencies and boards of health to restore rights and privileges of a business lost as a result of a violation, including reinstatement of licenses and permits. These provisions do not prohibit the enforcement of non-COVID-related matters.

### **Vacate and expunge violations**

First, the bill vacates any violation (and any sanctions imposed in response to a violation) that occurred between March 14, 2020, and the bill's effective date. Any record of a violation must be expunged not later than 30 days after the bill takes effect.<sup>113</sup>

### **Reinstate rights and privileges**

Elected state officers, state agencies, and boards of health must treat any finding of a violation as a nullity and take the steps within their power to restore, within 30 days, any rights

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<sup>111</sup> Defined to mean a corporation, association, partnership, limited liability company, sole proprietorship, joint venture, or other business entity composed of one or more individuals, whether or not the entity is operated for profit.

<sup>112</sup> The bill specifically includes executive orders (or an order related to an executive order); state or local orders issued under R.C. Chapter 3701; emergency rules under the Administrative Procedure Act (R.C. 119.03(G) (including O.A.C. Rule 4301:1-1-13 (emergency suspension of sales of beer, wine, mixed beverages, and spirituous liquor for on-premises consumption) and O.A.C. Rule 4301:1-1-80 (limitation on hours for on-premises sales or consumption and expansion of sales of beer, wine, mixed beverages, and spirituous liquor for off-premises consumption))); but also generally applies to any order, rule, or directive of elected state officers, state agencies, and boards of health.

<sup>113</sup> Not later than 60 days after the bill takes effect, the Liquor Control Commission must notify business owners that violations of these three rules were expunged: O.A.C. Rule 4301:1-1-13 (emergency suspension of sales of beer, wine, mixed beverages, and spirituous liquor for on-premises consumption), O.A.C. Rule 4301:1-1-80 (limitation on hours for on-premises sales or consumption and expansion of sales of beer, wine, mixed beverages, and spirituous liquor for off-premises consumption), and O.A.C. Rule 4301:1-1-52(B)(1) (prohibited activity-engaging in disorderly activities).

or privileges lost as a result of a finding of violation; the bill specifically includes “reinstatement of a revoked license and other right or privilege to do business.”

A separate provision of the bill requires the Liquor Control Commission to reinstate a liquor permit if:

1. The permit has been revoked as a result of a violation of certain rules governing COVID-19 and disorderly conduct;
2. The violation occurred between March 14, 2020, and the provision’s effective date; and
3. The permit holder pays a fine of \$2,500.

For each permit that has been reinstated, the Commission must notify the following:

1. The liquor permit holder whose permit is reinstated;
2. The Division of Liquor Control and the Investigative Unit of the Department of Public Safety. Following receipt of the notification, the Division and the Investigative Unit must delete any records of the revocation.
3. The General Assembly.

It is unclear if the general reinstatement requirement conflicts with the more specific provisions requiring payment of a \$2,500 fine to reinstate a liquor permit.

### **Cease disciplinary action**

The bill requires elected state officers, state agencies, and boards of health to cease any disciplinary action against a business for violations occurring between March 14, 2020, and the bill’s effective date.

### **Refund civil and administrative fines**

The bill generally requires elected state officers, state agencies, and local boards of health to refund any money collected in a civil or administrative penalty for a violation. Not later than 30 days after the bill takes effect, these amounts must be determined and refunded to businesses. A board of health refunds the money directly to each business. Elected state officers and state agencies must certify a list of businesses and amounts to the Director of Budget and Management, who then must issue the refunds to each business. If a business no longer exists, the OBM Director or the board of health must make a reasonable effort to locate, and issue the refund to, the owner.

The bill makes an exception in the case of a violation of one of these three rules:

- Ohio Administrative Code (O.A.C.) Rule 4301:1-1-13 (Emergency suspension of sales of beer, wine, mixed beverages, and spirituous liquor for on-premises consumption), which was in effect from April 7, 2020, to August 6, 2020;
- O.A.C. Rule 4301:1-1-80 (Limitation on hours for on-premises sales or consumption and expansion of sales of beer, wine, mixed beverages, and spirituous liquor for off-premises consumption), which was in effect from July 13, 2020, to November 29, 2020; and

- O.A.C. Rule 4301:1-1-52(B)(1) (Prohibited activity-engaging in disorderly activities), if enforced regarding COVID-19.

If a business violates one of these three rules, the business's fine is not refunded if a non-COVID-related conviction also was assessed at the time of adjudication.

Also regarding these three rules, the Liquor Control Commission must notify businesses that their violations were expunged and must report to the General Assembly about the expungements and the refunds, not later than 30 days after those actions are complete.

### **Venue for enforcement**

Finally, the bill allows a business to bring an action to enforce these provisions in the county where the business is located.<sup>114</sup>

### **Buy Ohio preference for personal protective equipment**

(R.C. 125.035 and 125.05)

The bill requires state agencies to give preference to U.S. and Ohio products through the "competitive sealed bid process" when purchasing personal protective equipment with a purchase cost of less than \$50,000. Under continuing law, purchases greater than \$50,000 generally already are subject to that process.

Under current law, a state agency may purchase, without competitive selection, any supplies or services that cost less than \$50,000. Before making the purchase, a state agency must comply with the first and second requisite procurement program. The process outlined in statute requires that a state agency submit a purchasing request to the Department of Administrative Services (DAS). DAS determines if the request can be fulfilled through a first or second requisite procurement programs such as the Ohio Penal Industries or Ohio Pharmacy Services at the Department of Mental Health and Addiction Services. If the request cannot be fulfilled in that manner, DAS provides a waiver and the agency may make the purchase without competitive selection.

The bill establishes an exemption to the above-described process for purchases of personal protective equipment. The agency still must comply with the first and second requisite procurement program. But, if the purchase cannot be filled in that manner, the purchase must be made in accordance with the criteria and procedures established by DAS for use by all state agencies in giving preference to U.S. and Ohio products. These criteria and procedures generally apply, under current law, to any purchases for an amount above \$50,000.

Under the bill, "personal protective equipment" means equipment worn to minimize exposure to hazards that cause workplace injuries and illnesses.

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<sup>114</sup> This does not include the provision under Section 743.20 of the bill, related to the reinstatement of liquor permits specifically.

## Open Meetings Law

(Sections 610.115 and 610.116)

The bill extends until December 31, 2021, the temporary authorization for public bodies to meet via electronic technology. Under current law, this authorization expires on July 1, 2021.

H.B. 197 of the 133<sup>rd</sup> General Assembly authorized public bodies, during the state of emergency declared by Executive Order 2020-01D, but not beyond December 1, 2020, to hold and attend meetings and hearings by means of teleconference, video conference, or any other similar electronic technology. The act specified that if a public body holds a meeting or hearing under this authority: (1) any resolution, rule, or formal action of any kind has the same effect as if it had occurred during an open meeting or hearing of the public body, (2) members of a public body who attend meetings or hearings by means of teleconference, video conference, or any other similar electronic technology, must be considered present as if in person at the meeting or hearing, must be permitted to vote, and must be counted in determining whether a quorum is present, (3) public bodies must provide notice of the meetings or hearings to the public, and (4) the public body must provide the public access to the meeting or hearing commensurate with the method in which the meeting or hearing is being conducted.

H.B. 404 of the 133<sup>rd</sup> General Assembly extended this authority until July 1, 2021.

## State Teachers Retirement Board meetings

(R.C. 3307.091)

The bill creates a permanent exception to the Open Meetings Law by allowing the State Teachers Retirement Board to adopt a policy that allows a Board member to attend a Board meeting by means of teleconference or video conference. A Board member who attends a meeting by teleconference or video conference is considered present in person at the meeting, may vote, and is counted for purposes of determining whether a quorum is present.

The Board must include in the policy, if adopted, the number of regular meetings at which each Board member must be present in person, provided that number is not less than  $\frac{1}{2}$  of the regular Board meetings annually. The Board also must include in the policy all of the following requirements with respect to a meeting at which a member attends by teleconference or video conference:

- That at least  $\frac{1}{3}$  of the members attending the meeting must be present in person at the physical location where the meeting is conducted (the Board consists of 11 members<sup>115</sup>);
- That all votes taken at the meeting must be taken by roll call vote;
- That a member who intends to attend a meeting by teleconference or video conference must notify the chairperson of that intent not less than 48 hours before the meeting, except in the case of an emergency as defined in the policy.

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<sup>115</sup> R.C. 3307.05, not in the bill.

At any meeting in which a member attends by teleconference or video conference, the Board must ensure that the public can hear and, if the means of attendance technologically permits it, to observe the discussions and deliberations of all the Board members, whether the member is participating in person or electronically.

Unless one of the requirements described above applies, the bill prohibits a person from doing any of the following:

- Limiting the number of Board members who may attend a meeting by teleconference or video conference;
- Limiting the total number of meetings that the Board may allow members to attend by teleconference or video conference;
- Limiting the number of meetings at which any one Board member may attend by teleconference or video conference;
- Imposing other limits or obligations on a Board member because the member attends a meeting by teleconference or video conference.

Generally, under continuing law, the Open Meetings Law requires a public body to take official action and conduct all deliberations on official business only in open meetings where the public may attend and observe. Members of a public body must attend meetings in person to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.<sup>116</sup>

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<sup>116</sup> R.C. 121.22.

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## NOTES

### Effective dates

(Sections 812.10 to 812.23)

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 bill includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section is subject to the referendum and takes effect on the 91<sup>st</sup> day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The bill also includes exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect.

### Expiration

(Section 809.10)

The bill includes an expiration clause stating that an item that composes the whole or part of an uncodified section contained in the bill (other than an amending, enacting, or repealing clause) has no effect after June 30, 2023, unless its context clearly indicates otherwise.

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## HISTORY

Action	Date
Introduced	02-16-21
Reported, H. Finance	04-21-21
Passed House	04-21-21