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# OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 110  
134<sup>th</sup> General Assembly

## Final Analysis

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LSC Staff

Revised Version\*

### SUMMARY

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

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.

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\* This version incorporates minor revisions for clarity.

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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.

### **Pay increase for exempt state employees**

- Increases pay for exempt state employees paid in accordance with salary schedule E-1 and increases the maximums in the pay ranges for employees paid in accordance with schedule E-2 by approximately 3% per year for the next three years.

### **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.
- Requires an employee to take parental leave within one year of a child's birth, stillbirth, or adoption placement (rather than beginning on the day of a child's birth or adoption placement as under former 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**

- Abolishes the Prescription Drug Transparency and Affordability Advisory Council and instead permits the Joint Medicaid Oversight Committee to examine any of the topics described in the report previously prepared by the Advisory Council.

## **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 under former law, 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 \$100,000 or less, 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.



## Public assistance private sector tools

- Requires the Department of Administrative Services to work with ODJFS and the Department of Medicaid to deploy private sector tools for digital identity management, authentication, and verification for individuals receiving public assistance.

## State contracts for goods and services

(R.C. 9.27)

The act 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.

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<sup>1</sup> Excludes the General Assembly, legislative agencies, courts, and judicial agencies. Includes all elected statewide executive 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 act.

- 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 act 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 contract in effect before the section's effective date, September 30, 2021, 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 act expands the types of purchases under state purchasing law that are eligible for an Ohio preference in scoring. Under continuing law, Ohio preference scoring is applied to purchases through the competitive sealed bid process. Under the act, 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 act 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 act 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.

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

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

Second, the act 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. Formerly, a board of elections was permitted to participate but separately was required to apply to DAS and pay a fee for its own membership, instead of participating through the county's membership.

Finally, the act 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 act 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. Former law suggested that DAS had to be an original party of a contract and could not join after a contract was procured.

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

## **Pay increase for exempt state employees**

(R.C. 124.152; Section 503.15)

For the next three years beginning in the pay period that includes July 1, 2021, the act does both of the following:

- Increases pay for exempt state employees paid in accordance with salary schedule E-1 by approximately 3% each year;
- Increases the maximum pay range amounts for exempt state employees paid in accordance with salary schedule E-2 by approximately 3% each year.

These pay increase provisions take effect on September 30, 2021. An exempt employee generally is an employee who is subject to the state job classification plan but exempt from

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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 act); 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).

collective bargaining, and includes certain employees of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General.

The act authorizes each state appointing authority to make expenditures from state operating appropriations to provide for compensation increases pursuant to approved collective bargaining agreements and pursuant to the act for employees exempt from collective bargaining.

## **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 act, an employee is eligible for parental leave on a child's stillbirth. To be eligible, the employee must be listed as a parent on the stillborn child's fetal death certificate. An employee who takes parental leave for a child's stillbirth is ineligible for paid bereavement leave, which under continuing law may be taken by a state employee for up to three days on the death of an immediate family member.<sup>6</sup> "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>7</sup>

The act requires an employee to take parental leave within one year of a child's birth, stillbirth, or adoption placement, rather than beginning on the day of the child's birth or adoption placement as under prior law.

### **Adoption expenses benefit**

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

### **Interaction with other leave types**

Under continuing law, an employee's use of parental leave does not prohibit an employee from taking leave under the federal Family and Medical Leave Act of 1993 (FMLA), except that parental leave is included in any FMLA leave time. Under the act, an employee cannot receive parental leave after exhausting FMLA leave for a child's birth, stillbirth, or adoption placement.

Under continuing law, if an employee is receiving disability leave benefits because of pregnancy and these benefits expire before the expiration of any parental leave benefits to which the employee would have been entitled, the employee can receive parental leave for

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<sup>6</sup> R.C. 124.387, not in the act.

<sup>7</sup> R.C. 3705.01, not in the act.

that additional time without being required to serve an additional waiting period. To do so, the act requires that the parental leave be contiguous to the disability leave.

### **Eligibility**

The act 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, the following employees are 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>8</sup>

### **Caregiver leave**

Under the act, 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 eligibility begins on the day 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>9</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 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 FMLA, except that caregiver leave is included in any FMLA leave time.

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

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<sup>8</sup> R.C. 124.152; also R.C. 124.14, not in the act.

<sup>9</sup> R.C. 5103.02; also R.C. 5101.85, not in the act.

## **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 act 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 former law, the act divides annual maintenance cost by *annual* miles driven. This modification better calculates an annual operating cost.

Second, the act allows proceeds from the disposition of state vehicles to be transferred from the Investment Recovery Fund to the Fleet Management Fund. Formerly, when DAS disposed of a motor vehicle originally purchased with GRF dollars, DAS was required to deposit the proceeds into either the Investment Recovery Fund or the Fleet Management Fund.<sup>10</sup> The act 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 act abolishes the Prescription Drug Transparency and Affordability Advisory Council and instead permits the Joint Medicaid Oversight Committee (JMOC) to examine any of the topics described in the report that was previously prepared by the Council, if the examination is requested by any JMOC member.

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 JMOC'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 act makes several changes in relation to state liability and the risk management program operated by the DAS.

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<sup>10</sup> If a vehicle was purchased with non-GRF funds, the proceeds are deposited into the fund used for the purchase.

## **Sovereign immunity**

The act 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 act, the state cannot be sued for losses incurred in relation to any action of the Risk Management Program.

The act 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 act specifies that the authority to sue such an officer or employee in a specific circumstance does not affect the general immunity provided to that officer or employee under the law.

## **Judicial liability program**

The act 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 act would be providing explicit authority to provide an already existing program.

## **Bond requirements**

The act amends the law related to bonds purchased in relation to state agents and employees. The act expressly requires that all necessary surety bonds, fidelity bonds, and public official bonds be purchased, as opposed to self-insured. DAS is expressly prohibited from issuing or underwriting any such bonds or providing performance bonds to any party.

## **Liability insurance program**

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

Also, the act expands the state's liability insurance program to cover agents of the state in addition to officers and employees of the state. The liability insurance program protects against liability resulting from lawsuits against the state.

## **Claims against the state**

The act amends the law related to the settlement of claims against the state. Continuing law 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 act specifies that these actions must be taken prior to such a claim being filed with a court. The act also 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 act 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 act 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 act makes several miscellaneous changes in the law related to the compromising, or settling, of claims made against the state:

- 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, including that the payment is final;
- 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 act eliminates the requirement that a public office include the date of birth of all public officials and employees on the database or list that it maintains. The act retains the requirement that the database include the names 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 act transfers responsibility to prepare deeds for the conveyance of state land from the Auditor of State to the DAS Director. The act 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 act 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 continuing 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 act 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 act 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 act authorizes the DAS Director to sell state-owned land with a fair market value of \$100,000 or less, with Controlling Board approval. Fair market value is to be determined by an independent appraiser. Funds from a sale under the act'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 act eliminates the authority of the State Chief Information Officer to establish policies and standards for the acquisition of common information technology by state agencies. Instead, the act 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 act also clarifies that polices 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.

## **Public assistance private sector tools**

(R.C. 125.70)

The act requires DAS to work with the Department of Job and Family Services and the Department of Medicaid to deploy private sector tools for digital identity management, authentication, and verification for individuals receiving Supplemental Nutrition Assistance Program (SNAP) benefits, Medicaid, or benefits funded by the Temporary Assistance for Needy Families block grant. The private sector tools must include joining available multistate cooperatives to identify individuals enrolled in public assistance programs, including the

National Accuracy Clearinghouse for SNAP, and other multi-state collaborative efforts to share public assistance enrollment information across state lines to avoid public assistance benefit duplication.

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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 preexisting 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 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.

### Certification of providers

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

The act 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 comply with continuing law that requires the provider to have a contract or grant agreement with the Department to provide the services. The act continues to require providers of services under the PASSPORT program and Assisted Living program to be certified as a condition of payment.

The act applies preexisting 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 criminal records check requirements to additional providers.<sup>11</sup>

### Training programs

(R.C. 173.012)

The act 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 interested parties. The Department may charge a fee for the training and use fees collected to

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<sup>11</sup> R.C. 173.38.

develop and offer additional training programs. The fees must be deposited into the Senior Community Outreach Fund, which the act creates.

## **Performance-based reimbursement**

(Section 209.20)

In order to improve health outcomes among populations served by PASSPORT administrative agencies, the act authorizes the Department to design a payment method for PASSPORT administrative agency operation that includes a pay-for-performance incentive component 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 act 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 the 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 former 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.

### Liming material sampling and analyzing

- Allows the Director to enter into an agreement with a person to perform inspections, sampling, and analysis of liming material on behalf of ODA.
- Allows the person to enter on property at any reasonable time to conduct the authorized inspections.
- Requires the Director to annually audit the inspection records.

### Southern Ohio Agricultural and Community Development Foundation

- Abolishes the Southern Ohio Agricultural and Community Development Foundation, effective December 30, 2021.

### Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

The act 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 was set to expire 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 act 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. However, local boards of health retain their authority to inspect farmers markets.

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

The act 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.

## **Liming material sampling and analyzing**

(R.C. 905.59)

The act allows the Director to enter into an agreement with a person that authorizes the person to perform inspections, sampling, and analysis of liming material on behalf of ODA. The person may enter on property at any reasonable time to conduct the authorized inspections. The Director must annually audit the records relating to the inspections, sampling, and analysis performed by the person.

Liming material is used for fertilizer purposes and has a calcium and magnesium content used to neutralize soil acidity. Under continuing law, ODA may continue to conduct inspections of liming material. ODA officials may enter public or private property to conduct inspections.

## **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 act 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 Ohio Proud Marketing Fund.

The Foundation was created in 2000 by S.B. 192 of the 123<sup>rd</sup> General Assembly as a result of the 1998 Tobacco Master Settlement Agreement reached between Ohio and other states and major tobacco manufacturers. Generally, the Foundation was tasked when it was created 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 produced in southern Ohio;

2. Preserving agricultural land and soils in southern Ohio;

3. Making strategic investments in communities that were affected by the reduction in the demand for tobacco; and

4. Providing education and training assistance to tobacco growers that helped 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 consisted of grants and donations made to the Foundation and investment earnings of the fund. The Foundation used money in the fund to award grants to assist farmers according to the Foundation's mission.

The Southern Ohio Agricultural and Community Development Operating Expenses Fund consisted of money transferred to it from the Southern Ohio Agricultural and Community Development Foundation Endowment Fund. The Foundation used 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 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 to match the Internal Revenue Service (IRS) reporting threshold.
- Requires a casino operator to use a data match program created by the Attorney General (AG) to withhold any amounts a patron owes to the state or a political subdivision from the amount of any casino winnings that exceed the IRS reporting threshold.
- 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 continuing law, before giving the remainder to the AG to pay other government debts.

### AG's special counsel; collection of debts

- Authorizes the AG to adopt rules as necessary to implement the law governing the AG's special counsel to collect claims.
- 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.

### Settlements awarding money to the state (VETOED)

- Would have renamed the Attorney General Court Order Fund as the Attorney General Court Order and Settlement Fund, and changed the fund from a custodial fund to a fund in the state treasury (VETOED).
- Would have required any money the AG receives through a court order, along with any money received under any in-court or out-of-court settlement or compromise, to be deposited in the fund, other than any money the AG receives as part of the AG's debt collection duties (VETOED).
- Would have required the AG, upon receiving \$10,000 or more under a settlement or court order, to notify the Governor, the Speaker of the House, the President of the Senate, and the Director of Budget and Management (VETOED).
- Would have required the Controlling Board to determine the appropriate fund or funds to which the money must be transferred (VETOED).
- Would have exempted from those requirements any amounts under \$10,000 (VETOED).

### Charitable bingo

- Makes numerous changes to the law governing charitable bingo, including legalizing electronic instant bingo; allowing 501(c)(6) nonprofit organizations to conduct raffles; and making other changes regarding bingo licenses.



## **Raffles**

- Allows a nonprofit organization that is tax-exempt under subsection 501(c)(6) of the Internal Revenue Code (a business league, chamber of commerce, real estate board, board of trade, or professional football league) to conduct a raffle that is not for profit.
- Requires such an organization to distribute at least 50% of the net profit from the raffle to a charitable purpose or to a government agency.

## **Electronic instant bingo**

- Establishes electronic instant bingo as a separate type of bingo, along with traditional bingo, raffles, and instant bingo, but largely regulates the operation of electronic instant bingo in the same manner as instant bingo.
- Requires the AG to begin to accept applications for licenses to conduct electronic instant bingo on January 1, 2022, and to begin to issue those licenses on April 1, 2022.

## **Definitions**

- Provides definitions for “electronic instant bingo” and “electronic instant bingo system.”
- Includes requirements designed to prevent electronic instant bingo from resembling or operating like a slot machine.

## **Charitable organizations conducting electronic instant bingo**

- Allows a veteran’s or fraternal organization to offer electronic instant bingo on a maximum of ten single-user terminals at its principal place of business, if it qualified as such an organization on or before June 30, 2021, has an appropriate status under the Internal Revenue Code, and has not conducted a raffle in violation of the Revised Code using an electronic raffle machine at any time after January 1, 2022.
- Requires electronic instant bingo proceeds to be distributed in the same manner as instant bingo proceeds are distributed under continuing law.
- Applies the same recordkeeping and operating requirements to electronic instant bingo as apply to instant bingo under ongoing law.

## **AG rules**

- Requires the AG to adopt rules under the Administrative Procedure Act to ensure the integrity of electronic instant bingo, and lists several topics that must be covered under those rules.

## **Distributor and manufacturer licensing**

- Requires a licensed distributor or manufacturer of bingo supplies to obtain an electronic instant bingo endorsement to the distributor’s or manufacturer’s license in order to distribute or manufacture electronic instant bingo systems.
- Requires any individual who installs, maintains, updates, or repairs an electronic instant bingo system to be licensed by the Ohio Casino Control Commission.

- Specifies requirements for a distributor or manufacturer to receive an endorsement, including passing a criminal records check, providing a surety bond, and paying the appropriate fee.
- Allows the AG to suspend or revoke an endorsement for violations of Ohio's gambling laws or rules.

### **Regulation of electronic instant bingo systems**

- Requires a manufacturer of an electronic instant bingo system first to submit the system to an independent testing laboratory and to the AG for approval.
- Requires every electronic instant bingo system in use in Ohio to meet certain monitoring, recordkeeping, and verification requirements.
- Allows the AG to establish by rule an annual fee to be paid by electronic instant bingo system distributors to cover the cost of monitoring and inspecting systems under the act.

### **Prohibitions regarding electronic instant bingo**

- Prohibits several types of conduct related to the operation of electronic instant bingo and the sale of electronic instant bingo systems and imposes a criminal penalty for a violation of the bill or the AG's rules.

## **Bingo licenses, generally**

### **Denial or suspension**

- Allows the AG to deny a bingo license to an organization, or suspend an organization's bingo license for up to five years, if the AG has good cause to believe that any director or officer of the organization has breached the director's or officer's fiduciary duty to the organization.
- Allows the AG to deny, suspend, or limit a bingo distributor or manufacturer license if there is good cause to believe the distributor or manufacturer, or certain partners, officers, or owners, have committed a breach of fiduciary duty, theft, or other misconduct related to a charitable organization that has a bingo license.

### **Youth athletic park organizations**

- Eliminates a requirement that a youth athletic park organization's playing fields have been used for nonprofit youth athletic activities for at least 100 days during a given year in order for the organization to obtain a bingo license.

### **License type**

- Requires a bingo license to indicate whether it is a Type I, Type II, or Type III license.

### **Technical changes**

- Makes numerous stylistic and technical changes to the section of law governing bingo licenses in order to incorporate "Type I," "Type II," and "Type III" license terminology, to

clarify that an organization does not need a license to conduct a raffle, and generally to make the section easier to read.

### **Punch boards and seal cards**

- Clarifies that punch boards and seal cards are types of instant bingo games and may be played under an instant bingo license.

### **Alcohol sales during traditional bingo**

- Allows an organization that has a D-4 liquor permit to sell alcohol for on-premises consumption while it is conducting traditional bingo games.

### **Minors playing traditional bingo**

- Makes a technical correction to clarify the penalty that applies to a charitable organization if it permits a person the organization knows, or should have known, is under 18 to play traditional bingo.

### **Bingo Law enforcement**

#### **Charitable organizations**

- Allows the AG or a law enforcement agency to examine the accounts and records of any officer, agent, trustee, member, or employee of a charitable organization with a bingo license.
- Permits the AG to impose a civil fine on an organization for failure to comply with the Bingo Law or related rules.

#### **Manufacturers and distributors**

- Permits the AG or a law enforcement agency to investigate a bingo distributor or manufacturer or any officer, agent, trustee, member, or employee of the bingo distributor or manufacturer in relation to violations of the Bingo Law.
- Permits the AG to impose a civil fine on a distributor or manufacturer for failure to comply with the Bingo Law or related rules.

### **Charitable organizations**

- Prohibits state agencies, with certain exemptions, from imposing reporting or filing requirements on charitable organizations that are more stringent than those found in the Revised Code or that are already in existence as of the prohibition's September 30, 2021, effective date.

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

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

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

- Requires the AG to create and administer a one-year pilot program for state funding of the required annual training of peace officers and troopers, and specifies that, with one limited exception, 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 required annual 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 required annual training of their peace officers and troopers.
- Requires the Commission to submit the report to the Governor, the General Assembly, the AG, and the Legislative Service Commission not later than March 1, 2022.
- Provides that the Commission ceases to exist when it submits the report.

## **Delinquent municipal income tax collection**

- Requires the AG 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 AG**

- Specifies that the quarterly reports submitted to the AG 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 AG establish and maintain a public database of information included in foreclosure sale reports with a requirement that the information be made publicly available.

## **Public record exemption for certain telephone numbers**

- Modifies the exemption from the Public Records Law for telephone numbers of victims, crime witnesses, and parties to motor vehicle accidents.

## Collecting debts from gambling winnings

### Lottery winnings

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

The act lowers 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. Under prior law, if a person won \$5,000 or more in the lottery, the Commission had to deduct the amount of those debts from the winnings and pay it to the Attorney General (the AG) to satisfy the debts. The act 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). That threshold is generally \$600, but is higher for some types of gambling winnings.<sup>12</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>13</sup>

### Casino winnings

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

The act 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 meet or exceed the IRS reporting threshold. 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>14</sup>

Under the act, 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's winnings meet the IRS threshold 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.

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<sup>12</sup> 26 United States Code (U.S.C.) 6041 and Internal Revenue Service, [Publication 3908](#).

<sup>13</sup> R.C. 3770.071, not in the act.

<sup>14</sup> R.C. 3123.90, not in the act.

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 act's requirements.

### **AG's special counsel**

(R.C. 109.08)

The act 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. That 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.

### **AG rules on collection of debt**

(R.C. 131.02)

The act 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. Otherwise, under continuing law, the AG must cancel an unsatisfied claim 40 years after it was certified for collection.

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

The law requires the AG to follow this process on behalf of state agencies, and also on behalf of state institutions of higher education and of political subdivisions. The act 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.

### **Settlements awarding money to the state (VETOED)**

(R.C. 109.111 and 109.112)

The Governor vetoed a provision that would have required the AG, when receiving money under a court order, settlement, or compromise that totals \$10,000 or more, to notify the Governor, the Speaker of the House, the President of the Senate, and the Director of

Budget and Management of the amount. The Controlling Board would have been required to determine the appropriate fund or funds to which the money must be transferred, and the Director, in consultation with the AG, would have been required to transfer the money according to the Controlling Board's instructions.

If the total amount did not exceed \$10,000, the act would have required the money to be treated the same as under existing law regarding any amounts received by court order. The AG would have been required to notify the Director of the amount. Then, the Director, in consultation with the AG, would have determined the appropriate distribution of the money and the AG would have made the transfer.

The vetoed provision also would have renamed the Attorney General Court Order Fund as the Attorney General Court Order and Settlement Fund, and changed the fund from a custodial fund to a fund in the state treasury. Under current law, any money the AG receives through a court order is deposited in the fund. The act would have specified additionally that any money the AG receives as a result of a settlement or compromise in a case, whether in court or out of court, also must be deposited in the fund, other than any money the AG receives as part of the AG's debt collection duties. Under existing law, out-of-court settlements are deposited in various other holding funds, depending on the nature of the settlement.

## Charitable bingo

### Overview

(R.C. 2915.01)

The Ohio Constitution allows the General Assembly to authorize and regulate bingo conducted by charitable organizations for charitable purposes. Charitable organizations that wish to conduct bingo games, other than raffles, must apply for a license from the AG and comply with the requirements of the Revised Code and of administrative rules adopted by the AG, including requirements governing the places, times, and manner of holding bingo games.<sup>15</sup> The act makes numerous changes to the law governing charitable bingo, including legalizing electronic instant bingo; allowing 501(c)(6) nonprofit organizations to conduct raffles; and making changes regarding bingo licenses.

### Types of bingo

The Revised Code defines "bingo" to include several types of activities:

- **Traditional bingo**, in which participants purchase a card with spaces arranged in a grid marked with letters, numbers, or other symbols, and cover the spaces as randomly selected numbers, letters, or symbols are called, with the goal being to win a prize by creating a line or other pattern.

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<sup>15</sup> Ohio Constitution, Article XV, Section 6; R.C. Chapter 2915; and Ohio Administrative Code (O.A.C.) Chapter 109:1-4.

- **Raffles**, in which participants purchase tickets and the ticket stubs are placed in a container and randomly selected, with the goal being to win a prize by having the participant’s ticket stub selected. Unlike for other bingo games, no license is required to conduct a raffle.
- **Instant bingo**, in which a participant purchases a paper ticket and then removes part of the ticket using a perforated pull tab to reveal whether the ticket is a winner. The prize amount and structure are predetermined for each “deal,” or set of tickets. In some instant bingo games, the winning numbers, letters, or symbols are determined by using a seal card to reveal predesignated winners or by using a bingo blower to randomly select the winners. The bill clarifies that **punch boards** are a type of instant bingo. In a punch board game, the organization prepares a board with many holes with a randomly numbered slip of paper in each hole, and participants pay for the opportunity to draw slips of paper from the board, with the goal being to win a prize by drawing the slip with the winning number.
- **Electronic instant bingo**, as added by the act.

## **Charitable organizations**

### ***Traditional and instant bingo***

(R.C. 2915.01)

For purposes of offering traditional and instant bingo games, continuing law defines a “charitable organization” as an organization that has been in continuous existence in Ohio for at least two years before applying for a bingo license and that either (1) is exempt from taxation under subsection 501(c)(3) of the federal Internal Revenue Code or (2) is a volunteer rescue service organization, volunteer firefighter’s organization, veteran’s organization, fraternal organization, or sporting organization that is exempt from taxation under subsection 501(c)(4), (7), (8), (10), or (19) of the Internal Revenue Code. However, as is discussed below in detail, the act only allows certain veteran’s and fraternal organizations to conduct electronic instant bingo.

### ***Raffles***

(R.C. 2915.092)

The act adds a nonprofit organization that is tax-exempt under subsection 501(c)(6) of the Internal Revenue Code (a business league, chamber of commerce, real estate board, board of trade, or professional football league) to the list of entities that may conduct a raffle, so long as it is not for profit. Continuing law allows a charitable organization that may conduct traditional or instant bingo, as described above, also to conduct a raffle that is not for profit.



## **Distribution of net profit**

### ***Traditional bingo***

(R.C. 2915.01)

The proceeds of bingo must be used for a charitable purpose. Continuing law requires the net profit of traditional bingo games to be used by or given to one of the following:<sup>16</sup>

- A public charity, as determined under the Internal Revenue Code;
- A veteran's organization that meets certain qualifications, provided that the net profit must be used for specified charitable purposes, used to award certain scholarships, donated to a governmental agency, used for nonprofit youth activities, used to donate U.S. or Ohio flags to nonprofit organizations, used for the promotion of patriotism, or used for disaster relief;
- A fraternal organization that has been in continuous existence in Ohio for 15 years and that uses the net profit exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, if such contributions would be considered deductible charitable contributions under the Internal Revenue Code;
- A volunteer firefighter's organization that uses the net profit to provide financial support for a volunteer fire department or a volunteer fire company.

### ***Raffles***

(R.C. 2915.092)

A nonprofit organization that is tax-exempt under subsection 501(c)(3) of the Internal Revenue Code may retain the entire proceeds of any raffle it conducts. However, if the organization is not a 501(c)(3) organization, continuing law requires the organization to distribute at least 50% of the net profit from the raffle to one of the charitable organizations listed above that may receive the proceeds of traditional bingo or to a federal, state, or local government agency. This requirement also applies to a 501(c)(6) organization that conducts a raffle, as permitted by the act.

### ***Instant bingo***

(R.C. 2915.101)

Under continuing law, a charitable organization other than a veteran's, fraternal, or sporting organization must distribute 100% of the net profit from the proceeds of the sale of instant bingo to an organization listed above that may receive the net profit of traditional bingo, or to a department or agency of the federal government, the state, or any political subdivision.

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<sup>16</sup> R.C. 2915.01(V).

Continuing law requires a veteran's, fraternal, or sporting organization that conducts instant bingo to dispose of the first \$250,000 or less in net profit from the proceeds of the sale of instant bingo in a calendar year as follows:

- The organization must distribute at least 25% to an organization listed above that may receive the net profit of other types of bingo, or to a department or agency of the federal government, the state, or any political subdivision;
- The organization may retain not more than 75% to cover the organization's expenses in conducting instant bingo.

The organization must dispose of any net profit from the proceeds of the sale of instant bingo that exceeds \$250,000 in a calendar year as follows:

- The organization must distribute at least 50% to an organization listed above that may receive the net profit of other types of bingo, or to a department or agency of the federal government, the state, or any political subdivision;
- The organization may distribute 5% for the organization's own charitable purposes or to a community action agency;
- The organization may retain 45% to cover the organization's expenses in conducting instant bingo.

The AG may, by rule, increase the \$250,000 threshold for changes in prices as measured by the Consumer Price Index and other factors affecting the organization's expenses in conducting bingo.

As discussed below, the act regulates electronic instant bingo proceeds in the same manner as instant bingo proceeds.

### **Electronic raffle machine lawsuit**

Since 2013, as part of a case originally titled *Ohio Veterans and Fraternal Charitable Coalition v. DeWine*, several charitable organizations have been involved in ongoing litigation against the AG concerning the issue of whether those organizations legally may hold raffles using devices known as electronic raffle machines. The machines operate by randomly predesignating an outcome or prize associated with each entry, then selling an entry to a participant through the machine's electronic interface and revealing whether the entry is a winner.

In 2018, the Franklin County Court of Common Pleas ruled that the electronic raffle machines several organizations had been using for the past several years did not meet the legal definition of a raffle and thus were illegal. However, the court granted a stay of its ruling until all appeals have been exhausted. That stay remains in place as of this writing; the Tenth District

Court of Appeals agreed with the lower court's ruling on the electronic raffle machines, but the Ohio Supreme Court has agreed to wait until after July 30, 2021, to consider the case.<sup>17</sup>

It appears that a system used to operate electronic raffle machines might meet the legal definition of electronic instant bingo as permitted under the act.

### **Electronic instant bingo**

(R.C. 109.32, 109.572, 2915.01, 2915.08, 2915.081, 2915.082, 2915.09, 2915.091, 2915.093, 2915.095, 2915.10, 2915.101, 2915.12, 2915.13, 2915.14, 2915.15, and 3772.01; Section 803.230)

The act establishes electronic instant bingo as a separate type of bingo, along with traditional bingo, raffles, and instant bingo, but largely regulates the operation of electronic instant bingo in the same manner as instant bingo. The act limits the ability to conduct electronic instant bingo to certain veteran's and fraternal organizations, as discussed below. The AG must begin to accept applications for licenses to conduct electronic instant bingo on January 1, 2022, and must begin to issue those licenses on April 1, 2022.

### **Definitions**

#### ***Electronic instant bingo***

"Electronic instant bingo" is a form of bingo that consists of an electronic or digital representation of instant bingo in which a participant wins a prize if the participant's electronic instant bingo ticket contains a combination of numbers or symbols that was designated in advance as a winning combination, and to which all of the following apply:

- Each deal (set of electronic instant bingo tickets) has a predetermined, finite number of winning and losing tickets and a predetermined prize amount and deal structure, provided that there may be multiple winning combinations in each deal and multiple winning tickets;
- Each electronic instant bingo ticket within a deal has a unique serial number that is not regenerated;
- Each electronic instant bingo ticket within a deal is sold for the same price;
- After a participant purchases an electronic instant bingo ticket, the combination of numbers or symbols on the ticket is revealed to the participant;

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<sup>17</sup> Summary judgment granted in *Ohio Veterans and Fraternal Charitable Coalition v. DeWine*, Case No. 13-CV-13610 (C.P. Franklin Co. February 23, 2018); stay granted March 9, 2018; judgment affirmed in *Ohio Veterans and Fraternal Charitable Coalition v. DeWine*, 2018-Ohio-4679 (10<sup>th</sup> Dist. Ct. App. 2018); appeal held in abeyance until July 30, 2021, in *Ohio Veterans and Fraternal Charitable Coalition v. Yost*, 2021-Ohio-121 (2021).

- The reveal of numbers or symbols on the ticket may incorporate an entertainment or bonus theme, provided that the reveal does not include spinning reels that resemble a slot machine;
- The reveal theme, if any, does not require additional consideration or award any prize other than any predetermined prize associated with the electronic instant bingo ticket.

Further, electronic instant bingo must not include any of the following:

- Any game, entertainment, or bonus theme that replicates or simulates the gambling games of keno, blackjack, roulette, poker, craps, other casino-style table games; horse racing; or gambling games offered in Ohio on slot machines or video lottery terminals (the machines operated in racinos);
- Any device operated by dropping one or more coins or tokens into a slot and pulling a handle or pushing a button or touchpoint on a touchscreen to activate one to three or more rotating reels marked into horizontal segments by varying symbols, where the predetermined prize amount depends on how and how many of the symbols line up when the rotating reels come to a rest;
- Any device that includes a coin or token slot, tray, or hopper and the ability to dispense coins, cash, tokens, or anything of value other than a credit ticket voucher.

### ***Electronic instant bingo systems***

Under the act, “electronic instant bingo system” means both of the following:

- A mechanical, electronic, digital, or video device and associated software to which all of the following apply:
  - It is used by not more than one player at a time to play electronic instant bingo on a single screen that is physically connected to the device (that is, it is a single-user terminal);
  - It is located on the premises of the principal place of business of a veteran’s or fraternal organization that holds a type II or type III bingo license to conduct electronic instant bingo at that location.
- Any associated equipment or software used to manage, monitor, or document any aspect of electronic instant bingo.

The act specifies that an electronic instant bingo system is not considered a slot machine or other prohibited scheme of chance under the Gambling Law or the Casino Law.

## **Charitable organizations conducting electronic instant bingo**

### ***License***

Continuing law allows the AG to issue three categories of bingo licenses:

- **Type I** – Traditional bingo;
- **Type II** – Instant bingo conducted at a traditional bingo session;

- **Type III** – Instant bingo conducted other than at a traditional bingo session (at a retail location).

The act allows a charitable organization that meets all of the following requirements to offer electronic instant bingo under a Type II or Type III license:

- The organization is a veteran’s or fraternal organization and qualified as such an organization on or before June 30, 2021;
- The organization is a veteran’s organization described in subsection 501(c)(4) of the Internal Revenue Code or is a tax-exempt organization described in subsection 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code;
- The organization has not conducted a raffle in violation of the Revised Code using an electronic raffle machine, as described in *Ohio Veterans and Fraternal Charitable Coalition v. DeWine*, at any time on or after January 1, 2022.<sup>18</sup>

An eligible organization may offer electronic instant bingo under a single license at one location specified on the license, which must be the organization’s principal place of business. The organization may have a maximum of ten electronic instant bingo systems (single-user terminals) on the premises. By contrast, under continuing law, an organization may conduct paper-based instant bingo under more than one license and at multiple locations.

The act also makes some broader changes to bingo licensing, discussed below under “**Bingo licenses, generally.**”

### ***Proceeds, records, and operations***

The act requires electronic instant bingo proceeds to be distributed in the same manner as instant bingo proceeds are distributed under continuing law. (See “**Distribution of net profit,**” above.) The act also applies the same recordkeeping and operating requirements to electronic instant bingo as apply to instant bingo under ongoing law.

### ***Game operators***

For purposes of electronic instant bingo, the act defines a “bingo game operator” as any person involved in selling or redeeming electronic instant bingo tickets, credits, or vouchers or accessing an electronic instant bingo system other than as a participant. The term does not include security personnel or a person who is installing, maintaining, updating, or repairing an electronic instant bingo system.

Continuing law requires bingo game operators to be at least 18, prohibits them from having been convicted of a disqualifying offense, and restricts an organization’s ability to compensate them for operating a bingo game.

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<sup>18</sup> *Ohio Veterans and Fraternal Charitable Coalition v. DeWine*, Case No. 13-CV-13610 (C.P. Franklin Co. February 23, 2018).

## **AG rules**

The act requires the AG to adopt rules under the Administrative Procedure Act to ensure the integrity of electronic instant bingo, including rules governing all of the following:

- The requirements to receive a license or endorsement to conduct electronic instant bingo;
- The location and number of electronic instant bingo systems in use, which must not exceed ten at the single licensed location per organization;
- The times when electronic instant bingo may be offered;
- Signage requirements in facilities where electronic instant bingo is offered;
- Electronic instant bingo device and system specifications, including reveal features and game themes;
- Procedures and standards for reviewing, approving, inspecting, and monitoring electronic instant bingo systems, as discussed below;
- The fees to be paid by manufacturers and distributors for that purpose;
- Procedures and standards for the review and approval of any changes to technology, systems, or games;
- Procedures allowing the AG to seek a summary suspension of a license to conduct electronic instant bingo or a license to manufacture or distribute electronic instant bingo systems if the AG has good cause to believe that the person or organization has violated the relevant law.

## **Distributor and manufacturer licensing**

Continuing law requires distributors and manufacturers of bingo supplies to be licensed by the AG, and electronic instant bingo systems are considered bingo supplies under the act. In addition to being licensed as a distributor or manufacturer, as applicable, the act requires a distributor or manufacturer of electronic instant bingo systems to obtain an electronic instant bingo endorsement to the distributor's or manufacturer's license. An endorsement issued under the act is good for the term of the underlying license.

The act also requires any individual who installs, maintains, updates, or repairs an electronic instant bingo system, such as an employee of a distributor, to hold an appropriate and valid occupational license issued by the Ohio Casino Control Commission. The Commission issues casino gaming employee licenses and key employee licenses to individuals working in various aspects of the casino industry, including technicians who work on equipment such as slot machines.<sup>19</sup>

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<sup>19</sup> R.C. 3772.131, not in the act.

A manufacturer of electronic instant bingo systems may only sell, offer to sell, or otherwise provide or offer to provide electronic instant bingo systems that contain proprietary software owned by, or licensed to, the manufacturer. If the software is licensed to the manufacturer, the manufacturer must provide a copy of the license with its application for an endorsement.

To obtain an endorsement, a distributor or manufacturer must apply to the AG, on a form prescribed by the AG, submit fingerprints for a criminal records check, and pay any applicable fee charged by BCII. (No criminal records check is required to receive a distributor or manufacturer license, generally.)

The AG must not issue the endorsement if the distributor or manufacturer, any partner or officer of the distributor or manufacturer, or any person who has an ownership interest of 10% or more in the distributor or manufacturer has violated any Ohio gambling law or rule or any existing or former law or rule of Ohio, any other state, or the U.S. that is substantially equivalent to any Ohio gambling law or rule.

The distributor or manufacturer also must provide the AG with a surety bond in the amount of \$50,000 and maintain the bond as long as the distributor or manufacturer is licensed. The bond may be in the form of a rider to a larger blanket liability bond. The bond must run to the state and to any person who may have a cause of action against the distributor or manufacturer for any violation of the Bingo Law or related administrative rules.

For a manufacturer endorsement, the act requires the AG to establish by rule an application and renewal fee in an amount sufficient to cover the cost of processing applications and investigating applicants' suitability. If the cost of processing a particular application and investigating the applicant's suitability exceeds the amount of the application and renewal fee, the AG may charge the applicant an additional fee as necessary to cover that cost. The AG must not issue the endorsement until all fees are paid in full. (Distributors instead are subject to an annual monitoring and inspection fee, discussed below.)

The act allows the AG to deny or suspend an endorsement issued under the act in the same manner as the AG may deny or suspend a manufacturer or distributor license for violations of Ohio's gambling laws or rules (see "**Denial or suspension**," below).

## **Regulation of electronic instant bingo systems**

### ***Approval***

Under the act, a manufacturer of an electronic instant bingo system must submit the system to an independent testing laboratory before the manufacturer may sell, offer to sell, or otherwise provide or offer to provide the system to any person for use in Ohio. The laboratory must be certified under the Casino Law to inspect casino gaming equipment, and it must determine whether the system meets the requirements of the act and of the AG's rules. The manufacturer must pay all costs of that testing and evaluation.

If the laboratory certifies that the system meets the applicable requirements, the manufacturer then may submit the system to the AG for review and approval, along with a copy of the laboratory's certification and a fee established by the AG by rule.

The AG must approve the system for use in Ohio if the AG agrees that the system meets the act's requirements and the AG's rules. The act requires the AG to consult the Ohio Casino Control Commission for assistance in determining whether the system is prohibited for use on the ground that it is a slot machine.

Before being placed into service, a system must be verified and sealed by the AG. The AG or a designee must remove the seal if the system is removed from service. If the seal is removed at any other time, the system must be returned to an independent testing laboratory.

### ***Monitoring***

The act requires every electronic instant bingo system in use in Ohio to have a central server located in Ohio, to include an internal report management system, and to allow the AG or the AG's designee to access the internal report management system, monitor the electronic instant bingo, and remotely deactivate the electronic instant bingo system or any aspect of it.

### ***Inspection***

The AG may inspect any electronic instant bingo system in use in Ohio at any time to ensure that the system is in compliance with the act and with the AG's rules. If the AG determines that any person or any system is in violation of the act or of those rules, the AG may order that the violation immediately cease and may deactivate the system or any aspect of it.

### ***Fees***

The AG may establish by rule adopted under the Administrative Procedure Act an annual fee to be paid by electronic instant bingo system distributors to cover the cost of monitoring and inspecting systems under the act. Those fees must be deposited in the Charitable Law Fund and used for those purposes.

### **Prohibitions regarding electronic instant bingo**

The act prohibits several types of conduct related to electronic instant bingo. These prohibitions are similar to continuing-law prohibitions regarding instant bingo, but are more specific to electronic instant bingo.

Under the act, no charitable organization that conducts electronic instant bingo may do any of the following:

- Conduct electronic instant bingo unless that organization is eligible for an electronic instant bingo license, as discussed above;
- Possess an electronic instant bingo system that was not obtained in accordance with the act or with AG rules;
- Conduct electronic instant bingo on any day, at any time, or on any premises not specified on the organization's Type II or Type III license;
- Hold more than one valid license to conduct electronic instant bingo at any one time;
- Conduct electronic instant bingo on more than one premises or on any premises other than the organization's principal place of business;



- Operate more than ten electronic instant bingo systems at the organization's principal place of business;
- Fail to display the charitable organization's bingo license or the serial number of each deal of electronic instant bingo tickets being sold;
- Permit any person the charitable organization knows, or should have known, to be under 18 to play electronic instant bingo;
- Sell or provide to any person an electronic instant bingo ticket for a price different from the price displayed on the game flare for the deal, except as a prize;
- Fail, once an electronic instant bingo deal is begun, to continue to sell tickets in that deal until all prizes have been awarded;
- Permit any person whom the organization knows, or should have known, has been convicted of a felony or gambling offense in any jurisdiction to be a bingo game operator in the conduct of electronic instant bingo;
- Permit a bingo game operator to play electronic instant bingo;
- Pay compensation to a bingo game operator for conducting electronic instant bingo, except that an employee of an organization may redeem electronic instant bingo tickets or vouchers for the organization's members or invited guests, so long as no portion of the employee's compensation is paid from any bingo receipts;
- Pay consulting fees to any person in relation to electronic instant bingo.

The act also prohibits any person from selling, offering to sell, or otherwise providing or offering to provide an unapproved electronic instant bingo system to any person for use in Ohio.

A person who knowingly violates any of those prohibitions is guilty of illegal electronic instant bingo conduct, which is a first degree misdemeanor for a first offense and a fifth degree felony for any subsequent offense. A person who knowingly violates a rule of the AG concerning electronic instant bingo is subject to the same penalties.

### **Bingo licenses, generally**

(R.C. 2915.01, 2915.08, 2915.081, and 2915.082)

#### **Denial or suspension**

Under the act, the AG may deny, suspend, or limit an organization's bingo license, if the AG has good cause to believe that any director or officer of the organization has breached the director's or officer's fiduciary duty to the organization.

Similarly, the act allows the AG to deny, suspend, or limit a bingo distributor or manufacturer license if the AG has good cause to believe that the distributor or manufacturer, any partner or officer of the distributor or manufacturer, or any person who has an ownership interest of 10% or more in the distributor or manufacturer, has committed a breach of fiduciary

duty, theft, or other type of misconduct related to a charitable organization that has a bingo license.

Continuing law allows the AG to deny or suspend a bingo license or a distributor or manufacturer license for certain other reasons involving dishonesty or violations of the Gambling Law.

### **Youth athletic park organizations**

The act eliminates a requirement that a youth athletic park organization's playing fields have been used for nonprofit youth athletic activities for at least 100 days during a given year in order for the organization to obtain a bingo license. Under continuing law, such an organization must be a nonprofit organization that owns, operates, and maintains playing fields that are used for nonprofit youth athletic activities and that are never used to make a profit.

### **License type**

The act requires a bingo license to indicate whether it is a Type I, Type II, or Type III license, along with the other relevant information that must be included under continuing law.

### **Technical changes**

Finally, the act makes numerous stylistic and technical changes to the section of law governing bingo licenses in order to incorporate "Type I," "Type II," and "Type III" license terminology, in line with the terms the AG uses; to clarify that an organization does not need a license to conduct a raffle; and generally to make the section easier to read. However, the bill does not change the requirements for the licenses, except as specified above.

### **Alcohol sales during traditional bingo**

(R.C. 4301.03 and 4303.17)

The act allows an organization that has a D-4 liquor permit to sell alcohol for on-premises consumption while it is conducting traditional bingo games. Under continuing law, a D-4 permit allows a private club to sell alcohol to its members for consumption on the premises. Prior law prohibited a club from selling alcohol under its D-4 permit during traditional bingo games.

### **Minors playing traditional bingo**

(R.C. 2915.09)

The act makes a technical correction to clarify the penalty that applies to a charitable organization if it permits a person the organization knows, or should have known, is under 18 to play traditional bingo. Under continuing law, such a violation is a first degree misdemeanor on the first offense and a fourth degree felony on any subsequent offense.

## **Bingo Law enforcement**

(R.C. 2915.08, 2915.081, 2915.082, and 2915.10)

### **Charitable organizations**

The act allows the AG or a law enforcement agency to examine the accounts and records of any officer, agent, trustee, member, or employee of a charitable organization with a bingo license, in addition to examining the charitable organization's accounts and records as permitted under continuing law.

The act specifies that the AG may impose a civil fine on an organization for failure to comply with the Bingo Law or related rules, according to a schedule of fines adopted under the Administrative Procedure Act.

### **Distributors and manufacturers**

The act also permits the AG or a law enforcement agency to do any of the following with respect to a bingo distributor or manufacturer or any officer, agent, trustee, member, or employee of the bingo distributor or manufacturer:

- Investigate the person;
- Examine the person's accounts and records;
- Conduct inspections of the premises where bingo supplies are manufactured or distributed.

Under the act, if a law enforcement agency has reasonable grounds to believe that a bingo distributor or manufacturer or an officer, agent, trustee, member, or employee of the bingo distributor or manufacturer has violated any provision of the chapter of the Revised Code governing gambling, the agency may commence a court action to enforce that chapter, so long as the agency gives the AG written notice of the action.

The act prohibits any person from destroying, altering, concealing, withholding, or denying access to any accounts or records of a bingo distributor or manufacturer that have been requested for examination. And, the act prohibits any person from obstructing, impeding, or interfering with any inspection, audit, or observation of premises where bingo supplies are manufactured or distributed. Whoever violates those prohibitions is guilty of a first degree misdemeanor.

Continuing law gives the AG and law enforcement agencies those powers with respect to charitable organizations that conduct bingo, but not with respect to bingo distributors or manufacturers.

The act also specifies that the AG may impose a civil fine on a distributor or manufacturer for failure to comply with the Bingo Law or related rules, according to a schedule of fines adopted under the Administrative Procedure Act.

## Charitable organizations

(R.C. 1716.21)

The act prohibits a state agency or official from imposing any filing or reporting requirements on a charitable organization that is more stringent, restrictive, or expansive than the requirements explicitly authorized by the Revised Code. This prohibition is not to be construed as repealing or otherwise negating any rule or requirement already in existence. It is also not to be construed as negating or limiting any of the following:

- Any civil or criminal right, claim, or defense that the AG may assert under the Revised Code or common law;
- The authority of the AG to institute and prosecute an action to enforce any provision of the Revised Code the AG is authorized to enforce;
- The independent authority of the AG to protect charitable assets in Ohio.

All of the following are exempt from this prohibition:

- State grants and contracts;
- Fraud investigations;
- Any enforcement action taken against a specific charitable organization;
- Settlement agreements;
- Assurances of discontinuance;
- Court judgments;
- Entities operating under the Ohio Gambling laws.

## Ohio Peace Officer Training Academy

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

The act 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 continuing 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. Under the act, the forfeiture amount that used to be deposited into the Peace Officer Training Commission Fund instead must be deposited into the Ohio Law Enforcement Training Fund. A provision of law, retained by the act, 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>20</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 act 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 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 act 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**

Under the pilot program, 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.

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<sup>20</sup> Ohio Constitution Article XV, Section 6(C)(3)(f).

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

Not later than January 1, 2022, the AG must begin the pilot 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 total cost of the salaries of the officers or troopers who will receive that training in calendar year 2022, as certified by the agency, during the period of the training. The amount paid 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 total cost 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 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 required under R.C. 109.803 that exceeds the amount of the payment.

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

The act 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 act 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, with each having a law enforcement background. The Speaker, the President, and the Governor must make their initial appointments not later than October 30, 2021 (30 days after this provision's effective date).

The Commission must study possible long-term methods for providing state funding to law enforcement agencies for training their peace officers and troopers as 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 that 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 act 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 members 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.

## **Delinquent municipal income tax collection**

(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 act 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>21</sup> The act 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

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<sup>21</sup> 26 U.S.C. 6402(e)(5).

taxes of certain businesses that opt for centralized collection and administration are administered by a state agency – in both cases, the Tax Commissioner.<sup>22</sup>

## **Foreclosure sale reports to the AG**

(R.C. 2329.312)

The act revises requirements concerning the quarterly reports that sheriffs and private selling officers who conduct foreclosure sales of residential property must submit to the AG. Specifically, it adds a requirement that the reports contain specific data that shows whether deadlines applying to the appraisal, the buyer's payment for the property sold at an auction, and the confirmation of sale were met. The reports must also include information as to whether the statutory deadline was met for the sale of vacant and abandoned property.

The act maintains the requirement that the AG make the information submitted in the reports publicly available. However, it removes a requirement that the AG maintain a database with the information submitted in the reports.

## **Public record exemption for certain telephone numbers**

(R.C. 149.43)

The act revises the law that exempts from public records release the telephone numbers of crime victims and witnesses to a crime, and of parties to a motor vehicle accident subject to R.C. 5502.11, that are listed in a law enforcement record or report, unless the telephone numbers are requested by an insurer or insurance agent investigating an insurance claim resulting from a motor vehicle accident.

The act's revisions specify that:

1. The telephone numbers of crime victims (see below) and witnesses to a crime are exempt unless the act's provisions with respect to parties to a motor vehicle accident described in (2) apply;
2. The telephone numbers of parties to a motor vehicle accident subject to R.C. 5502.11 (see below) are exempt until the 30<sup>th</sup> day after the accident's occurrence (the exemption does not apply on and after that 30<sup>th</sup> day); and
3. The requirement that the request for the telephone numbers be made as part of an insurance investigation is repealed.

### **Related provisions**

Unchanged by the act:

1. Under the Crime Victims' Rights Law (R.C. 2930.01, not in the act), "victim" means: (a) a person identified as the victim of a crime or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that

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<sup>22</sup> R.C. Chapters 718 and 5745.



provides the basis for the criminal prosecution or delinquency proceeding and subsequent proceedings to which that law makes reference, or (b) a person who receives injuries as a result of a vehicle, streetcar, trackless trolley, aquatic device, or aircraft accident proximately caused by a violation of a specified nature or a motor vehicle accident proximately caused by a violation of a specified nature and who receives medical treatment of a specified nature.

2. R.C. 5502.11, not in the act, requires every law enforcement agency representing any political subdivision investigating a motor vehicle accident involving a fatality, personal injury, or property damage greater than \$1,000, within five days, to forward a written report of the accident to the Director of Public Safety.

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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, as under former law.

### 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 remedies and recoveries available under law against an entity that is not in compliance with the terms and conditions of a state award for economic development.

### Auditor of State authority

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

#### Auditor responsibilities

The act modifies the statutory description of the Auditor of State's authority to specify the Auditor is the lead public official responsible for the examination, analysis, inspection, and audits of all public offices. Former law, modified by the act, specified that the Auditor was the chief inspector and supervisor of public offices.

#### Employees

Further, the act eliminates the statutory titles of assistant auditors of state, deputy inspector, and deputy supervisor, and eliminates the education and experience qualifications necessary for appointment as an assistant auditor of state. Former law, modified by the act,

required the Auditor of State to appoint not more than six deputy inspectors and supervisors and a clerk. The act also removes the requirement that not more than three deputy inspectors and supervisors were to belong to the same political party. Finally, the act eliminates the requirement that the Auditor was to appoint state examiners to be known as assistant auditors of state. Instead, the act 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 act eliminates the entitlement, of Auditor of State employees, to compensation when called to testify in legal proceedings. Under former law, any employee called to testify in any legal proceedings in regard to any official matter was 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 act 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 act 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 Chief Deputy Auditor of State (Deputy Auditor of State under former law), may perform all the duties of Auditor of State.

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

(R.C. 117.55 and 125.112)

The act requires the Auditor of State, rather than the Attorney General as under former 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 act, the Department of Development (DEV) must send the Auditor a list of state awards for economic development no later than 30 days after the end of the state fiscal year. 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 act, the Auditor of State must publish a report of its reviews and determinations no later than 90 days after receiving the list of state awards from DEV. Formerly, the Attorney General was required annually to submit a report regarding the level of compliance to the General Assembly.

The act 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. Under former law, the Attorney General had to pursue remedies against a noncomplying entity as the Attorney General determined was appropriate, and to the extent the entity had not complied with the terms and conditions.

The act 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 the law governing the Auditor of State.

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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.
- Eliminates the OBM Director's oversight regarding internal agency fund assessments and allocations for certain funds.
- Requires investment earnings of the Budget Stabilization Fund to be credited to the fund.

### Voided income tax refund warrants

(R.C. 126.37)

The act reduces the amount of time by which the OBM Director 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 OBM 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 OBM 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>23</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.

### 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 act eliminates the OBM Director's oversight regarding internal agency fund assessments and allocations. In most cases, the funds modified by the act are assessed an amount to be used by the affected agency for administration purposes. The act permits the affected agency director or superintendent to determine the assessment amount without OBM Director approval. The funds and the entity administering the funds are listed in the table below.

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<sup>23</sup> See R.C. 126.35, not in the act.

Funds modified by the act		
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

## **Budget Stabilization Fund investment earnings**

(R.C. 131.43)

The act requires investment earnings of the Budget Stabilization Fund (known as the Rainy Day Fund) to be credited to the fund.

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## CAPITOL SQUARE REVIEW AND ADVISORY BOARD

- Authorizes the Capitol Square Review and Advisory Board (CSRAB) to enter into an indefinite delivery indefinite quantity contract for the services of an architect or engineer on an on-call, multi-project basis, to advise and consult with CSRAB for a defined contract period, not to exceed two years.

### **Indefinite delivery indefinite quantity contract**

(R.C. 105.41 and 153.013)

The act authorizes the Capitol Square Review and Advisory Board (CSRAB) to enter into an indefinite delivery indefinite quantity contract for the services of an architect or engineer. An indefinite delivery indefinite quantity contract is a contract for an indefinite quantity, within stated limits, of supplies or services that will be delivered by the awarded bidder over a defined contract period.

The act authorizes the executive director of CSRAB, with the Board's approval, to advertise and seek bids for, and award, an indefinite delivery indefinite quantity contract for an architect or engineer on an on-call, multi-project basis, to advise and consult with CSRAB for a defined contract period not to exceed two years. The executive director must do all of the following to enter into an indefinite delivery indefinite quantity contract:

- Prepare bidding documents;
- Establish contract forms;
- Determine contract terms and conditions, including the maximum overall value of the contract, which may include an allowable increase of 5% of the advertised contract value, and the duration of the contract; and
- Take any other action necessary to fulfill the duties and obligations of the executive director.

The act specifies that the requirements set forth in the act prevail in the event of any conflict with any other provision of the Public Improvements Law.

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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, or 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.
- Pushes back, from January 1, 2022, to February 11, 2022, the transition date of regulation of limited liability companies from the existing Limited Liability Company Act (R.C. Chapter 1705) to the new Ohio Revised Limited Liability Company Act (R.C. Chapter 1706).

### 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 responsibility and authority.
- 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 prior law, or to contract with another health district or building department for plumbing inspections 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.

#### 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.



## 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.

## 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

- Authorizes the Division of Real Estate and Professional Licensing to adopt rules with respect to the regulation of manufactured home dealers, brokers, and salespersons.
- Sets a 30-day 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.
- 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.
- 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 authorized fire investigators are 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.

## **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.

#### **Taxes**

- Requires S-1 and S-2 permit holders to pay the 30¢ per-gallon tax, and the additional 2¢ per-gallon tax, on wine used to support the Ohio Grape Industries Fund, but exempts permit holders that manufacture 500,000 gallons of wine or less per year from the 30¢ per-gallon tax.
- Replaces the tax credit for A-1c liquor permit holders (small breweries) for the state beer tax, which applies to the first 9.3 million gallons of annual production, with an exemption for A-1c permit holders that produce up to 9.3 million gallons, and applies the same exemption to S-1 permit holders.

#### **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**

- Generally prohibits a person from knowingly sending or transporting a shipment of wine to a personal consumer unless the person holds an S-1 or S-2 permit or is a fulfillment warehouse.
- Generally prohibits a person from knowingly sending or transporting 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.

### **Repackaging of alcohol**

- Authorizes the repackaging of beer, wine, or mixed beverages, which is the rebundling of containers of those products into new configurations.
- Authorizes the Division of Liquor Control to issue an R permit to specified entities to conduct repackaging.
- Establishes a \$750 permit fee for each R permit location.

### **Serving containers in DORAs**

- Requires qualified liquor permit holders in designated outdoor refreshment areas (DORAs) to serve beer or intoxicating liquor in plastic bottles or other “nonglass” containers, rather than in plastic bottles or other plastic containers as in former law.

### **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.
- Prohibits a to-go mixed beverage sold by a qualified liquor permit holder from exceeding the amount contained in a standard mixed beverage sold by the qualified permit holder for on-premises consumption.

## **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.

## **VII. Self-service storage facilities**

- Allows the sale of personal property in a self-service storage facility for the satisfaction of amounts due the facility owner to take place on the internet.
- Allows notices required to be sent before the sale of personal property kept in self-service storage facilities to be delivered by private delivery service.
- Requires that, if a required notice is sent by certified or first-class mail, then the notice is to also be sent via email.
- Expands the class of persons who may enforce liens under the Self-Service Storage Facility Law to include the sublessor of an entire self-service storage facility as well as agents of facility owners, lessors, and sublessors.
- Expands the costs to which proceeds from the sale of personal property held in a self-service storage facility may be applied to include late fees and expenses incurred to enforce a lien.
- Grants self-service storage facility owners discretion as to whether to rent previously delinquent self-service storage facility space or allow removal of the personal property following payment by a person other than the occupant.

## **I. Division of Securities**

### **Ohio Investor Recovery Fund**

(R.C. 1707.47 and 1707.471)

The act creates the Ohio Investor Recovery Fund (OIRF) for victims of securities fraud who have not received restitution from the perpetrators of the fraud pursuant to 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 act, 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 act 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 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 related documents 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 discovers, 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 act, 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 act 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 act 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 the act's OIRF 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 act 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 (the civil equivalent of theft) an eligible adult's assets and thereby deprive the eligible adult of the ownership, use, benefit, or possession of the assets.

Under the act, 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 either (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 act 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.

## **Ohio Revised Limited Liability Company Act effective date**

(R.C. 1706.83; Sections 610.1165 and 610.1166, amending Sections 4 and 5 of S.B. 276 of the 133<sup>rd</sup> General Assembly)

The act pushes back, from January 1, 2022, to February 11, 2022, the transition date for limited liability company regulation. The existing Limited Liability Company Act will be replaced by the new Ohio Revised Limited Liability Company Act. Limited liability companies are currently regulated under R.C. Chapter 1705. The new Revised Act was enacted by S.B. 276 of the 133<sup>rd</sup> General Assembly.

## **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 prior law, boards of health in city and general health districts were authorized to inspect plumbing in nonresidential buildings, provided they employed a plumbing inspector certified by the Division of Industrial Compliance. Health districts could 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 employed a Division of Industrial

Compliance certified inspector. If the board of health employed a plumbing inspector or contracted for plumbing inspections, the Division of Industrial Compliance was barred from conducting plumbing inspections in that board's territory.

The act 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 act 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 act 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 act, 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.

## **Building inspection fees**

(R.C. 3791.07)

Under continuing law, the Division of Industrial Compliance completes various inspections of plans, industrialized units, and buildings. Prior law allowed the Board of Building Standards to adopt a fee schedule for those inspections. The act 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.

## **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 act restores the requirement that a person obtain a license in order to operate a 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 re-creates 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 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 act requires the Board to issue a license to a person who held an active license to operate historical boilers in public on April 12, 2021 when the requirement for a license ended pursuant to H.B. 442.

## **Manufactured homes**

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

The act 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.

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

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

(R.C. 4781.04)

The act 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.

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

(R.C. 4735.14)

The act 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. Prior law required the notification, but did not specify a deadline.

The act 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 act 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 prior law, the Superintendent could only recommend an ancillary trustee upon the death of a licensed broker or the revocation or suspension of the broker's license.

### **Disposition of license fees**

(R.C. 4735.15)

The act 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 prior law, the State Fire Marshal or another authorized person was required to determine whether property loss from fire and in excess of \$5,000 was caused by arson. The act modifies the determination requirement, providing that the State Fire Marshal or the authorized person must make the determination to the extent practicable and in a manner consistent with accepted standards of investigation.

### **Revolving loan program**

(R.C. 3737.17)

Under the act, 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 act 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. Prior law required 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 former law, small in-state and out-of-state wineries that manufactured less than 250,000 gallons of wine annually were eligible for an S liquor permit. This permit allowed these wineries to sell and ship their wine directly to consumers. Wineries that were not eligible for or that did not have an S permit had to first sell their wine to a wholesale distributor. The distributor then sold the wine to a retailer, who then sold to consumers. A brand owner and U.S. importer of beer or wine was also eligible for an S permit and could sell the beer or wine directly to consumers.

The act 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 act 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, 4303.332, 4303.333, and 4303.99)

The act 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 act 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 act 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.

### **Ohio grape industries tax**

(R.C. 4301.43, 4301.432, 4303.33, and 4303.333)

The act requires an S-1 and S-2 liquor permit holder to pay the 30¢ per-gallon tax on wine (subject to the exemption below) and the additional 2¢ per-gallon tax on wine that is used to support the Ohio Grape Industries Fund. Under former law, an S liquor permit holder had to pay the 2¢ per-gallon tax, but was not required to pay the 30¢ per-gallon tax.

The act exempts S-1 and S-2 permit holders that manufacture 500,000 gallons of wine or less per year from the 30¢ per-gallon tax. Formerly, the exemption applied only to Ohio-based wine manufacturers that manufactured 500,000 gallons of wine or less per year.

### **Beer tax exemption**

(R.C. 4303.332)

The act eliminates the tax credit for small breweries (A-1c liquor permit holders) for the state beer tax. The tax credit applied to the first 9.3 million gallons of beer sold or distributed in Ohio by an A-1c permit holder (which is permitted to produce up to 31 million gallons of beer annually). Instead, the act establishes a tax exemption from the beer tax for A-1c permit holders that produce up to 9.3 million gallons per calendar year. Thus, the tax exemption does not apply to all A-1c permit holders as did the former tax credit. Finally, it also applies the exemption to an S-1 permit holder that produces up to 9.3 million gallons of beer annually.

### **Wine fulfillment warehouse**

(R.C. 4303.234)

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

Under continuing 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 act establishes both of the following prohibitions regarding the illegal shipment of beer or wine:

1. It prohibits a person from knowingly sending or transporting 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 wine is delivered by specified permit holders as authorized under continuing law;

- c. The person holds an S-1 or S-2 permit; or
  - d. The person is a fulfillment warehouse.
2. It prohibits a person from knowingly sending or transporting a shipment of beer to a personal consumer without an S-1 permit unless:
- a. The beer is a to-go serving of wine delivered by a retail liquor permit holder;
  - b. The beer is delivered by specified permit holders as authorized under continuing law.
- 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 act 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 act does not establish a penalty for violators of this prohibition.

### **Repackaging of alcohol**

(R.C. 4303.237)

The act authorizes the repackaging of beer, wine, or mixed beverages, which is the rebundling of containers of those products into new container configurations or with other promotional merchandise. Either of the following may engage in repackaging, provided an R liquor permit, created by the act, is obtained from the Division of Liquor Control:

1. A manufacturer or supplier of beer, wine, or mixed beverages; or
2. An entity operating under a written authorization from the manufacturer or supplier to operate a repackaging facility.

The act allows an R permit holder to deliver repackaged products only to the following:

1. The manufacturer or supplier that supplied the beer, wine, or mixed beverages to the R permit holder for repackaging purposes;
2. A wholesale distributor (B liquor permit holder) that is authorized by the beer, wine, or mixed beverages manufacturer or supplier to sell or distribute the repackaged products in Ohio; or
3. An entity outside Ohio if so authorized by the beer, wine, or mixed beverages manufacturer or supplier.

An R permit holder must ensure all of the following:

1. That repackaged products delivered to a B permit holder have been registered with the Division;
2. It does not deliver more repackaged products to a B permit holder than the B permit holder specifically ordered; and

3. That a territory designation form has been filed with the Division for the products.

The act provides that title to repackaged products in the possession of an R permit holder remains with the manufacturer or supplier for whom repackaging is being conducted. Further, the Liquor Control Commission must revoke an R permit if the R permit holder possesses or delivers beer, wine, or mixed beverages in violation of the act. An R permit holder cannot have any financial interest in any other permit authorized under the liquor control laws, except that a manufacturer may hold a manufacturing liquor permit. Finally, the fee for the R permit is \$750 for each location.

### **Serving containers in DORAs**

(R.C. 4301.82)

The act requires qualified liquor permit holders in designated outdoor refreshment areas (DORAs) to serve beer or intoxicating liquor in plastic bottles or other “nonglass” containers. Former law exclusively required the use of plastic bottles or other plastic containers.

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

(R.C. 4303.17)

The act 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.

### **To-go cocktails**

(R.C. 4303.185)

The act prohibits a to-go mixed beverage sold by a liquor permit holder from exceeding the amount contained in a standard mixed beverage sold by the qualified permit holder for on-premises consumption. Current law allows bars, restaurants, breweries, wineries, and microdistilleries to sell to-go cocktails to a personal consumer for off-premises consumption, including via delivery to the location of the personal consumer. The to-go cocktails are sold by the individual drink in sealed, closed containers.

## **VI. Division of Financial Institutions**

### **Residential mortgage lending fee increases**

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

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

Type of fee	Prior 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

## VII. Self-service storage facility

(R.C. 5322.01, 5322.02, and 5322.03)

Continuing law defines a “**self-service storage facility**,” in general terms, as real property that is designed and used only to rent individual storage space to occupants whose access is limited to storing or removing personal property.

The act modifies the procedures self-service storage facility owners may use, primarily through liens the law places on personal property stored at a facility, when occupants default on their obligations.

### Self-service storage facility liens

Continuing law grants self-service storage facility owners liens on personal property kept in the facilities pursuant to rental agreements. The act includes late fees and expenses incurred in the enforcement of the lien as expenses that the liens secure. Under continuing law, the liens secure expenses for rent, labor, or other charges specified in the rental agreement that have become due, and for expenses necessary for the preservation of the property or reasonably incurred in the disposition of the property.

#### Lien enforcement

A self-service storage facility owner who wishes to enforce a lien on personal property kept in the facility must follow certain procedures established by law. The requirements are mandatory and exclusive, as continuing law states that an owner’s lien can only be enforced pursuant to the Self-Service Storage Facility Law.

The act modifies those procedures by changing requirements for the sale itself, changing who qualifies as an “owner” and thus who may enforce the lien, and several aspects of the law’s notice and advertising requirements.

#### Sale requirements

Self-service storage facility liens are enforced through the sale of personal property held in the facilities. Before a sale may take place, notice and advertising procedures must be followed, but those procedures are affected by the act’s changes. Specifically, continuing law,



amended in part by the act, requires the sale of personal property to be held at the self-service storage facility or at the nearest suitable place to the facility, so long as the address of that place is included on the required notice.

The act adds the internet to the allowable sale locations and also makes the listed sale locations permissive rather than exclusive.

### **“Owner” – who may enforce the lien**

Under continuing law, revised in part by the act, an “owner” is a person who receives rent from occupants pursuant to rental agreements in the person’s capacity as the owner of the self-service storage facility or the lessor of the entire facility. The act expands who qualifies as an owner to also include operators and sublessors of an entire facility, as well as the agents of an owner, operator, lessor, or sublessor who are authorized to manage a facility or receive rent from occupants pursuant to rental agreements.

### **Required notice and advertisement**

An owner seeking to enforce a lien through the sale of personal property must provide notice to the following persons under continuing law:

- All persons who claim an interest in the personal property and who the owner has actual knowledge of;
- All persons who hold liens on motor vehicles or watercraft amongst the property; and
- All persons who have filed security agreements, with relevant officials, in the name of the occupant showing a security interest in the property.

The act modifies the contents of the notice and expands the manner in which notice may be delivered.

Under continuing law, revised in part by the act, the notice must include, among other things unaffected by the act:

- A demand for payment within a specified time, not less than ten days after delivery of the notice;
- A conspicuous statement that unless the claim is paid, the personal property will be advertised for sale and sold by auction at a specified time and place;
- The address of the place where the sale will take place if it will be held at a location other than the self-service storage facility; and
- The name of the towing company that will presumably tow the vehicle.

The act removes the requirement that a specified time and place for the auction be listed in every notice, and clarifies that if the sale is to be held at a place other than the self-service storage facility, the street or internet address be provided, rather than simply an address.

With respect to delivery methods, continuing law requires the notice to be delivered in person, sent by certified mail, or sent by first-class mail with a certificate of mailing to the last known address of each person who must be given notice. The act also permits notice to be

made by email or private delivery service and makes related modifications to the circumstances under which notice will be presumed to be delivered. Additionally, the act requires that if the notice is sent by email, then the notice must also be sent via either certified or first-class mail to the last known address of each person who is required to be notified.

Under prior law, notice was presumed delivered if sent by first-class mail with a certificate of mailing when it was deposited with the U.S. Postal Service and properly addressed with proper prepaid postage. The act specifies that notices are “deemed” delivered when sent by U.S. Postal Service, private delivery service, or email so long as certain conditions are met. For U.S. Postal Service and private delivery service, the notice is deemed delivered when deposited with the service so long as it is sent with a verification of mailing, properly addressed, and the postage is prepaid. For email, the notice is deemed delivered when it is properly addressed and sent.

After the expiration of the time given in the notice, continuing law requires the owner to advertise the sale, and include all of the following in the advertisements:

- A general description of the personal property;
- The name and last known address of the occupant;
- The self-service storage facility’s address; and
- The time, place, and manner of the sale.

The act specifies that it is the self-service storage facility’s street address, rather than an unspecified type of address, that must be included in the advertisement alongside the time, place, and manner of the sale.

Continuing law, revised by the act, states that an advertisement will be deemed commercially reasonable if at least three independent bidders attend the sale at the time and place advertised. The act maintains the three independent bidders requirement, but allows their registration for, viewing of, or attendance at the sale to demonstrate commercial reasonableness.

### **Payment by others**

Continuing law allows any person who has a legal interest or a security interest in, or who holds a lien against, personal property other than a motor vehicle or watercraft, to pay the self-service storage facility owner’s lien and reasonable expenses and remove the personal property from the facility. Continuing law, revised in part by the act, also states that, upon receipt of payment from a person other than the occupant, the owner must either allow the personal property to be removed or enter into a new rental agreement for the storage of the personal property. The act modifies this provision to state that the owner may, at his or her sole discretion, allow the person to enter into a new rental agreement or permit the person to remove the personal property from the self-service storage facility.

## **After property is removed**

After all personal property is removed from a self-service storage facility pursuant to the law (e.g., through sale at auction or removal by another person with an interest in the property), provision is made for the vacated space. Under prior law, any person could enter into a rental agreement for the storage for personal property with the owner, and the owner had no obligation to the prior occupant of the space in the self-service storage facility. Prior law also stated that, before entering into a new rental agreement, the facility owner had to have any motor vehicle or watercraft towed from the storage space.

The act revises these provisions to state that the owner may enter into a rental agreement with a new occupant, rather than that any person may enter into a rental agreement with the owner. It also eliminates the requirement that the owner first have any motor vehicle or watercraft towed from the storage space, though that requirement may have been redundant as the law only made provision for new rental agreements once all personal property was removed.

## **Delivery of excess funds**

Continuing law requires self-service storage facility owners to deliver the balance of any funds obtained from the sale of personal property under a lien to the occupant whose property was sold. Prior law stated that the balance was to be sent by certified mail to the occupant's last known address. The act clarifies that the balance is to be sent to the occupant's last known mailing address, and also allows it to be sent by first class mail or private delivery service with a certificate or verification of mailing.

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## **CONTROLLING BOARD**

- Would have increased, effective January 1, 2022, the number of days that the Controlling Board President must publish the Board’s meeting agenda before each meeting, from seven to 14 (VETOED).

### **Agenda publication deadline (VETOED)**

(R.C. 127.13; Section 812.10)

The Governor vetoed a provision that would have changed the deadline for the Controlling Board President to publish the Board’s meeting agenda from seven days to 14 days before the scheduled meeting. The change would have been effective January 1, 2022.

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## COSMETOLOGY AND BARBER BOARD

- Allows an individual who is licensed to provide services under the Cosmetology Law or Barber Law to provide those services on premises other than a licensed salon or a licensed barber shop for limited events, only if the services provided are incidental to the licensee's practice in a salon or barber shop.
- Prohibits the State Cosmetology and Barber Board from requiring an individual who provides incidental services as described above to obtain an additional license or permit to provide those services.
- Changes the requirement that the Board member who was required to be employed as a barber instead hold a current, valid barber or barber teacher license at the time of appointment, but specifies that a Board member's term is not affected if the member is serving on September 30, 2021 (the provision's effective date).
- Eliminates a requirement that an individual who does not pass the barber teacher license examination wait one year and remain employed as an assistant barber teacher before applying to retake the examination.

### Cosmetology or barber services at limited events

(R.C. 4713.351)

The act allows, notwithstanding any provision of the Cosmetology Law<sup>24</sup> or Barber Law,<sup>25</sup> or the rules adopted under either law, to the contrary, an individual who is licensed to provide services under either law to provide those services on premises other than a licensed salon or a licensed barber shop for limited events, only if the services provided are incidental to the licensee's practice in a salon or barber shop. A "limited event" includes, but is not limited to, the following:

1. A charity event;
2. On-location wedding or event preparation;
3. A bridal or hair show;
4. An on-location spa event;
5. An on-location event at a location such as a nursing home, hospital, or other care facility that lacks an on-site salon or barber shop;
6. An on-location event at the private residence of an individual who is unable to visit a fixed location salon or barber shop.

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<sup>24</sup> R.C. Chapter 4713.

<sup>25</sup> R.C. Chapter 4709.

The act prohibits the State Cosmetology and Barber Board from requiring an individual who provides incidental services as described above to obtain an additional license or permit to provide those services. An administrative rule adopted by the Board allowed the Board to issue a temporary event salon license to a licensee who wishes to provide services on premises other than a fixed location.<sup>26</sup>

## **Board membership**

(R.C. 4713.02; Section 747.10)

The act alters the qualifications for Board membership by requiring that one of the two barber members hold a current, valid barber or barber teacher license at the time of appointment and have been licensed as a barber or barber teacher in Ohio for at least five years immediately before appointment. Former law required that member to have been employed as a barber and have been licensed in Ohio for at least five years immediately before appointment. The act maintains the requirement that the other barber member of the Board be an employer barber and have been licensed as a barber in Ohio for at least the past five years. The act states that this change in membership does not affect the terms of the Board's members who are serving on September 30, 2021 (the provision's effective date).

## **Barber teacher examinations**

(R.C. 4709.10)

The act eliminates the requirement that an individual who does not pass the barber teacher license examination must wait one year and remain employed as an assistant barber teacher before applying to retake the examination.

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<sup>26</sup> O.A.C. 4713-8-09.

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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)

Continuing 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 act 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 (DEV) and Director of Development, respectively.

### **Brownfield and demolition programs**

- Creates the Brownfield Remediation Program to award grants for the remediation of brownfield sites and appropriates \$350 million to the program;
- Creates the Building Demolition and Site Revitalization Program to award grants for the demolition of commercial and residential buildings and revitalization of surrounding properties on sites that are not brownfields and appropriates \$150 million to the program.

### **Broadband Expansion Program Authority changes**

- Limits to the four-year period of 2022 through 2025 the law granting appointed members of the Broadband Expansion Program Authority a monthly stipend that qualifies each member for one year of retirement service credit (but not health care coverage) under the Ohio Public Employees Retirement System (OPERS).
- Repeals the law that allowed up to two Authority members at a time to attend meetings electronically.

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

- Transfers the administration of the minority business enterprise program (MBE), the encouraging diversity, growth, and equity program (EDGE), the women-owned business enterprise program (WBE), the veteran-friendly business procurement program (VBE), and the contractor compliance program from the Department of Administrative Services (DAS) to DEV.
- Removes the Equal Opportunity Employment Coordinator from being the head of a division, and instead requires the Coordinator to report to a position designated 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 DEV.

### **Job creation and retention tax credits**

- 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.



- Requires the state to prioritize job retention tax credit (JRTC) applications that meet certain criteria.

## **Megaproject tax incentives**

- Authorizes the following tax incentives for operators and certain suppliers of a “megaproject” (i.e., a development project that includes at least \$1 billion in investment or creates at least \$75 million in Ohio payroll, both indexed to inflation):
  - Lengthens the maximum term of the JCTC from 15 years to 30 years.
  - Permits the assignment of all or a portion of a megaproject supplier’s JCTC to the megaproject’s operator.
  - Excludes from commercial activity tax (CAT) the gross receipts of a megaproject supplier from sales to a megaproject operator.
  - Lengthens the maximum term of local community reinvestment area (CRA) or enterprise zone (EZ) property tax exemptions to 30 years.

## **Rural industrial park loan eligibility**

- Expands eligibility for loans under the Rural Industrial Park Loan Program to include projects located in any rural area (rather than only economically distressed or labor surplus areas), but specifies that all counties eligible for the program under prior law continue to be eligible.
- Specifies that a rural area is any Ohio county that is not designated as part of a Metropolitan Statistical Area by the U.S. Office of Budget and Management.

## **Rural growth investment credit**

- Authorizes an additional \$45 million in tax credits for insurance companies that make loans to or investments in special purpose rural business growth funds which must loan or invest the funds in certain businesses located in less-populated counties.
- Requires DEV to begin accepting applications from prospective rural business growth funds beginning November 1, 2021.
- Modifies the investment criteria for the new (“program two”) credit allocation as follows:
  - Allows for investment in businesses with fewer Ohio employees or less Ohio payroll if the business is headquartered in a county bordering another state.
  - Increases by one year the time within which a rural business growth fund must fully loan or invest its eligible investment authority and, consequently, decreases by one year the time for which the fund must maintain those loans or investments.
  - Requires 25% of a rural business growth fund’s loans or investments to be in businesses principally located in a county having a population no greater than

- 75,000, and 75% in businesses principally located in a county having a population no greater than 150,000.
- Adjusts the amount a rural business growth fund may invest in a single business.
  - Stipulates the following for all rural business growth funds, including those certified as part of the original (“program one”) credit allocation:
    - The 10% portion of a rural business growth fund’s eligible investment authority that must consist of contributions of the fund’s affiliates may be derived from either direct or indirect loans or investments.
    - Amounts returned to a rural business growth fund and then reinvested in the same business are considered investments in a new business for the purposes of the investment requirements associated with the tax credit.
    - The aggregate amount invested by all rural business growth funds in the same business, including amounts reinvested following return or repayment, must not exceed \$15 million.

### **Transformational mixed use development (TMUD) tax credit**

- Extends by two years the sunset date after which the Tax Credit Authority (TCA) is prohibited from certifying new transformational mixed use development (TMUD) projects, until June 30, 2025.
- Authorizes the TCA to preliminarily approve up to \$100 million in tax credits to property owners and investors in TMUD projects in each of FY 2024 and 2025 (the same annual cap that applied under prior law to FY 2020 to 2022).

### **Film and theater tax credit**

- Revokes eligibility of production contractors (i.e., persons other than a production company that are involved in the production of a motion picture) for the film and theater tax credit.

### **Meat processing plant grants**

- Requires the DEV Director to establish a grant program for meat processing plants, including prescribing the grant application form.
- Specifies that a meat processing plant is a facility that is located in Ohio, was in operation as of July 1, 2021, and provides processing services for livestock and poultry producers.
- Authorizes the owner or operator of a meat processing plant to apply to the Director for a grant and, after receipt of the grant application, requires the Director to review the application and score it based on specified criteria, including project readiness.
- Prohibits the Director from considering certain expenditures for a grant, including improvements to personal residences, nonfarm commercial property, and any other nonfarm structures.

- Prohibits the Director from awarding a grant of more than \$250,000.

## **Ohio Aerospace and Aviation Technology Committee**

- Requires the Ohio Aerospace and Aviation Technology Committee to select its chairperson from among its legislative members.

## **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 act renames the Development Services Agency (DSA) as the Department of Development (DEV). Similarly, the Director of Development Services is retitled 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 act does not make the change uniformly throughout the Revised Code. Instead, the change is reflected in several sections addressing DEV's operations, and the act directs that references to DSA and its Director throughout the Revised Code mean the renamed DEV and its Director.

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

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

## **Brownfield and demolition programs**

(R.C. 122.65, 122.6511, and 122.6512; Sections 259.10, 259.30, 512.30 and 512.240)

The act creates two programs in DEV to revitalize distressed properties:

- The Brownfield Remediation Program to award grants for the remediation of brownfield sites;
- The Building Demolition and Site Revitalization Program to award grants for the demolition of commercial and residential buildings and revitalization of surrounding properties on sites that are not brownfields.

The act uses prior law's definitions of "**brownfield**" and "**remediation.**" The former is an abandoned, idled, or under-used industrial, commercial, or institutional property where expansion or redevelopment is complicated by known or potential releases of hazardous substances or petroleum. The latter means any action to contain, remove, or dispose of hazardous substances or petroleum at a brownfield.

## **Program rules and initiation**

The DEV Director is required to adopt rules for both programs under the Administrative Procedure Act. The rules must include provisions for determining project and project sponsor eligibility, program administration, and any other provisions the Director finds necessary. The Director must also ensure that both programs are operational and accepting proposals for grants by December 29, 2021.

## **Program funding and allocation**

The act creates a fund for each program, the Brownfield Remediation Fund and the Building Demolition and Site Revitalization Fund, respectively. Each fund consists of moneys appropriated to it by the General Assembly, and any investment earnings on the funds are to be credited back to them. For FY 2022, the act appropriates \$350,000,000 to the Brownfield Remediation Fund and \$150,000,000 to the Building Demolition and Site Revitalization Fund. Any unexpended and unencumbered amounts in the funds at the end of FY 2022 are reappropriated by the act for the same purposes in FY 2023.

The act requires the DEV Director to reserve a portion of any funds appropriated to either program for projects in each Ohio county. The reservations are effective for one calendar year after an appropriation (until June 30, 2022, for the FY 2022 appropriation). The specific reservation requirements are \$1,000,000 per county for the Brownfield Remediation Program, and \$500,000 per county for the Building Demolition and Site Revitalization Program. If an appropriation is insufficient to reserve those amounts, a proportionate amount is to be reserved. After a calendar year passes from the date of an appropriation, the reserved funds lose their reserved status. Those funds, and any other unreserved funds are then available for projects anywhere in the state and awarded on a first-come, first-served basis. Grants awarded from unreserved funds are limited to 75% of a project's total cost.

The Director is permitted to use 2.5% of the funds appropriated to each program in FY 2022, and any amounts reappropriated to FY 2023, to operate the programs.

## **Broadband Expansion Program Authority changes**

(R.C. 122.403; repealed R.C. 122.404)

### **Authority members' stipend**

The act amends the Broadband Expansion Program Authority law established under [H.B. 2 of the 134<sup>th</sup> General Assembly](#) (which took effect May 17, 2021) by limiting to a four-year period (January 1, 2022, to December 31, 2025) the provision granting the Authority's three appointed members a monthly stipend to qualify each for one year of Ohio Public Employees Retirement System (OPERS) retirement service credit for each year of service as an Authority member. DEV remains responsible for paying the stipends.

As established in H.B. 2, the Authority has five members: the DEV 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. The appointed members serve four-year terms and may be reappointed.

Under continuing law, all members receive reimbursement for their necessary and actual expenses incurred in performing Authority business, and DEV is responsible for paying all reimbursements. The act adds the further specification that DEV must pay all reimbursements for *meals and expenses*.

### **Attending meetings remotely**

The act repeals the law that allowed members to attend Authority meetings by electronic communication. The law required that (1) at least three members attended the meeting in person at the place where the meeting was conducted, (2) the electronic communication permitted simultaneous communication among all Authority members who attended electronically and in person, and (3) all votes were taken by roll call.

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

(R.C. 9.47, 121.07, 122.92, 125.111, 126.021, and 153.59; with conforming changes in numerous other R.C. sections; Sections 518.10 to 518.16)

On July 1, 2021, the act transfers the responsibility for administering certain programs from the Department of Administrative Services (DAS) and the Equal Opportunity Employment Coordinator to DEV. These programs are the minority business enterprise (MBE) program, the encouraging diversity, growth, and equity (EDGE) program, the women-owned business enterprise program (WBE), the veteran-friendly business procurement program (VBE), and the contractor compliance program. The first four of these programs assist business enterprises owned by certain racial minorities, economically and socially disadvantaged individuals, and women, as well as “veteran-friendly businesses” that meet certain benchmarks related to veteran or active military ownership or employment. Businesses certified under any of these programs are eligible for contract assistance, financial and bonding assistance, and management and technical assistance provided by the state. In addition, state agencies are required to set aside a certain amount of their contracts each year for MBEs. Businesses certified through the EDGE and VBE programs are also afforded certain preferences in competing for state contracts.

The contractor compliance program refers to the programs under which a person desiring to bid on a public improvements contract under R.C. Chapter 153 (public improvements) or 5525 (ODOT construction contracts) may apply to certify that the person is compliant with state and federal affirmative action programs in order to be eligible for the contract, and under which all contractors from whom the state makes purchases are required to have an affirmative action plan on file with the state. These affirmative action programs include the state’s requirement that purchase agreements only be made with contractors with written affirmative action policies. A similar requirement exists for capital improvement projects.

The act also changes the role of the Equal Opportunity Employment Coordinator, an office within DAS.<sup>27</sup> Under prior law, the Coordinator was the head of a division within DAS. The act specifies that the Coordinator is no longer the head of a division, instead reporting to a position determined by the DAS Director.

The act 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 DEV Director or DEV, as appropriate. When the Equal Employment Coordinator, the DAS Director, 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 act exempts the transfer of employees from Ohio's public employees' collective bargaining law. 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 act 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 act 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 act requires the OBM Director to make budget and accounting changes made necessary by the transfer.

The act 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, of the MBE, EDGE, WBE, and VBE programs, including data comparing the efficiency of the programs under DAS versus DEV. The report must include data, to the extent it is available, on the number of businesses certified, the length of time 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 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

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<sup>27</sup> R.C. 121.04, not in the act.

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 act.

Finally, the act 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 act clarifies that the responsibility for oversight of the diesel emissions reduction grant program and several tax credits, including the film and theater credit, small business investment credit, and opportunity zone fund investment credit, rests with DEV, not the Minority Development Financing Advisory Board. These programs and credits, were administered by DEV under prior law, but certain erroneous cross references suggested that the Board had that responsibility.

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

## **Job creation and retention tax credit**

(R.C. 122.17 and 122.171)

The act makes two changes to the job creation and retention tax credits. With respect to the job creation tax credit (JCTC), the act allows employers, even those currently in a tax credit agreement, to count work-from-home employees in computing the JCTC credit amount and verifying its compliance with the agreement. With respect to the job retention tax credit (JRTC), the act requires the Tax Credit Authority (TCA) and the DEV Director to prioritize credit applications that meet certain criteria.

## **Background**

Under continuing law, the TCA is authorized to enter into JCTC and JRTC agreements with employers to foster job creation or retention and capital investment in the state. The amount of the credit equals an agreed-upon percentage of the amount by which the employer's "Ohio employee payroll" (i.e., the compensation paid by the employer and used in computing the employer's tax withholding obligations) exceeds the employer's "baseline payroll" (i.e., Ohio employee payroll for the 12 months preceding the tax credit agreement). The credits may be claimed against the 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.



## **JCTC and 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.

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

## **Priority of JRTC applications**

The act requires the TCA and DEV Director, when recommending and approving JRTC applications, to prioritize applications that meet one or more of the following criteria:

- The applicant has not received a JRTC or JCTC for a project at the same location within the preceding five years;
- The applicant is not currently receiving a JRTC or JCTC for any other project;
- The applicant's facility has been operating at the proposed project site for the preceding ten years;
- The project will involve significant upgrades, rather than only routine maintenance, such as an increase in capacity of a facility, new product development, or technology upgrades or other facility modernization;
- The applicant intends to use materials and equipment sourced from Ohio businesses in the project when possible.

The TCA and DEV Director must give greater priority to applications that meet more of the criteria.

Under continuing law, a JRTC application is submitted to the TCA, which forwards the application to the DEV Director, OBM Director, Tax Commissioner, and, if the applicant is an insurance company, Superintendent of Insurance to make a determination on the economic impact of the proposed project. The DEV Director submits recommendations to the TCA, which then makes the final determination of which projects to award a JRTC. The act's criteria must be considered in both the DEV Director's recommendations and the TCA's final decision.



## Megaproject tax incentives

(R.C. 122.17, 3735.65, 3735.67, 3735.671, 5709.61, 5709.62, 5709.63, 5709.631, 5709.632, 5751.01, 5751.052, and 5751.091)

The act authorizes several special tax incentives for operators and certain suppliers of a “megaproject,” i.e., a large-scale development that meets certain investment or payroll thresholds. Specifically, the act (1) increases the maximum number of years, from 15 to 30, over which the operator or supplier may receive a JCTC, (2) authorizes a megaproject supplier’s JCTC to be wholly or partially allocated to the megaproject’s operator, (3) authorizes a megaproject supplier, in calculating its CAT liability, to exclude its gross receipts from sales to a megaproject operator, and (4) authorizes local governments to grant a 30-year community reinvestment area (CRA) or enterprise zone (EZ) property tax exemption to a megaproject or property owned by a megaproject supplier.

### Qualifying projects and suppliers

Before a business may qualify for any of these enhanced incentives, it must either operate or sell tangible personal property to a “megaproject.” A megaproject is a development project that satisfies all of the following conditions:

1. The operator must compensate the project’s employees at 300% of the federal minimum wage or more. (The federal minimum wage is currently \$7.25 per hour for nonexempt employees, so the wage threshold equals \$21.75 per hour.) The wage threshold is calculated exclusive of employee benefits and must be met at the time the project is approved for a JCTC (see “**Job Creation Tax Credit**,” below).

2. The operator must either make at least \$1 billion in fixed-asset investments in the project or create at least \$75 million in annual Ohio employee payroll (i.e., payroll subject to Ohio income tax) at the project.

3. If the project qualifies on the basis of Ohio employee payroll, the operator must maintain at least \$75 million in annual payroll at the project throughout the term of the JCTC (see “**Maximum term**,” below).

4. The project requires “unique sites, extremely robust utility service, and a technically skilled workforce.”

In addition to the megaproject’s operator, certain suppliers of a megaproject are eligible for the act’s incentives (referred to in this analysis as a “qualifying megaproject supplier”). Specifically, any business that sells tangible personal property may qualify for the incentives if it satisfies both of the following requirements:

1. The business makes at least \$100 million in fixed-asset investments in Ohio;

2. The business creates at least \$10 million in annual Ohio employee payroll and maintains that level of payroll throughout the term of the JCTC (see “**Maximum term**,” below).

Beginning in 2025, and every fifth following year, the Tax Commissioner is required to index for inflation the fixed-asset investment thresholds and the Ohio employee payroll

thresholds required for a project or supplier to qualify as a megaproject and megaproject supplier, respectively. Each new threshold amount is calculated by multiplying the current threshold by the percentage increase, if any, in the gross domestic product (GDP) over the preceding five years and adding that result to the current threshold. The Commissioner must certify the new threshold amounts to the DEV Director and the TCA, which administer the megaproject incentives.

## **Job Creation Tax Credit**

### **Maximum term**

A megaproject operator or qualifying megaproject supplier must be approved by the TCA to receive a JCTC before the operator or supplier may qualify for the act's other incentives. The act increases the maximum number of years that a JCTC may be awarded from 15 to 30 years for a business that is a megaproject operator or qualifying megaproject supplier. As a condition of continuing to receive annual compliance certificates (i.e., tax credit certificates issued following the DEV Director's determination that the project is in compliance with the JCTC agreement) during the term of the JCTC, the act specifically requires the operator or supplier to continue to meet the megaproject qualifications, described above. If those qualifications are not met, the DEV Director is required to notify the Commissioner, presumably to assist the Commissioner in determining whether a megaproject supplier is eligible for the act's CAT exclusion (see "**Commercial activity tax exclusion**," below). As with other noncompliant JCTC projects, the TCA may reduce the term or amount of a noncompliant megaproject operator's or supplier's JCTC or may require the operator or supplier to repay credits already claimed.

### **Allocation of supplier's JCTC**

If a megaproject supplier is awarded a JCTC, the act authorizes the JCTC agreement to allocate all or a portion of the supplier's credit to the operator of the megaproject to which the supplier sells tangible personal property. The DEV Director is required to issue annual compliance certificates to any operator allocated a portion of a supplier's credit in this manner.

### **Commercial activity tax (CAT) exclusion**

Continuing law imposes the CAT based on a business's taxable gross receipts from sales in Ohio. CAT is remitted on an annual or quarterly basis (referred to as a "tax period") depending on the amount of taxable gross receipts. The act authorizes a megaproject supplier to exclude, in calculating the supplier's taxable gross receipts, gross receipts from the sale of tangible personal property to a megaproject operator, but only if the supplier has been awarded a JCTC and holds a certificate issued by the Tax Commissioner (referred to in this analysis as a "CAT exclusion certificate").

For a megaproject supplier to obtain a CAT exclusion certificate, the megaproject's operator must first file with the Tax Commissioner, by October 1 of each year, a list of megaproject suppliers the operator anticipates will sell tangible personal property to the operator during the following calendar year. The list must include the name, address, and federal tax identification number of each megaproject supplier. The Commissioner will then issue a CAT exclusion certificate to the megaproject operator and to each supplier on that list. If

the legal name or structure of any supplier on that list changes, the operator must, within 60 days of becoming aware of the change, notify the Commissioner, who will issue updated CAT exclusion certificates to the operator and to every supplier. These certificates must be maintained for four years from the date they are issued.

If a megaproject supplier improperly excludes amounts in calculating the supplier's taxable gross receipts for any tax period in which it is not eligible for the exclusion for the entire period, a recoupment charge is imposed on the supplier equal to 0.26% (the general CAT rate) of the supplier's taxable gross receipts received from selling tangible personal property to the megaproject operator during that tax period. A megaproject supplier that is assessed such a charge for three consecutive calendar years is prohibited from claiming the CAT exclusion for any future year.

### **Property tax exemptions**

The act authorizes counties and municipal corporations to grant up to a 30-year EZ or CRA property tax exemption to the site of a megaproject or a site owned and operated by a qualifying megaproject supplier (referred to as a "qualifying site"), provided the megaproject operator or supplier, respectively, has been awarded a JCTC. EZ and CRA exemptions are generally limited to no more than a 15-year term. If either exemption is granted to a qualifying site, the property owner is required to annually certify to the county or municipal corporation that the megaproject operator or supplier holds a JCTC annual compliance certificate. If the operator or supplier does not hold such a certificate, the county or municipal corporation may terminate the exemption beginning with the tax year in which the termination decision is made. The act's property tax exemptions are subject to the approval of the school board of the affected school district if and to the extent such approval is required for other EZ or CRA projects, as described in the summaries of those exemption statutes, below.

### **Summary of enterprise zones and community reinvestment areas**

Under continuing law, counties and municipal corporations may designate areas within the county or municipal corporation as an EZ or a CRA. After an EZ designation is approved by the DEV Director, the county or municipal corporation may then enter into enterprise zone agreements with businesses for the purpose of fostering economic development in the zone.

In contrast, a CRA is more generally established to encourage new construction or the remodeling of existing structures. Similar to an EZ, after a CRA is approved by the DEV Director, the county or municipal corporation may enter into an agreement with a business exempting the increased value of new construction or remodeling of a commercial or industrial structure in the CRA in exchange for the creation or retention of jobs at the structure. (Unlike an EZ, residential construction and remodeling may also qualify for a CRA exemption, but no agreement is required for residential exemptions.)

### **Rural industrial park loan eligibility**

(R.C. 122.23)

The act expands eligibility for loans under the Rural Industrial Park Loan Program to include projects located in any rural area, meaning any Ohio county that is not designated as

part of a metropolitan statistical area by the U.S. Office of Management and Budget. However, it stipulates that any county that was eligible for the program under prior law continues to be eligible under the act.

Under the program, the DEV Director may make loans and loan guarantees for the development and improvement of industrial parks in economically distressed areas or areas with a labor surplus as designated by the Director. The Director must use the Rural Industrial Park Loan Fund to support the program.

## **Rural growth investment credit**

(R.C. 122.15, 122.151, 122.153, 122.154, and 122.156; Section 757.60)

The act authorizes an additional \$45 million in tax credits for insurance companies that make loans to or investments in special purpose “rural business growth funds,” which are investment funds that meet certain eligibility criteria and are certified by DEV to provide capital for businesses with substantial operations in rural areas (referred to as “rural business concerns”). It also modifies the investment benchmarks and other requirements upon which the credit is contingent. Some of the act’s changes apply only to rural business growth funds certified after September 30, 2021 (“program two” funds). Other changes apply to all funds, including those certified before that date (“program one” funds).

### **Background**

Rural growth investment credits may be claimed against the state’s taxes on foreign and domestic insurance companies. The amount of the credit equals 100% of the insurance company’s credit-eligible capital contribution to a rural business growth fund. A “credit-eligible capital contribution” is an investment of cash that either (1) purchases an equity interest in the fund or (2) provides a loan with a maturity of at least five years, level principal repayment, and repayment terms that are independent of the fund’s profitability. The sum of the credit-eligible contributions collected by the rural business growth fund must comprise exactly 60% of the fund’s “eligible investment authority” – which is the amount of capital it agrees to invest in or lend to rural business concerns.

A participating insurance company must claim the credit in four annual installments, each equal to 25% of its credit-eligible capital contribution. The first installment is not available until the expiration of a three-year holding period, which begins tolling after the credit-eligible contribution is approved by DEV and after all amounts comprising the fund’s eligible investment authority have been collected (referred to as the “closing date”). After the holding period, DEV must issue tax credit certificates to the insurance company on the fourth, fifth, sixth, and seventh anniversaries of the closing date. The credit is nonrefundable but, if it is not fully claimed in one year, the excess may be carried forward for up to four years.

### **Credit cap**

Prior law prohibited DEV from certifying more than \$45 million in credit eligible contributions over the lifetime of the rural business growth program. That initial credit allocation was fully awarded shortly after the credit’s enactment in 2018. The act increases the

overall credit cap by \$45 million. Due to the three year holding period, the new credit allocation can be claimed no sooner than FY 2025.

### **Accepting applications**

The process for awarding rural growth investment tax credits is initiated by application of an investment fund that has developed a business plan to invest in rural business concerns (see below). If the application is approved, DEV must certify the applicant as a rural business growth fund and specify the amount of the applicant's eligible investment authority. The act requires DEV to begin accepting applications for certification of program two funds beginning November 1, 2021.

### **Affiliate contributions**

Within 60 days of certification, the rural business growth fund must collect the appropriate amount of credit-eligible capital contributions and the investments of cash that will make up the remainder of the fund's eligible investment authority. Continuing law requires at least 10% of the fund's eligible investment authority to be contributed by affiliates of the fund. The act specifies that, for both program one and program two funds, the 10% affiliate contribution threshold may be met through either direct or indirect contributions.

### **Timing and duration of investments**

Tax credits awarded to the investors of a rural business growth fund are contingent upon the fund making and maintaining a series of loans to or investments in rural business concerns (see below). A program one rural business growth fund must invest at least 50% of its eligible investment authority within one year of the closing date, and 100% within two years of the closing date. DEV is prohibited from awarding tax credit certificates to the investors of a program one fund that fails to meet either or both of these benchmarks.

The act relaxes the investment benchmarks for program two rural business growth funds. A program two fund need only invest 25% of its eligible investment authority within one year of the closing date, 50% within two years of the closing date, and 100% within three years of the closing date. Like program one funds, a program two fund must maintain its investments until the sixth anniversary of the closing date. Therefore, the act decreases by one year the time for which a program two fund must invest its full eligible investment authority. (Under continuing law, if a loan or investment is sold or repaid, it is considered to be "maintained" so long as the fund reinvests or re-loans the returned capital, minus any profits, within one year.)

### **Border county rural business concerns**

A "rural business concern" is a business that has its principal operations in a rural area of Ohio (i.e., a county having a population less than 200,000), has fewer than 250 employees, and had not more than \$15 million in net income (i.e., federal gross income minus federal and state taxes) for the preceding taxable year. Under the law, changed in part by the act, a business has its "principal operations" in Ohio if at least 80% of its employees are Ohio residents or at least 80% of its payroll goes to Ohio residents. A business that does not meet either criterion can still qualify as a rural business concern if it agrees to relocate or restructure in such a way that at least 80% of its employees or 80% of its payroll are in Ohio.

The act allows program two rural business growth funds to make loans to or investments in businesses that have fewer Ohio employees or less Ohio payroll, so long as the business is headquartered in a county that borders another state. Under the act, a business headquartered in a border county has its principal operations in Ohio if at least 65% of its employees are Ohio residents or at least 65% of its payroll goes to Ohio residents. As with the general thresholds, a business that does not meet either criterion can still qualify as a rural business concern if it agrees to relocate or restructure in such a way that at least 65% of its employees or 65% of its payroll are in Ohio. The act's border county employment and payroll thresholds do not apply to loans or investments by program one rural business growth funds.

### **Geographic location of rural business concerns**

The act requires a program two rural business growth fund to invest 25% of its eligible investment authority in rural business concerns having their principal business operations in a county with a population no greater than 75,000 (referred to by the act as "tier three rural areas"), and at least 75% of its eligible investment authority in rural business concerns having their principal business operations in counties with a population no greater than 150,000 ("tier two" and "tier three rural areas"). Investments in rural business concerns having their principal business operations in counties with a population greater than 150,000, but no greater than 200,000 ("tier one rural areas") do not count towards the investment requirements associated with the tax credit to the extent those investments exceed 25% of the fund's eligible investment authority. If a program two fund fails to meet and maintain the investment thresholds prescribed by the act, the credits awarded to the fund's investors are subject to recapture.

Under continuing law, a program one rural business concern must have its principal operations in a county having a population no greater than 200,000.

### **Limit for investments in one business**

Under continuing law, the amount by which a program one rural business growth fund's loans or investments in one rural business concern (or its affiliates) exceeds 20% of the fund's eligible investment authority is not counted for the purposes of compliance with the investment requirements. The act retains that standard for program one funds, but for program two funds instead specifies that investments exceeding \$5 million in the same rural business concern are not counted for the purpose of the investment requirements.

The act also specifies that, for both program one and program two funds, if a loan or investment in a rural business concern is returned or repaid and then reinvested by the fund in the same rural business concern, that reinvestment counts as an investment in a new rural business concern for the purpose of the investment requirements. The act specifies that the aggregate amount of loans or investments by all program one and program two rural business growth funds in the same rural business concern, including amounts reinvested following a return or repayment, must not exceed \$15 million.



## **Transformational mixed use development (TMUD) tax credit**

(R.C. 122.09)

The act modifies an insurance premium tax credit, enacted by [S.B. 39 of the 133<sup>rd</sup> General Assembly](#), for capital contributions to the construction of a transformational mixed use development (TMUD). TMUDs are multi-purpose construction projects that meet certain minimum building height, square footage, or payroll criteria and that are expected to have a transformational economic impact on the surrounding area. Credits are awarded by the Tax Credit Authority (TCA) through an application process initiated either by the property owner or an insurance company that contributes capital to the project. The amount of the credit depends, in part, on the development costs associated with the TMUD if the applicant is the property owner, or the amount of the capital contribution if the applicant is an insurance company and, in part, on the increase in tax collections at the project site and the surrounding area. More than one person may apply for, and receive a tax credit for the same project, but the total amount of tax credits awarded for a TMUD project must not exceed 10% of the development costs incurred by the property owner.

The act extends by two years the sunset date after which the TCA is prohibited from certifying new TMUD projects, from June 30, 2023, to June 30, 2025. Under the act, the TCA may preliminarily approve up to \$100 million in tax credits in each of FYs 2024 and 2025. The same cap applied, under prior law, to FY 2020 to 2022. However, due to the timing of the enactment of S.B. 39, the TCA did not preliminarily approve any credits in either FY 2020 or 2021. The act revokes the authority of the TCA to preliminarily approve credits for those years and, in effect, carries forward the associated credit allotments to FY 2024 and 2025.

## **Film and theater tax credit**

(R.C. 122.85)

The act revokes the eligibility of production contractors for the film and theater tax credit. Continuing law allows a refundable tax credit for companies that produce all or part of a motion picture or Broadway theatrical production in Ohio and incur at least \$300,000 in Ohio-sourced production expenditures. The credit equals 30% of the company's Ohio-sourced expenditures for goods, services, and payroll involved in the production. A company can claim the credit against the CAT, (FIT), or the personal income tax.

[H.B. 166 of the 133<sup>rd</sup> General Assembly](#), the FY 2020-FY 2021 budget act, extended eligibility for the credit to production contractors – persons other than the production company that are involved in the production of a motion picture. Production contractors are included in the same credit application and evaluation process as the production company producing the picture. The credit awarded to the production contractor equals 30% of the contractor's actual or estimated Ohio-sourced expenditures incurred in performing services related to the motion picture such as editing, postproduction, photography, lighting, cinematography, sound design, catering, special effects, production coordination, hair styling or makeup, art design, or distribution. Under the act, only the production company is eligible for the credit.

## Meat processing plant grants

(Section 701.90)

The act requires the DEV Director to establish a grant program for meat processing plants, including prescribing the grant application form. A meat processing plant is a facility that is located in Ohio, is in operation as of July 1, 2021, and provides processing services for livestock and poultry producers.

The owner or operator of a meat processing plant may apply to the Director for a grant. After receiving a grant application, the Director must review the application and score it based on the following criteria:

1. Whether the grant will improve the applicant's processing efficiencies for livestock and poultry by allowing for the following:

- New equipment, including upgrades to existing equipment;
- New technology, including upgrades to existing technology; and
- Training of personnel.

2. Whether the grant will be used for expansion or new construction for the processing of livestock and poultry, including:

- Areas to confine livestock and poultry;
- Areas for the processing of livestock and poultry; and
- Refrigeration or freezers.

3. Whether the grant will be used for food safety certification or to assist in obtaining cooperative interstate shipment status;

4. Whether the grant will improve harvest services for livestock and poultry producers; and

5. Project readiness.

The Director may not consider the following as eligible for grant funding:

1. Improvements to personal residences, nonfarm commercial property, and any other nonfarm structures;

2. Agricultural tractors, motorized vehicles, and other mobile equipment with an internal combustion engine; and

3. Land purchases.

Meat processing plants awarded a grant must maintain the equipment, technology, plant expansion, or new construction in working and serviceable order for five years after the awarding of the grant. The Director may not award a grant exceeding \$250,000.



## **Ohio Aerospace and Aviation Technology Committee**

(R.C. 122.98)

The act requires the Ohio Aerospace and Aviation Technology Committee to select its chairperson from among its legislative members. A chairperson must be selected for each General Assembly and the term of office of a chairperson lasts for the duration of the chairperson's respective General Assembly term. Prior law required the chairperson to alternate each General Assembly between the first legislator appointed by the President of the Senate and the first legislator appointed by the Speaker of the House.

Under continuing law, the Committee consists of 21 members: three Senators appointed by the President, not more than two from the same political party; three Representatives appointed by the Speaker, not more than two from the same political party; and 15 individuals who represent the aviation, aerospace, or technology industry, the military, or academia, one appointed by the Governor, and the remaining 14 chosen by a majority vote of the six legislative members.

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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 services in an intermediate care facility for individuals with intellectual disabilities (ICF/IID)**

- Eliminates a formula for determining an ICF/IID's Medicaid payment rate that expired on July 1, 2021.
- For FY 2022, establishes varying Medicaid rates for ICFs/IID depending on whether an ICF/IID meets certain criteria.
- Provides that the mean FY 2023 Medicaid rates for all ICFs/IID after certain modifications are made cannot exceed \$365.05.
- 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.

### **Medicaid rates for waiver services (VETOED)**

- For FY 2022, would have specified that the Medicaid payment rate for adult day services and residential services provided under a Department-administered waiver equal the rates for the services in effect on June 30, 2021, increased by 2%.
- For FY 2023, would have specified that the Medicaid payment rate for adult day services and residential services provided under a Department-administered waiver equal the rates for the services in effect on June 30, 2022, increased by 2%.

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

- Requires the Director of Developmental Disabilities to issue a residential facility license to an ICF/IID that meets enumerated conditions.
- Prohibits the Director from issuing more than five such licenses.

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

- Permits a 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 board waiver allocation plan**

- Eliminates a requirement that each county board of developmental disabilities (county DD board) submit an annual plan to the Department 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 it, 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 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 act 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 act 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 act 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 act, must compile and annually submit data to the Governor and Lieutenant Governor regarding the policy's implementation.

The act 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 act 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 services in intermediate care facilities for individuals with intellectual disabilities (ICF/IID)**

(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 former law, an ICF/IID's Medicaid payment rate was to be the higher of two rates determined under two different formulas. The older formula predated H.B. 24 of the 132<sup>nd</sup> General Assembly, which enacted the newer one in 2018. The older formula expired, and an ICF/IID's rate is now exclusively determined under the newer formula. The act eliminates language regarding the older formula (which became obsolete on July 1, 2021), and makes corresponding changes to law retained by the act to reflect the elimination.

The act requires the Department of Developmental Disabilities to make certain modifications to the new formula. For FY 2022, the act establishes three different categories of ICFs/IID and sets varying Medicaid day rates for those categories. For an ICF/IID that has a valid Medicaid provider agreement in effect on June 30, 2021, the act specifies that the Medicaid day rate for FY 2022 equals the rate in effect for the ICF/IID on June 30, 2021, increased by two per cent. For an ICF/IID that undergoes a change of operator during FY 2022, and both the existing operator and entering operator have valid Medicaid provider agreements, the Medicaid day rate for FY 2022 equals the rate in effect for the ICF/IID on the day immediately preceding the effective date of the change of operator. For an ICF/IID that obtains an initial provider agreement during FY 2022, the Medicaid day rate equals \$357.89.

For FY 2023, the act requires the Department to adjust the per Medicaid day rate for all ICFs/IID if the mean total per Medicaid day rate for ICFs/IID exceeds \$365.05. If the mean total per Medicaid day rate is greater than \$365.05, the Department must adjust the rate by the percentage by which the mean total per Medicaid day rate exceeds \$365.05.

Finally, regarding the franchise permit fee that continuing law requires ICFs/IID to pay (see below), the act 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)

Law unchanged by the act 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>28</sup>

The act 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.

## **Medicaid rates for waiver services (VETOED)**

(Section 261.170)

The Governor vetoed a provision that would have set the Medicaid payment rates for adult day services and residential services provided under a Medicaid waiver administered by the Department for FY 2022 and FY 2023 equal the rates for those services in effect on June 30, 2021 (for FY 2022), and June 30, 2022 (for FY 2023), increased by 2%. These rates would have applied to the following adult day services: (1) adult day support services, (2) career planning services, (3) group employment support, (4) individual employment support, (5) nonmedical transportation services, and (6) vocational habilitation services. They also would have applied to the following residential services: (1) homemaker/personal care services, (2) informal, community, or residential respite services, (3) on-site/on-call services, (4) shared living services, and (5) transportation services.

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<sup>28</sup> 42 U.S.C. 1396b(w)(4)(C).

## **Transfer of residential facility license**

(R.C. 5123.19)

The act requires the Director of Developmental Disabilities to issue a residential facility license to a facility that meets the following conditions:

- The facility will be certified as an ICF/IID;
- The building where the facility will be located was operated as a residential facility under a lease for at least 20 years before the date of the new license application;
- The former operator of the facility relocated beds from the facility to another site that will be licensed as a residential facility;
- The facility will be located in Preble, Claremont, or Warren County;
- The facility will contain eight beds;
- The licensee will make a good faith effort to serve multi-system youth or adults with severe behavioral challenges at the facility, or at one or more other licensed residential facilities.

The act prohibits the Director from issuing more than five of these new residential facility licenses.

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

(R.C. 5123.034)

The act 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 act 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.

## **County board waiver allocation plan**

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

The act eliminates a requirement that each county board of developmental disabilities (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 act 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 act also requires county DD 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 act 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 act 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 former law, a county board was required to employ a business manager who satisfied 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 act 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)

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

Continuing 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 act 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, in the court's discretion, 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 act 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, continuing 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 act 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 act requires that the total Medicaid payment rate for each 15 minutes of routine homemaker/personal care services that a Medicaid provider provides to a qualifying enrollee of the Individual Options Medicaid waiver program be 52¢ higher than the rate for services that 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 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>29</sup> or public hospital immediately before enrolling in the Individual Options Medicaid waiver program.

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<sup>29</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.

- 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 act permits the Director of Developmental Disabilities to authorize the continuation or implementation of innovative pilot projects that are likely to assist in promoting the objectives of state law governing the Department and county DD boards. Under the act, 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 act updates the federal law citations in continuing 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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## DEPARTMENT OF EDUCATION

### I. School finance

#### Direct funding for community and STEM schools, open enrollment students, and state scholarships

- Requires state operating funding to be paid directly to school districts, community schools, and STEM schools for the students they are educating, and requires direct payment of state scholarships.

#### School financing system for FY 2022 and FY 2023

- Creates a new school financing system for school districts and other public entities that provide primary and secondary education for FY 2022 and FY 2023.
- 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 student funds, and career-technical education funds and associated services funds.
- Establishes spending requirements for disadvantaged pupil impact aid and the portion of a district’s state share of the base cost that is attributable to the staffing cost for the student wellness and success component of the base cost.
- 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 a city, local, and exempted village school district’s state core foundation funding (including disadvantaged pupil impact aid) for FY 2022 and FY 2023.
- Eliminates the term “formula amount” and instead, where the act’s system relies on a static base cost amount, uses the “statewide average base cost per pupil” or the “statewide average career-technical 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 joint vocational school districts (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 student 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 that each school district's state core foundation funding, transportation funding (if any), and supplemental targeted assistance equals 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) for FY 2022 and FY 2023 that is subject to the same phase-in percentage as the phase-in percentage specified for city, local, and exempted village school districts (16.67% for FY 2022 and 33.33% for FY 2023).
- 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.

### **School financing for FY 2024 and after**

- Specifies that the various components of the school financing system for FY 2022 and FY 2023 described above will be calculated in a manner determined by the General Assembly for FY 2024 and each fiscal year thereafter.
- Specifies that those components of the school financing system for FY 2022 and FY 2023 described above that were not components of the school financing system prior to

FY 2022 will be calculated in a manner determined by the General Assembly for FY 2024 and each fiscal year thereafter if the General Assembly authorizes those payments.

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

- Repeals the requirement for the Department 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.
- Permits any chartered nonpublic school (secular or religiously affiliated) that elects to receive Auxiliary Services funds directly to designate an organization to receive and distribute those funds on its behalf.
- Clarifies that directly paid Auxiliary Services funds may be used to acquire goods and services under contract with school districts, educational service centers, the Department of Health, city or general health districts or private entities.

### **Auxiliary Services Reimbursement Fund**

- Permits educational service centers to apply to the Department for moneys from the Auxiliary Service Reimbursement Fund.

### **Chartered nonpublic school administrative cost reimbursement**

- Removes the maximum annual per-pupil amount for administrative cost reimbursement for chartered nonpublic schools formerly specified in codified law, which was \$360 and,

instead, specifies that cost reimbursement payments may not exceed the per-pupil amount prescribed by the General Assembly for each particular school year.

- Prescribes in uncodified law, for each of FY 2022 and FY 2023, a maximum annual per-pupil amount for administrative cost reimbursement of \$475.

## **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 subject to certain exemptions.
- Exempts a student with an individualized education program (IEP) from the requirement to demonstrate competency in math and English language arts, if the IEP expressly exempts the student from that requirement subject to other 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 or 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.

## **Kindergarten readiness and reading skills assessments**

- Requires a district or school to administer the Kindergarten Readiness Assessment and the kindergarten reading skills assessment by the 20<sup>th</sup> day of instruction of a school year, instead of by November 1 as under prior law.

## **III. Educator licensure**

### **Teacher licensure disciplinary actions – human trafficking**

- Adds human trafficking to the list of offenses for which the State Board of Education must revoke or deny an educator license.

### **Release of information obtained during an investigation**

- Permits a school district or school located in Ohio or another state to request any report of misconduct that the Department has regarding an individual who is under consideration for employment, and requires the Department to provide the report to the district or school.

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

- Generally prohibits a school representative from knowingly and intentionally assisting 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 assessment's contents to help students prepare for the assessment, and failing to comply with any rule adopted by the Department regarding security protocols for an assessment.
- Specifies that all of the prohibited actions related to state achievement assessments are grounds for termination of a teacher contract and for termination of a nonteaching employee's position.

### **Teach for America licenses**

- Requires the state Superintendent (rather than the State Board) to inactivate (rather than revoke) a Teach for America (TFA) participant's resident educator license if the participant resigns or is dismissed from TFA prior to completing its support program.
- Provides that the inactivation of a participant's license does not (1) constitute a suspension or revocation of the license or (2) necessitate an opportunity for a hearing.

### **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.

- 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.

### **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.

### **Educator Standards Board membership**

- Adds five members to the Educator Standards Board (ESB):
  - One person who represents community schools, appointed by the State Board of Education; and
  - Four persons, who are active in or retired from the education profession, two each appointed by the Speaker of the House and the Senate President.
- Permits, instead of requiring as under prior law, the State Board to use lists of nominees from the Ohio Federation of Teachers and the Ohio Education Association to appoint teachers to the ESB.

### **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.

### **Computer science education licensure**

- Extends through the 2022-2023 school year an exemption that permits public schools to employ an individual who is not licensed to teach computer science, nevertheless to teach computer science courses, so long as that individual meets other prescribed requirements.

## **IV. Community schools**

### **Requirement to locate in challenged school districts – eliminated**

- Eliminates the requirement that new start-up community schools must be located in a “challenged school district.”
- Eliminates the requirement that the Department annually publish a list of challenged school districts.

### **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.



## **Disenrollment of e-school students – failure to participate**

- Prohibits a student who is disenrolled from an internet- or computer-based community school (e-school) for failure to participate from re-enrolling in that school for the remainder of the year, rather than one year from the date of disenrollment and permits the student to enroll in a different e-school during that same year.

## **Community school sponsors**

- 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.
- Permits an “exemplary” sponsor to open up two new internet- or computer-based community schools that will serve students enrolled in a dropout prevention and recovery program (not to exceed six in a five-year period) without approval by the state Superintendent.

## **Low-performing community school sponsor changes (VETOED)**

- Would have permitted community schools in which a majority of the enrolled students are children with disabilities receiving special services to contract with a new sponsor without approval from the Department, notwithstanding the school’s low performance.

## **JCARR review of EMIS, other changes (VETOED)**

- Would have subjected to review by the 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 providing additional funding for certain e-schools operating dropout prevention and recovery programs on a per-pupil basis for students in grades 8-12.
- 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).

## **V. STEM schools**

- 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.
- Instead of using the term “career centers,” as under prior law, permits JVSDs and comprehensive and compact career-technical education providers 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.
- Eliminates 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.
- Permits a JVSD, comprehensive and compact career-technical education provider, or ESC to 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.
- 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.
- 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 the Chancellor of Higher Education, in consultation with the state Superintendent, to adopt rules to define an alternative remediation-free eligibility option for the CCP program.

- Eliminates the eligibility condition for certain students who are not remediation-free if they (1) have at least a 3.0 cumulative high school grade point average or (2) receive a recommendation from a school counselor, principal, or career-technical program advisor, except for those who qualified under that condition prior to September 30, 2021.

### **Nonpublic school participation (VETOED)**

- Would have prohibited applying any requirement of the CCP program 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.

### **Cost effectiveness study**

- Requires the Department of Education, in consultation with the Department of Higher Education, to study the results and cost-effectiveness of the CCP program and submit a report of its findings to the Governor, Speaker of the House, Senate President, and Director of the Legislative Service Commission by January 1, 2023.

## **VII. State scholarship programs and educational savings**

### **Scholarship amounts**

- Revises the scholarship amounts as follows:
  - For the Educational Choice (Ed Choice) and Cleveland Scholarship Programs, \$5,500 for students in any of grades K-8 and \$7,500 for students in any of grades 9-12.
  - For the Autism Scholarship Program, \$31,500 for FY 2022 and \$32,445 for FY 2023 and each fiscal year thereafter.
  - For the Jon Peterson Special Needs Scholarship Program, specifies that the base amount used in the computation of scholarship amounts is \$6,217 for FY 2022 and \$6,414 for FY 2023 and specifies amounts for the disability category for each of those fiscal years.

## **Performance-based Ed Choice scholarship eligibility**

- Changes the performance index rankings used to determine whether a student is eligible for a performance-based Ed Choice scholarship sought for the 2023-2024 or 2024-2025 school year under the performance index score eligibility criteria.
- Expands qualifications for a performance-based Ed Choice scholarship, including qualifying high school students not enrolled in public schools, siblings, students in foster or kinship care or other placement, and students who received but no longer qualify for the Autism or Jon Peterson scholarship.
- Phases out the requirement that, to qualify for a performance-based Ed Choice scholarship, students generally must be enrolled in either a school operated by their resident districts or a community school.
- Eliminates the restriction on the number of performance-based Ed Choice scholarships the Department may award in a school year.
- Maintains a student's eligibility for a performance-based scholarship if, after the first day of the application period, the Department changes the internal retrieval number (IRN) of the school in which the student is enrolled or otherwise would be assigned.

## **Ed Choice eligibility for 2021-2022**

- Expands qualifications for an Ed Choice scholarship sought for the 2021-2022 school year based on the Ed Choice designation list for the 2019-2020 or 2021-2022 school year.
- Requires the Department, by July 15, 2021, to develop eligibility guidance and provide it to chartered nonpublic schools enrolling Ed Choice scholarship students and to begin accepting and processing applications for students eligible under the provision.
- Requires the Department, for complete applications submitted by August 1, 2021, to provide notice of award or denial by September 15, 2021.
- Prohibits the Department, for the 2021-2022 school year only, from prorating Ed Choice scholarships based on a completed application submitted by October 31, 2021.

## **Ed Choice operations (PARTIALLY VETOED)**

- Requires the Department to make monthly partial payments for Ed Choice scholarships, rather than "periodic" partial payments as under prior law.
- Establishes a single application period that opens the February 1 prior to the school year for which a scholarship is sought, and prorates the scholarship amount for applications submitted after the start of the school year.
- Requires the Department, by February 1, 2022, to establish a system under which an applicant may enter a student's address and receive notification of whether the student is eligible for a performance-based scholarship.

- Prohibits a school district from objecting to a student’s scholarship eligibility if the Department’s system determines the student is eligible.
- Requires each school district with an Ed Choice designated building to provide the Department with the attendance zone of such a building by January 1 of each year.
- Requires the Department to accept applications for conditional approval.
- Would have required the Department to award a scholarship to a student who had conditional approval, if the student enrolled in a chartered nonpublic school within one year of receiving conditional approval and did not change addresses prior to enrolling in the school (VETOED).
- Requires the Department, if it determines an Ed Choice scholarship application contains an error or deficiency, to notify the applicant within 14 days of the application’s submission.
- Requires the Departments of Education, Jobs and Family Services, and Taxation to enter into a data sharing agreement to assist the Department of Education in determining student eligibility for Ed Choice scholarships.

### **Autism Scholarship Program providers**

- Subjects registered private providers approved for the Autism Scholarship Program and their employees to certain criminal records check requirements.
- Requires the Department 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.

### **Cleveland Scholarship Program**

- Establishes a single application period that opens February 1 prior to the school year for which a scholarship is sought, including prorating the scholarship amount for applications submitted after the start of the school year.
- Qualifies a private school located outside of the Cleveland City School District boundaries to accept Cleveland scholarship students if the school (1) is located in a qualifying neighboring municipality (as under continuing law) and (2) offers any of grades K-12 (instead of grades 9-12 as under prior law).

### **ACE Educational Savings Account Program**

- Establishes the Afterschool Child Enrichment (ACE) Educational Savings Account Program to provide eligible students with an educational savings account for FY 2022 or FY 2023 containing \$500 to be used for prescribed secular or nonsecular purposes.
- Finances the program with federal coronavirus relief funds.

- Qualifies a student for an account if the student is at least 6 years old and under 18 years old, has a family income at or below 300% of the federal poverty level, and is enrolled in a public or nonpublic school or is being homeschooled.
- Requires the Department to prescribe emergency rules for the establishment of accounts by October 30, 2021, create an online form for parents or guardians to request an account by January 28, 2022, and select a vendor that meets prescribed criteria to administer the program.
- Requires the Department, by December 31, 2022, to submit a report to the General Assembly regarding the administration of the program.

## **VIII. Other**

### **Student transportation – pick up and drop off times**

- Requires school districts, educational service centers, and private school transportation contractors to “deliver” students 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 30 minutes after the close of the day.

### **Community and nonpublic school transportation**

- Prescribes procedures for school district transportation plans for community and chartered nonpublic school students whom a district is required to transport.
- 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 previous school year as under prior law.

### **Deduction for district noncompliance with transportation 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.

- Specifies that the annual payment in lieu amount must be at least 50% but not more than the average cost of pupil transportation for the previous school year, as determined by the Department.
- If a district or school fails to provide transportation (under the payment in lieu provision), requires the Department to order it to make a payment equal to 50% of the cost of providing transportation, as determined by the district board or school governing authority, but not more than \$2,500.

### **Transportation contracts**

- Authorizes a school district to contract with federal or state agencies, municipal corporations, political subdivisions, and other public and private groups and organizations to assist those entities in the fulfillment of their legitimate activities and in times of emergency.

### **Online school bus driver training program**

- Requires the Department to develop a permanent online training program to satisfy the classroom portion of pre-service and annual in-service training for school bus driver certification.

### **Withdrawal of certain students for failure to take assessments**

- Beginning with the 2020-2021 school year, creates a new starting point for automatic withdrawal of students enrolled in internet- or computer-based schools who fail to take the required state assessments for two consecutive school years.

### **Online learning**

- Permits school districts, with the approval of the Superintendent of Public Instruction, to operate a school using an online learning model and prescribes requirements for them.
- Requires the State Board to revise operating standards for school districts to include prescribed standards for the operation of online learning models.

### **Blended learning**

- Requires districts and schools using a blended learning model operate an annual calendar of at least 910 hours.

### **Information on academic standards and model curricula**

- Requires the Department to include information on the use of online learning in the delivery of standards or curricula to students, whenever the State Board adopts standards or model curricula.

### **FAFSA data system**

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

## **Computer science education**

- Requires the Department, in consultation with the Chancellor, to establish a committee to develop a state plan for K-12 computer science education.
- Requires the committee to complete the state plan by September 30, 2022, and the Department to post it in a prominent location on its website.
- Requires the State Board to update its standards and curriculum for computer science education by September 30, 2022.

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

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

## **Venereal disease instruction**

- Requires a school district or school to notify all parents and guardians if the district or school chooses to offer additional instruction in venereal disease or sexual education not specified under law, including the name of instructors, vendor, and the name of the curriculum being used.
- Prohibits a district or school from offering such additional instruction to a student unless a parent or guardian has submitted written permission for that student to receive that instruction.
- Requires the Department to conduct and publish on its website an annual audit at the beginning of each school year of school districts to ensure compliance with requirements regarding venereal disease education.

## **Victim counseling**

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

## **Academic distress commissions**

- Prohibits the state Superintendent from establishing any new academic distress commissions (ADCs) for the 2021-2022 and 2022-2023 school years.
- Establishes a process by which school districts currently subject to an ADC may be relieved from the oversight of its ADC prior to meeting the conditions prescribed by continuing law.
- Requires the Auditor of State, one time between July 1, 2022, and June 30, 2025, to complete a performance audit of school districts subject to an ADC.



## **Educational service centers**

- Permits an educational service center (ESC) governing board to delay reorganizing its subdistricts, if its territory is divided into subdistricts, until July 1, 2022.
- Specifies that an ESC must be considered a “local education agency,” for the purposes of eligibility in applying for *competitive* federal grants.

## **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.
- 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 to establish the Career Promise Academy Summer Demonstration Pilot Program to operate in the 2021-2022 and 2022-2023 school years.

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

- Requires public and chartered nonpublic high schools to inform students in grades 6 through 11 at least annually about advanced standing programs.

## **Interscholastic athletics transfer rules**

- Repeals the requirement 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.

## **Sale or lease of school district property**

- For purposes of the involuntary sale or lease of “unused” school district real property, adds to the definition of an “unused school facility” any school building that has been used for direct academic instruction but less than 60% of the building was used for that purpose in the preceding school year.
- Delays the effective date of the provision until July 1, 2022.

## 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, 3302.04, 3302.20, 3310.41, 3310.51, 3310.52, 3310.54, 3310.57, 3310.62, 3313.64, 3313.974, 3313.975, 3313.976, 3313.978, 3313.979, 3313.98, 3313.981, 3314.08, 3314.083, 3314.084, 3314.086, 3314.087, 3314.089, 3314.091, 3314.11, 3314.191, 3314.20, 3314.24, 3315.18, 3317.011, 3317.012, 3317.013, 3317.014, 3317.016, 3317.018, 3317.019, 3317.0110, 3317.02, 3317.021, 3317.022, 3317.023, 3317.024, 3317.026, 3317.028, 3317.0212, 3317.0213, 3317.0214, 3317.03, 3317.051, 3317.071, 3317.072, 3317.11, 3317.16, 3317.161, 3317.162, 3317.20, 3317.201, 3317.25, 3319.57, 3324.05, 3324.09, 3326.10, 3326.101, 3326.31, 3326.32, 3326.35, 3326.36, 3326.39, 3326.40, 3326.44, 3326.51, 3328.32, 3328.34, and 3365.01; repealed and reenacted R.C. 3317.017, 3317.0215, 3317.0217, and 3317.0218; repealed R.C. 3310.08, 3310.09, 3310.55, 3310.56, 3314.085, 3314.088, 3314.53, 3317.029, 3317.0216, 3317.0219, 3317.163, 3317.26, 3317.27, 3326.33, 3326.41, 3326.42, and 3328.33; Sections 265.215, 265.220, 265.225, and 265.323)

### Overview of prior law

The school financing system in prior law specified a per-pupil “formula amount” and then used that amount, along with a district’s “state share index” (based on valuation and, for some districts, also on median income), to calculate a district’s base payment (called the “opportunity grant”). The system also included 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 that school financing system, 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.

### Overview of the act’s school financing system

#### Direct funding for community and STEM schools, open enrollment students, and state scholarship programs

The act 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 prior law where community and STEM school students and students who open enroll were included in the student count of their resident school districts, and the funds attributable to those students were deducted from their resident districts and then paid to the

schools in which they were enrolled. Similarly, it requires direct payment of state scholarships, rather than deducting the amounts of those scholarships from students' resident districts.

### **School financing for FY 2022 and FY 2023**

The act's school financing system for FY 2022 and FY 2023 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 student funds, career-technical education funds, and career-technical associated services funds. These components are subject to a guarantee for FY 2022 and FY 2023. 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 act, former law prescribed a fixed "formula amount" for use in computing a base cost and categorical payments for all school districts and other public schools. The act eliminates this term. Where the act'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 act does guarantee transportation funding for FY 2022 and FY 2023.

The act provides a substantially similar formula for joint vocational school districts (JVSDs) (including the same phase-in specified for city, local, and exempted village school districts and a guarantee), but, as under prior law, it does not provide targeted assistance, gifted student 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 the same phase-in specified for city, local, and exempted village school districts, 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.

Additionally, the act requires payment of a formula transition supplement for FY 2022 and FY 2023 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 act 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 act (1) establishes a new funding formula for educational service centers (ESCs) that is subject to the same phase-in specified for city, local, and exempted village school districts, (2) 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, and (3) requires the Department to award transportation collaboration grants.

### **School financing for FY 2024 and each fiscal year thereafter**

The act specifies that the various components of the school financing system for FY 2022 and FY 2023 described above will be calculated in a manner determined by the General Assembly for FY 2024 and each fiscal year thereafter. If those components were not part of the school financing system prior to FY 2022, the act specifies that they will be calculated in a manner determined by the General Assembly for FY 2024 and each fiscal year thereafter if the General Assembly authorizes those payments.

### **Direct funding for community and STEM schools, open enrollment students, and state scholarships**

(R.C. 3310.41, 3313.979, 3314.08, 3317.02, 3317.022, and 3317.03; repealed R.C. 3310.08, 3310.09, 3310.55, 3310.56, 3314.085, 3326.33, and 3326.41; conforming changes in numerous R.C. sections)

- Requires state operating funding to be paid directly to school districts, community schools, and STEM schools for the students they are educating, and requires the direct payment of state funding for state scholarship programs.
- Pays funding for these schools and programs to "funding units" and then distributes that funding to each school or on behalf of each scholarship recipient in an amount that equals what that school or scholarship recipient would otherwise receive if funding were calculated for the school or scholarship recipient on an individual basis.
- Establishes for this purpose the "community and STEM school funding unit," the "Educational Choice Scholarship funding unit," the "Pilot Project Scholarship funding unit," the "Autism Scholarship funding unit," and the "Jon Peterson Special Needs Scholarship funding unit."

- 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.

(A city, local, or exempted village school district’s “formula ADM,” which was used for school financing payments under prior law and is used under continuing law for the school facilities assistance program, counts students in the district in which they reside rather than the district in which they are being educated.)

- Specifies that a joint vocational school district’s “enrolled ADM” is the count of the students that are being educated by the district.

(A joint vocational school district’s “formula ADM,” which was used for school financing payments under prior law and is used under continuing law for the school facilities assistance program, counts students receiving services in the district other than those students who open enroll into the district.)

- Specifies that the community and STEM school unit’s “enrolled ADM” is the number of students enrolled in all community and STEM schools.
- Specifies that the “enrolled ADM” of each state scholarship funding unit is the number of students who receive the scholarships awarded under the respective state scholarship program.

## **School financing system for FY 2022 and FY 2023**

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

#### **Base cost enrolled ADM**

(R.C. 3317.02)

- 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 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 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.

### **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 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 continuing law using multiples instead of dollar amounts;<sup>30</sup>
- ❖ 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.

### ***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 prior law

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<sup>30</sup> Those multiples are prescribed in R.C. 3317.013.

(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;<sup>31</sup>
- ❖ 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 student 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 or \$14 for FY 2023;
  - 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

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<sup>31</sup> Those multiples are prescribed in R.C. 3317.016.

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 student 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 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 continuing law using multiples instead of dollar amounts;<sup>32</sup>
- ❖ 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;<sup>33</sup>
- ❖ 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 for FY 2022 and FY 2023.
- 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.

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<sup>32</sup> Those multiples are prescribed in R.C. 3317.014(A).

<sup>33</sup> That multiple is prescribed in R.C. 3317.014(B).

- 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 (excluding base and "other" transportation funding and the 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 student 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).
- Guarantees each district a total amount of state core foundation funding equal to its "funding base."
- 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 the statewide average base cost per pupil times the reduction in the number of students in excess of that prescribed minimum decrease.

### **Spending requirements for disadvantaged pupil impact aid and the student wellness and success component of the base cost**

(R.C. 3317.011(E)(3) and 3317.25; Section 265.323)

- Specifies that the initiatives for which economically disadvantaged funds must be spent under prior law are also the initiatives for which disadvantaged pupil impact aid must be spent under the act. (Continuing law requires these funds to be spent for one or more of the initiatives or a combination of the initiatives.)
- Adds the following initiatives to the list of initiatives for which disadvantaged pupil impact aid must be spent and also specifies that the portion of a district's state share of the base cost that is attributable to the staffing cost for the student wellness and success component of the base cost, as determined by the Department, must be spent for one or more of the following initiatives:
  - ❖ Mental health services, including telehealth services;
  - ❖ Culturally appropriate, evidence-based or evidence-informed prevention education, including youth-led programming and social and emotional learning curricula to promote mental health and prevent substance use and suicide;
  - ❖ Services for homeless youth;
  - ❖ Services for child welfare involving youth;
  - ❖ Community liaisons or programs that connect students to community resources, including City Connects, Communities in Schools, and other similar programs;
  - ❖ Physical health care services, including telehealth services;
  - ❖ Family engagement and support services; and
  - ❖ Student services provided prior to or after the regularly scheduled school day or any time school is not in session.
- Requires that a district must develop a plan for utilizing its disadvantaged pupil impact aid in coordination with one of the following: a board of alcohol, drug, and mental health services, an educational service center (ESC), a county board of developmental disabilities, a community-based mental health treatment provider, a board of health of a city or general health district, a county department of job and family services, a nonprofit organization with experience serving children, or a public hospital agency.
- Requires a district's annual report of the initiatives on which its disadvantaged pupil impact aid was spent (which is required under continuing law) to be submitted in a manner prescribed by the General Assembly and to include the amount of money that was spent on each initiative.

- Specifies that a district's annual report of the initiatives on which its disadvantaged pupil impact aid was spent must be submitted after the end of each fiscal year (rather than at the end of each fiscal year as under prior law).
- Requires a district, after the end of each fiscal year, to submit a report to the Department, in a manner prescribed by the Department, describing the initiative or initiatives on which the portion of a district's state share of the base cost that is attributable to the staffing cost for the student wellness and success component of the base cost was spent.

### **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 prior 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 or 33.33% for FY 2023, (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 by administrative rules;
  - ❖ A density supplement for districts with low rider density calculated in the same manner as prior 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 prior 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 prior law).
- Specifies that each district is guaranteed 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 or 33.33% for FY 2023 (rather than the approved cost of such transportation as under prior 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 prior 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. 3317.022 and 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 or \$5 for FY 2023.
- 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 prior law, does not provide targeted assistance, gifted student funding, or transportation funding to JVSDs.

### **Community school and STEM school funding**

(R.C. 3314.08, 3314.091, 3317.0110, 3317.02, 3317.022, 3317.023, 3317.026, 3326.39, and 3326.43; repealed R.C. 3314.085, 3326.33, and 3326.41; conforming changes in numerous R.C. sections)

- 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 continuing 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 equal to \$2.50 for FY 2022 or \$5 for FY 2023 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)

- Subject to the phase-in percentage (see below), 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.
- 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).

## **Subsidy for school bus purchases**

(R.C. 3317.071)

- 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.

## **Gifted student funding and service 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 required under continuing 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 continuing law.
- Requires (rather than permits as under prior 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 act's reporting requirement regarding the provision of services to gifted students.

## **School financing for FY 2024 and after**

(R.C. 3317.022 and numerous other R.C. sections)

- Specifies that the various components of the school financing system for FY 2022 and FY 2023 described above will be calculated in a manner determined by the General Assembly for FY 2024 and each fiscal year thereafter.
- Specifies that those components of the school financing system for FY 2022 and FY 2023 described above that were not components of the school financing system prior to



FY 2022 and FY 2023 will be calculated in a manner determined by the General Assembly for FY 2024 and each fiscal year thereafter if the General Assembly authorizes those payments.

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

(Repealed R.C. 3314.088, 3317.0219, 3317.163, 3317.26, and 3326.42; Section 265.323)

- 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).
- Requires that, if a district or school spends student wellness and success funds and enhancement funds it received for FY 2020 or FY 2021 on or after September 30, 2021, those funds must be spent in accordance with the spending requirements for student wellness and success funds and enhancement funds as they existed prior to the act's effective date, and permits the Department to require districts and schools to report how all of those funds are spent.

## **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;
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 district's 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

(Repealed R.C. 3317.029)

The act 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 act 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 its state funding.

## **Auxiliary Services funds – direct payment**

(R.C. 3317.024; Section 265.170)

The act permits all chartered nonpublic schools, instead of only nonreligious-affiliated schools as under prior law, to choose whether to receive Auxiliary Services funds directly from the Department.<sup>34</sup> Otherwise, by default a school receives those funds through the school district in which it is located. For any year in which a religious chartered nonpublic school chooses direct payment, the act requires submission of an affidavit to the Department certifying that funds will be spent in a lawful manner and for permissible purposes. Generally, under continuing law, a chartered nonpublic school 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 act temporarily permits any chartered nonpublic school to choose direct payment for the 2021-2022 and 2022-2023 school years by notifying the Department by July 31, 2021.

### **Designation of organization to receive funds on behalf of a school**

The act permits any chartered nonpublic school that elects to receive Auxiliary Services funds directly to designate an organization that oversees one or more nonpublic schools to receive and distribute those funds on its behalf. Generally, a school that designates an organization to receive funds on its behalf must notify the Department of the organization's name by April 1 of each odd-numbered year. However, for the 2021-2022 and 2022-2023 school years, a chartered nonpublic school that elects to designate an organization to receive those funds on its behalf must do so by July 31, 2021.

Organizations designated to manage a school's Auxiliary Services funds may charge the school up to 4% of the total amount of its Auxiliary Services payments. An organization designated to receive funds of multiple chartered nonpublic schools may use one or more accounts to manage the funds but must ensure that each school receives the funds to which it is entitled.

The act requires each chartered nonpublic school that elects to receive funds directly or an organization designated to receive and disburse Auxiliary Services funds on behalf of a school to maintain records of receipt and expenditures of the funds in a manner that conforms with generally accepted accounting principles.

Finally, the Department must create and disseminate a standardized reporting form that may be used to record receipt and expenditure of Auxiliary Services funds, but it may not require use of the form.

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<sup>34</sup> 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. See R.C. 3317.06, not in the act, and 3317.062.

## **Use of directly paid Auxiliary Services funds**

(R.C. 3317.062)

The act clarifies that directly paid Auxiliary Services funds may be used to acquire good and services under contract with school districts, educational service centers, the Department of Health, city or general health districts, or private entities.

It also permits chartered nonpublic schools to sell, donate, trade, or otherwise dispose of materials and equipment, including textbooks, purchased with Auxiliary Services funds that are no longer needed, obsolete, or unfit for use or that have been in the school's possession at least four years. But the school must return the proceeds from a sale to the state.

## **Auxiliary Services Reimbursement Fund**

(R.C. 3317.064)

The act permits educational service centers (in addition to school districts as under continuing law) to apply to the Department for moneys from the Auxiliary Services Reimbursement Fund for payment of incentives for early retirement and severance for personnel assigned to provide services at chartered nonpublic schools.

## **Chartered nonpublic school administrative cost reimbursement**

(R.C. 3317.063; Section 265.180)

The act removes the \$360 maximum annual per-pupil amount for administrative cost reimbursement for chartered nonpublic schools prescribed in prior codified law. Instead, the act prohibits cost reimbursement payments from exceeding the maximum annual per-pupil amount specified by the General Assembly for each particular school year. The act further prescribes in uncodified law, for each of FY 2022 and FY 2023, a maximum annual per-pupil maximum amount of \$475.<sup>35</sup>

## **II. Graduation requirements and assessments**

### **High school graduation requirements**

The act makes several changes to the high school graduation requirements for students who entered 9<sup>th</sup> grade for the first time on or after July 1, 2019 (the Class of 2023 and on).

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<sup>35</sup> Chartered nonpublic schools may receive reimbursement for the actual mandated service, administrative, and clerical costs incurred during the preceding school year in preparing, maintaining, and filing reports, forms, and records and providing such other administrative and clerical services that are not an integral part of the teaching process.

In addition to meeting the state’s minimum curriculum requirements, continuing law generally requires those students to demonstrate competency in math and English language arts and earn at least two diploma seals to qualify for a high school diploma.<sup>36</sup>

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, divided among two categories: 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. For locally defined seals, the requirements are 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. At least one of the diploma seals a student earns must be state-defined.<sup>37</sup>

### **Industry-recognized credentials**

(R.C. 3313.618, 3313.6113, and 3313.6114)

The act 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. Specifically, the act 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. Prior law specified only that a student must earn an industry-recognized credential for either of those purposes.

In addition, the act requires the Department, when calculating the number of students who earned an industry-recognized credential for the state report card, to include only students who earned a credential, or group of credentials, at least equal to that total number of points required for graduation.

A similar provision was enacted in H.B. 82 of the 134<sup>th</sup> General Assembly, effective September 30, 2021.

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<sup>36</sup> The law also permits students who entered 9<sup>th</sup> 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.

<sup>37</sup> For more information, the Department of Education’s guidance about graduation requirements is available [here](#).

## **State-issued licenses**

(R.C. 3313.618 and 3313.6114)

The act 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.

A similar provision was enacted in H.B. 82 of the 134<sup>th</sup> General Assembly, effective September 30, 2021.

## **Chartered nonpublic schools**

(R.C. 3313.618 and 3313.619)

The act 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 a 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.

The act 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, as required for public schools under continuing law.

## **Transfers between schools**

(R.C. 3313.6114)

The act changes how either a public or chartered nonpublic school must address any progress a transfer student made toward completing a locally defined diploma seal at the student’s prior 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 student’s 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.

## **Transfers into schools**

(R.C. 3313.618 and 3313.6114)

The act requires transfer students who, in the prior school year, were homeschooled or attended an out-of-state or nonchartered, nonpublic school to demonstrate competency and earn diploma seals. However, the act 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 act 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.

However, the act prohibits those students from using a grade for an American history, American government, or science course completed prior to enrolling in their new school if, subsequent to that enrollment, the students take a course associated with the American history, American government, or science end-of-course exam.

### **Exemption for certain students with IEPs**

(R.C. 3313.61 and 3313.618)

The act exempts a student with a disability who has an individualized education program (IEP) from demonstrating competency in math and English language arts if the 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 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 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**

(R.C. 3313.618; conforming change in R.C. 3301.0714)

The act permits a student to 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**

(R.C. 3313.618)

The act requires a student to earn *cumulative* score of proficient or higher on three or more state technical assessments to use those assessments as a “foundational” option when

using an alternative demonstration of competency. Prior law required a student to earn a score of proficient or higher on three state technical assessments.

The act also 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 under continuing law.

### **Citizenship and Science diploma seal requirement changes**

(R.C. 3313.6114)

The act expands the ways in which a student may earn the Citizenship and Science diploma seals by qualifying students for those seals for completing courses offered by their high schools and by permitting students with significant cognitive disabilities to earn those seals based on their alternate assessment scores.

Specifically, the act qualifies a student for a Citizenship diploma seal if that student attains a final course grade of “B” or higher in an American history course and American government course offered by the student’s high school. Similarly, the act qualifies a student for a Science diploma seal if the student attains a final course grade of “B” or higher in any of the following courses offered by the student’s high school:

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.

In addition, the act permits a student with significant cognitive disabilities to earn the Citizenship or Science diploma seal by attaining scores set by the State Board on the alternate assessments in social studies or science.

(The act also qualifies certain transfer students for the Citizenship or Science diploma seal, see “**Transfers into schools,**” above.)

Continuing law permits students to earn the Citizenship or Science diploma seal by attaining scores of proficient or higher on relevant end-of-course exams, scores at least equivalent to proficient on appropriate AP or IB exams, or final course grades of “B” or higher in appropriate College Credit Plus courses.

### **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 2022-2023 school year (the Class of 2026), the act 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.

The act does not affect the requirement under continuing law that students prior to the Class of 2026 must take the ACT or SAT.

An identical provision was enacted in H.B. 82 of the 134<sup>th</sup> General Assembly, effective September 30, 2021.

### **Kindergarten readiness and reading skills assessments**

(R.C. 3301.0715 and 3313.608)

The act requires a district or school to administer the Kindergarten Readiness Assessment, and the kindergarten reading skills assessment for the Third Grade Reading Guarantee, by the 20<sup>th</sup> day of instruction of the school year. Prior law required a district or school to administer those assessments by November 1.

### **III. Educator licensure**

#### **Teacher licensure disciplinary actions – human trafficking**

(R.C. 3319.31(C))

The act adds human trafficking<sup>38</sup> to the list of specific criminal offenses for which the State Board is required to revoke an individual's educator license or deny issuance or renewal of a license, without an administrative hearing.

#### **Release of information obtained during an investigation**

(R.C. 3319.319)

The act permits 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 and notify the district or school of the confidential nature of the information.

If the Department provides the contents of a report, 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.

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

(R.C. 3319.318, 3314.03, 3326.11, and 3328.24)

The act prohibits a "school representative" from knowingly and intentionally assisting another individual in obtaining school employment to teach school age children, if the

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<sup>38</sup> R.C. 2905.32, not in the act.



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.

## **Cheating on assessments**

(R.C. 3319.151 and 3319.99)

### **Prohibited actions**

The act prohibits a person from taking several other actions, in addition to those already prohibited under continuing law, 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.

Continuing law already prohibits a person from revealing to a student specific questions that will appear on a state achievement assessment or otherwise helping the student cheat. A person who violates this continuing prohibition is guilty of a minor misdemeanor.

### **Consequences for teacher licensure and employment**

The act 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. However, continuing law mandates a one-year licensure suspension for the act of revealing test content. The act 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.

Finally, it specifies that all of prohibited actions related to state achievement assessments are grounds for termination of a teacher contract and for termination of a nonteaching employee's position.

## Teach for America licenses

(R.C. 3319.227 and future R.C. 3319.227 amended in Section 110.10)

The act requires the state Superintendent, on behalf of the State Board, to inactivate a Teach for America (TFA) Program participant's resident educator license if the participant resigns or is dismissed from TFA prior to completing its two-year support program. Formerly, the State Board was required to revoke a TFA participant's license when the participant resigned or was dismissed.

Additionally, the act states that the inactivation of a TFA participant's license does not (1) constitute a suspension or revocation or (2) necessitate an opportunity for a hearing.

## Pre-employment applications and screening

(R.C. 3319.393, 3314.03, 3326.11, and 3328.24)

### Written notice on employment applications

The act 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 act requires each school district, other public school, and chartered nonpublic school to consult the Department's "Educator Profile" database, identified on the website as "CORE" – Connected Ohio Records for Educators.<sup>39</sup> 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 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 act 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, it permits a district or school to require an applicant or volunteer to undergo background checks in addition to the criminal records checks already required.

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<sup>39</sup> Ohio Department of Education, Educator Profile, available at <https://core.ode.state.oh.us/Core4/ODE.CORE.Lic.Profile.Public.UI/>.

## Career-technical educator licensure

(R.C. 3319.229)

The act 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. Prior law required at least a high school diploma to qualify for these licenses.

## Educator Standards Board membership

(R.C. 3319.60)

The act adds five voting members to the Educator Standards Board (ESB). Those members include:

1. One person who represents community schools, appointed by the State Board of Education; and
2. Four persons, who are active in or retired from the education profession, two each appointed by the Speaker of the House and the President of the Senate.

The act also permits, instead of requiring as under prior law, the State Board to appoint the ESB's school district teacher members (see below) using lists of nominees from the Ohio Education Association (OEA) and Ohio Federation of Teachers (OFT). Under the act, the organizations still must submit their lists of nominees, 14 from the OEA, from which the State Board may appoint 7 members, and 6 from the OFT, from which the State Board may appoint 3 members. The act also retains the requirements that the State Board request additional nominees if there is an insufficient number of nominees from both lists to satisfy the membership requirements.

### Background on ESB membership

The ESB develops and recommends to the State Board of Education standards for educator professionals and educator professional development.

Besides the five members added by the act, under continuing law, the ESB consists of 21 other voting members as follows:

- 18 members appointed by the State Board, including:
  - Ten teachers employed by school districts (3 employed to teach in a secondary school, 2 in a middle school, 3 in an elementary school, 1 pre-kindergarten teacher, and 1 who serves on a local professional development committee);
  - One teacher employed by a chartered nonpublic school;
  - Five school administrators employed by school districts (1 secondary school principal, 1 middle school principal, 1 elementary school principal, 1 school treasurer or business manager, and 1 district superintendent);
  - One school district board member; and
  - One parent.

- Three members appointed by the Chancellor of Higher Education, who are employed by institutions of higher education that offer educator preparation programs (1 employed by a private nonprofit institution of higher education, 1 employed by a state university or a university branch, and 1 employed by a state community college, community college, or technical college).

The ESB also consists of six nonvoting members, including the state Superintendent, or designee; the Chancellor or designee; and the chairpersons and the ranking minority members of the education committees of the Senate and House.

## **School counselor standards**

(R.C. 3319.61)

The act requires the Educator Standards Board to include knowledge of the career-technical credit transfer program (“Career-Technical Assurance Guide” (CTAG)) in 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>40</sup>

## **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 act extends through the 2022-2023 school year an exemption that permits a public school to permit 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 in a school district or school other than the one that employed the individual when the individual completed the professional development program.

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<sup>40</sup> See R.C. 3333.162, not in the act.

## Definition

(R.C. 3319.236; Sections 610.10 and 610.11, amending Section 733.61 of H.B. 166 of the 133<sup>rd</sup> General Assembly)

The act 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.<sup>41</sup>

## IV. Community schools

### Requirement to locate in challenged school districts – eliminated

(R.C. 3302.036, 3314.02, 3314.021, 3314.05, and 3314.353)

The act eliminates the requirement that new start-up community schools may be established only in a “challenged school district.” In keeping with this change, the act permits a community school governing authority to designate and modify the primary location of a community school established in two school districts under the same contract regardless of when the school was established or where the school’s primary location was prior to September 30, 2021.

It also (1) prohibits the Department from restricting new start-up schools on the basis of prospective location and (2) eliminates the requirement that the Department annually publish a list of challenged school districts.

Formerly, a new start-up community school could be established only in a “challenged school district.” A “challenged school district” is any of the following: (1) a Big-Eight school district (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, or Youngstown), (2) a low-performing school district as determined by the school’s performance index score, value-added progress dimension, or overall ratings on the state report card, or (3) a school district in the original community school pilot project area (Lucas County).<sup>42</sup>

### Automatic closure of community schools

(R.C. 3314.355)

The act prohibits the automatic closure of community schools on the basis of any report card ratings issued prior to the 2022-2023 school year. Thus, the 2022-2023 school year is a new starting point for automatic closure.

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<sup>41</sup> Otherwise, R.C. 3301.012, not in the act, specifies that computer science means “logical reasoning, computing systems, networks and the internet, data and analysis, algorithms and programming, impacts of computing, and structured problem solving skills applicable in many contexts from science and engineering to the humanities and business.”

<sup>42</sup> R.C. 3314.02(A)(3).

Together, H.B. 197 and H.B. 409, both of the 133<sup>rd</sup> General Assembly, prohibited the Department 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 established a safe harbor from penalties and sanctions for districts and schools based on the absence of report card grades for those years.<sup>43</sup>

## **Disenrollment of e-school students – failure to participate**

(R.C. 3314.261)

The act modifies the disenrollment procedures of internet- or computer-based community schools (e-school) in which a majority of the students *are not* enrolled in a DOPR program. Under the act, a student who is disenrolled for failure to participate in instructional activities may not re-enroll in that school for the remainder of the school year, rather than for one year from the date of disenrollment as under prior law. The act also permits a disenrolled student to enroll in another e-school during that same school year, whereas prior law prohibited this unless the school was a DOPR school.

An e-school that is not a DOPR school must comply with attendance requirements that are different from brick-and-mortar community schools. Each of these schools must have a policy specifying that a student is in attendance when the student (1) participates in at least 90% of the hours of instructional activities offered by the school that year or (2) is on pace for on-time completion of any course in which the student is enrolled. The policy must provide for certain consequences, including disenrollment, after the student's unexcused absences exceed 30 hours, provided other conditions are satisfied.

## **Community school sponsors**

(R.C. 3314.013 and 3314.016)

### **Sponsor incentives – frequency of evaluations**

The act 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 prior law. The act 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. Those incentives, unchanged by the act, 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.

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<sup>43</sup> Section 17(B) of H.B. 197 and Section 6 of H.B. 409 of the 133<sup>rd</sup> General Assembly.

## **Sponsor incentives – opening new DOPR e-schools**

Finally, the act makes available a new incentive for sponsors rated “exemplary” during the most recent sponsor evaluation. These sponsors may open up to two new e-schools that will serve students enrolled in a DOPR program each year, not to exceed six new schools in a five-year period. Subject to approval by the state Superintendent, prior law restricted the opening of *any* new e-schools to a total of five per year.

## **Low-performing community school sponsor changes (VETOED)**

(R.C. 3314.034)

The Governor vetoed a provision that would have exempted community schools in which a majority of the enrolled students are children with disabilities receiving special education and related services from the restrictions on a low-performing community school from entering into a contract with a new sponsor without approval from the Department.

Generally, lower-performing community schools may enter into a contract with a new sponsor only if all of the following conditions are satisfied:

1. The proposed sponsor received a rating of “effective” or higher on its most recent evaluation or is the Office of School Sponsorship;
  2. The school submits a request to enter into a new contract to the Department;
  3. The school has not submitted a prior request to change sponsors that was granted;
- and
4. The Department grants the school’s request.

## **JCARR review of EMIS, other changes (VETOED)**

(R.C. 3301.85)

The Governor vetoed a provision that would have required the Department to submit to the Joint Committee on Agency Rule Review (JCARR) any proposed changes to the Education Management Information System (EMIS) or the Department’s “business rules and policies” that may affect community schools. JCARR would have then been required to hold public hearings regarding the changes, consider testimony, and vote to determine whether community schools can reasonably comply with those changes. The Department would have been prohibited from implementing any changes affecting community schools without JCARR’s affirmative determination.

## **Montessori preschool payments**

(R.C. 3314.06)

The act eliminates the requirement that the Department pay the “formula amount” (under the prior school funding law) for each student under age four admitted to a Montessori preschool operated by a community school. Instead, the act specifies such a school will receive no community school funds for students under age five. Such schools may be eligible for

payments under the act's separate uncodified provision for operation of early childhood education programs.<sup>44</sup>

## **Community School Revolving Loan Fund**

(Repealed R.C. 3314.30 and 3314.31)

The act 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. According to the Office of Budget and Management, the fund, established in 2003, has never been accessed by a community school.

## **Pilot funding for DOPR e-schools**

(Sections 610.04 and 610.05, amending Section 5 of H.B. 123 of the 133<sup>rd</sup> General Assembly)

The act extends to FY 2022 and FY 2023 the pilot program established initially for FY 2021 that provides additional funding for certain e-schools operating DOPR 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 FY 2022 or FY 2023.

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 DOPR 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 act 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).

## **V. STEM schools**

The act 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.

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<sup>44</sup> See Section 265.20.



## **STEM Committee membership**

(R.C. 3326.02)

The act 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. The other members of the STEM Committee under continuing law are four members of the public, two of whom are appointed by the Governor, one of whom is appointed by the Speaker of the House, and one of whom is appointed by the Senate President.

## **Grades offered by STEM and STEAM schools**

(R.C. 3326.03)

The act permits a STEM or STEAM school to submit an amended 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 12.

## **STEM and STEAM school designations for JVSDs and ESCs**

(R.C. 3326.03 and 3326.51)

The act 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 September 30, 2021, 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. A JVSD also may elect to apply for a designation as a STEM school equivalent or distinction as a STEM program of excellence.

## **STEM and STEAM school equivalent designations for career-technical education providers**

(R.C. 3326.01 and 3326.032)

Continuing law permits a community school and a chartered nonpublic school to receive a designation of STEM school equivalent. Prior law also permitted a “career center” to receive the designation. A career center was a high school in which a career-technical planning district provided career-technical education services that met state standards. Instead of using the term “career center,” the act specifies that any of the following may receive a STEM school equivalent designation:

1. A school operated by a JVSD;
2. A school offering career-technical educator programs that is operated by a school district participating in a compact career-technical educator provider; or
3. A school offering career-technical education programs that is operated by a comprehensive career-technical educator provider.

The act defines a “compact career-technical education provider” as two or more city, exempted village, or local school districts that are not members of a JVSD and that have entered into a compact under which students enrolled in any of the participating districts may access career-technical education programs provided by a participating district. A “comprehensive career-technical education provider” is defined as a city, exempted village, or local school district that is not a member of a JVSD and that provides a comprehensive career-technical education program to all high schools operated by the district.

## **Proposals for STEM and STEAM schools and equivalents**

(R.C. 3326.03, 3326.032, and 3326.07)

The act revises the specifications of 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. Have a curriculum that is problem-based (as well as rigorous, diverse, integrated, and project-based as under continuing law) with the goal to prepare “all students for post-high school learning experiences” (rather than with the goal to prepare students for college as under prior 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 prior 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 prior law); and
5. In the case of a STEM or STEAM school equivalent, have established partnerships with institutions of higher education and businesses, as well as arts organizations if the proposal is for a STEAM school equivalent (continuing law already requires this for STEM and STEAM schools).

The act 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 act 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, comprehensive career-technical education provider, compact career-technical education provider, or educational service center (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 September 30, 2021, from electing to apply for distinction as a STEM program of excellence.

The act 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 act 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 act 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 act requires STEM and STEAM schools and equivalents and JVSDs, comprehensive career-technical providers, compact career-technical education providers, 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 act 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 act 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 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 act 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. 3326.111, and R.C. 3326.14)

The act 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.)

## 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 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 act 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. The act does not address where students in the custody of DYS will attend college courses under the program and the transportation or security for those students.

The act 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 DYS to be deducted from the state operating funds of those schools.

## **Academic eligibility for all students**

(R.C. 3365.03)

Continuing law generally requires a student, as a condition of eligibility for the CCP program, to be “remediation free.” But, prior law prescribed a condition for a student who was not remediation free to participate if the student scored within one standard error of measurement below the remediation-free threshold on a standard assessment and (1) had at least a 3.0 cumulative high school grade point average or (2) received a recommendation from a school counselor, principal, or career-technical program advisor. The act removes this condition and, instead, requires the Chancellor of Higher Education, in consultation with the state Superintendent, to adopt rules to define an alternative remediation-free eligibility option. The act does grandfather in students who qualified under the former condition before September 30, 2021.

## **Nonpublic school participation (VETOED)**

(R.C. 3365.02)

The Governor vetoed a provision that would have prohibited any requirement of the CCP program, and any rule adopted by the Chancellor or the State Board of Education for administering the program, to apply to a nonpublic school that chooses not to participate in the program.

## **Course subject matter disclaimer**

(R.C. 3365.035 and 3365.04)

The act 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 act 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 the college or university in which the student wishes to enroll.

When admitting a student under the CCP program, each college or university must include the following in the institution's enrollment materials:

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 academic advisor.

Each participating college or university 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 or university 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.

## **Cost-effectiveness study**

(Section 265.530)

The act requires the Department of Education, in consultation with the Department of Higher Education, to study the results and cost-effectiveness of the CCP program and submit a report of its findings to the Governor, Speaker of the House, Senate President, and Director of the Legislative Service Commission by January 1, 2023. The study must include the cost-effectiveness of the program for secondary schools and participants and whether participants save money on college tuition and reduce the amount of time to degree completion.

## **VII. State scholarship and educational savings programs**

### **Scholarship amounts**

In addition to directly funding state scholarships as part of the changes to the school funding formula (see "**I. School finance**" above), the act revises the scholarship amounts for the Educational Choice (Ed Choice) Scholarship Program, the Pilot Project (Cleveland)

Scholarship Program, the Autism Scholarship Program, and the Jon Peterson Special Needs Scholarship Program.

### **Maximum amounts for Ed Choice and Cleveland programs**

(R.C. 3317.022(A)(10) and (11))

The act increases the maximum amount for a student under an Ed Choice or Cleveland Scholarship. Specifically, for a student enrolled in any of grades K-8, the act increases the maximum scholarship amount to \$5,500, from \$4,650 under prior law. For a student enrolled in any of grades 9-12, it increases the maximum scholarship amount to \$7,500, from \$6,000 under prior law. The act further requires those scholarship amounts to increase in future fiscal years by the same percentage as the average base cost per pupil increases in those years.

The act maintains the requirement that a student must receive the lesser of either the base tuition of the student's chartered nonpublic school, minus certain tuition discounts, or the maximum scholarship amount.

### **Autism scholarship maximum amount**

(R.C. 3317.022(A)(12))

The act increases the maximum scholarship amount a student may receive under the Autism Scholarship to \$31,500 for FY 2022 and \$32,445 for FY 2023 and each fiscal year thereafter. Under prior law, the maximum amount was \$27,000.<sup>45</sup>

The act maintains the requirement that a student's scholarship amount must equal the lesser of (1) the tuition charged by the student's special education program or (2) the maximum scholarship amount.

### **Jon Peterson Special Needs scholarship amount**

(R.C. 3317.022(A)(13))

The act changes how the amount of a Jon Peterson Special Needs scholarship is calculated, as shown in the table below.

<b>Scholarship Amount</b>	
<b>The act</b>	<b>Prior law</b>
Lesser of: <ol style="list-style-type: none"> <li>The amount charged by the student's alternative provider;</li> <li>The sum of \$6,217 for FY 2022, or \$6,414 for FY 2023, plus a specified</li> </ol>	Lesser of: <ol style="list-style-type: none"> <li>The amount charged by the student's alternative provider;</li> <li>The sum of the "formula amount" under prior law (\$6,020),<sup>47</sup> plus a specified</li> </ol>

<sup>45</sup> See R.C. 3310.41.

Scholarship Amount	
The act	Prior law
amount for the student's category of disability (see below); or	amount for the student's category of disability (see below); or
3. \$27,000. <sup>46</sup>	3. \$27,000. <sup>48</sup>

Amounts for Disability Categories	
The act	Prior law
The specified amounts for each category of disability are:	The specified amounts for each category of disability were:
Category 1. (Speech and language disability) \$1,514 for FY 2022, and \$1,562 for FY 2023;	Category 1. (same disabilities) \$1,578;
Category 2. (Specific learning disability, developmental disability, other health impairment-minor, or preschool child who is developmentally delayed) \$3,841 for FY 2022, and \$3,963 for FY 2023;	Category 2. (same disabilities) \$4,005;
Category 3. (Hearing disability or severe behavior disability) \$9,465 for FY 2022, and \$9,522 for FY 2023;	Category 3. (same disabilities) \$9,622;
Category 4. (Vision impairment or other health impairment – major) \$12,644 for FY 2022, and \$12,707 for FY 2023;	Category 4. (same disabilities) \$12,841;
Category 5. (Orthopedic disability or multiple disabilities) \$17,193 for FY 2022, and \$17,209 for FY 2023; and	Category 5 (same disabilities) \$17,390; and
Category 6. (Autism, traumatic brain injury, or both visual and hearing impairment) \$24,591 for FY 2022, and \$25,370 for FY 2023. <sup>49</sup>	Category 6. (same disabilities) \$25,637. <sup>50</sup>

<sup>47</sup> R.C. 3317.02(F) under prior law and Section 265.215(E) of H.B. 166 of the 133<sup>rd</sup> General Assembly.

<sup>46</sup> R.C. 3317.022(A)(13).

<sup>48</sup> Repealed R.C. 3310.56.

<sup>49</sup> R.C. 3317.022(A)(13)(a)(ii).



The act also requires that the specified base amount, \$6,414, for FY 2023, must increase in future fiscal years by the same percentage as the average base cost per pupil increases in those years. In addition, the dollar amount assigned to the child's category of disability also must increase by the same percentage that amounts calculated by the General Assembly for those categories of special education services increase for future fiscal years. (The act's new school funding model assigns a "multiple" to each of those same six categories that it then multiplied by the statewide average base cost per pupil.)

## **Performance-based Ed Choice scholarship eligibility**

### **Performance index score criteria**

(R.C. 3310.03)

The act changes the performance index score eligibility criteria for performance-based Ed Choice scholarships in a few ways. Under continuing law, a student qualifies for a first-time scholarship under that criteria by satisfying two conditions:

1. The student must be enrolled in, or in some cases would be assigned to, a school building operated by the student's resident school district that ranked in the lowest 20% of district buildings statewide according to a performance index score (excluding buildings operated by the Cleveland Municipal School District) for a prescribed number of years.

2. The student's resident district must have an average of 20% or more of its school aged residents, for the three consecutive years prior to the school year for which a scholarship is sought, qualify to be included in the formula to distribute federal Title I funds

The act changes the performance index score rankings used to determine whether a student satisfies the first of those conditions, as follows:

1. For a scholarship for the 2023-2024 school year, a building must be ranked in the lowest 20% for the 2018-2019 and 2021-2022 school years (rather than the 2020-2021 and 2021-2022 school years as under prior law); and

2. For a scholarship for the 2024-2025 school year, a building must be ranked in the lowest 20% for the 2021-2022 and 2022-2023 school years (rather than for at least two of the three most recent school years as under prior law).

The act maintains continuing law for scholarships for the 2025-2026 school year and thereafter, which requires that a building is ranked in the lowest 20% for at least two of the three most recent school years.

Finally, the act qualifies high school students (including entering 9<sup>th</sup> graders) who meet the criteria described above if, in the school year prior to the year for which a scholarship is sought, the student was enrolled in a public or nonpublic school, or was homeschooled, and completed any of grades eight through eleven. Otherwise, to qualify for a performance-based

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<sup>50</sup> Repealed R.C. 3310.56 and R.C. 3317.013 under prior law.

scholarship under continuing law, a student generally must be enrolled in a building operated by the student’s resident district or a community school. However, that requirement also is being phased out under the act (see below).

### **Phase-out of public school enrollment requirement**

(R.C. 3310.03)

The act expands eligibility for performance-based Ed Choice scholarships by phasing out the requirement that, to qualify for a performance-based scholarship, a student generally must be enrolled in either a building operated by the student’s resident district or a community school. The act exempts students seeking scholarships for a particular school year, as follows:

School year for which a scholarship is sought	Grades exempt from public school enrollment requirement
2021-2022	K-2
2022-2023	K-4
2023-2024	K-6
2024-2025	K-8
2025-2026 and after	K-12

### **Former Autism or Jon Peterson scholarship recipient**

(R.C. 3310.034)

The act qualifies for a performance-based Ed Choice scholarship a student who received an Autism scholarship or a Jon Peterson Special Needs scholarship, but who is no longer in need of special education services and, therefore, is no longer eligible for either of those scholarships. Under the act, such a student is eligible for a performance-based scholarship regardless of whether the student is enrolled in an Ed Choice designated building. Moreover, the student remains eligible to renew that scholarship until the student completes grade 12 so long as the student meets the state testing and attendance criteria for all other Ed Choice scholarship recipients under continuing law.

### **Siblings, foster families, and children placed with guardians, custodians, or kinship caregivers**

(R.C. 3310.033)

The act qualifies a student for a performance-based Ed Choice scholarship, regardless of whether that student is enrolled in an Ed Choice designated building, if that student satisfies any of the following conditions:

1. The student's "sibling" received a performance-based scholarship in the school year immediately prior to the year for which a scholarship is sought;
2. The student is placed with a foster caregiver;
3. The student is a child placed with a guardian, legal custodian, or kinship caregiver;
4. The student is not a child placed with a guardian, legal custodian, or kinship caregiver, but has resided in the same household as such a child for at least 45 consecutive days within the last calendar year;
5. The student is not placed with a foster caregiver, but resides in a certified foster home;
6. The student:
  - a. Is not a child placed with a foster caregiver, guardian, legal custodian, or kinship caregiver;
  - b. Has a parent or guardian who resides in Ohio; and
  - c. Resides in the household of an individual who is not the student's parent or guardian for at least 45 consecutive days within the last calendar year and, if not for residing in that household, would have been homeless.
7. The student is not a child at risk of homelessness (as described above), but resides in the same household as such a child for at least 45 consecutive days within the last calendar year.

This provision does not apply to students who reside in the Cleveland Municipal School District.

The act permits the Department to request that any individual applying for a scholarship under the provision provide appropriate documentation, as defined by the Department, that the student meets the prescribed eligibility qualifications. For a student at risk of homelessness (as described above), the documentation must be provided by the student's parent, guardian, or caretaker.

For the provision's purposes, a "sibling" is:

1. A brother, half-brother, sister, or half-sister by birth, marriage, or adoption;
  2. A cousin by birth, marriage, or adoption residing in the same household;
  3. A foster child residing in the same household, including a child who is subsequently adopted by the child's foster family;
  4. A child residing in the same household who is placed with a guardian or legal custodian;
  5. A child residing in the same household who is being cared for by a kinship caregiver;
- or

6. Any other child under 18 years old who has resided in the same household for at least 45 consecutive days within the last calendar year.

The act specifies that a student who qualifies under this provision remains eligible to renew that scholarship until the student completes grade 12 so long as the student meets the state testing and attendance criteria for all other Ed Choice scholarship recipients under continuing law.

### **Limit on number of performance-based scholarships – eliminated**

(R.C. 3310.02; conforming change in R.C. 5703.21)

The act eliminates the restriction on the number of performance-based Ed Choice scholarships that the Department may award each school year.

Prior law restricted the number of performance-based scholarships for a school year to 60,000, unless the number of applicants for a school year exceeded 90% of the maximum number. In that event, the Department was required to increase the maximum number for the next year by 5%. That new maximum number then would serve as the limit on scholarships until another, similar adjustment upward was triggered.

### **Maintain eligibility even if building IRN changes**

(R.C. 3310.036)

The act specifies that a student who is eligible for a performance-based Ed Choice scholarship as of February 1 prior to the year for which a scholarship is sought remains eligible for a scholarship even if, after that date, the Department changes the internal retrieval number (IRN) of the school building in which the student is enrolled or would otherwise be assigned.

### **Ed Choice eligibility for 2021-2022**

(Sections 733.70 and 812.23)

Effective June 30, 2021, the act qualifies for an Ed Choice scholarship for the 2021-2022 school year any student who satisfies one of the following conditions:

1. The student was homeschooled during the 2020-2021 school year, regardless of whether that student was enrolled in a public or nonpublic school in any prior year, and, during the 2021-2022 school year, is or would be assigned to a school building that was Ed Choice designated in the 2019-2020 school year;

2. The student was new to Ohio during the 2020-2021 school year and, for the 2021-2022 school year, is or would be assigned to a building that was Ed Choice designated in the 2019-2020 school year;

3. The student is enrolling in kindergarten for the 2021-2022 school year and would be assigned to a building that was Ed Choice designated in the 2019-2020 school year;

4. The student was enrolled in a public or nonpublic school, or homeschooled, during the 2020-2021 school year and both:

a. Was or would have been assigned to a building during the 2019-2020 school year that was Ed Choice designated in that year; and

b. Subsequently relocated and, during the 2020-2021 school year, was or would have been assigned to a building that was Ed Choice designated in that year.

5. The student was enrolled in a nonpublic school for 8<sup>th</sup> grade during the 2020-2021 school year and, for 9<sup>th</sup> grade during the 2021-2022 school year, is enrolled in or would otherwise be assigned to a building that was Ed Choice designated in the 2019-2020 or the 2021-2022 school year;

6. The student is the sibling of any other student determined to be eligible under the conditions described above or who received a scholarship during the 2020-2021 school year.

The act requires the Department to develop eligibility guidance consistent with this provision, post it on the Department's website in a prominent, easy-to-find location, and provide it to every nonpublic school that accepts Ed Choice scholarships by July 15, 2021. By that date, the Department also must begin accepting and processing applications for the 2021-2022 school year for students eligible under the provision. The act specifies that, for complete applications submitted by August 1, 2021, the Department must provide notice of award or denial by September 15, 2021.

The act authorizes the Department to request that applicants provide appropriate documentation, as defined by the Department, that students meet the eligibility qualifications prescribed under the provision.

Finally, the act prohibits the Department, for the 2021-2022 school year only, from prorating any Ed Choice scholarships based on a completed application submitted to the Department by October 31, 2021.

## **Ed Choice operations**

### **Monthly partial payments**

(R.C. 3317.022(E))

The act requires the Department of Education to make monthly partial payments for Ed Choice scholarships, rather than periodic partial payments as under prior law.<sup>51</sup>

### **Application period**

(R.C. 3310.16)

The act prescribes a single application period for Ed Choice scholarships that must open on February 1 prior to the school year for which a scholarship is sought. The Department must, within 45 days of receiving a completed application, determine whether an applicant is eligible and notify the applicant. Finally, the Department must award a scholarship to each approved

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<sup>51</sup> See repealed R.C. 3310.08(C)(1).

applicant. The act does not prescribe an end date to the application period. However, except for an application for the 2021-2022 school year received by October 31, 2021, it states an applicant who submits an application after the start of the school year must receive a prorated scholarship amount based on how much of the school year remains.

Prior law prescribed a “priority application period” opening on February 1 and running for at least 75 days. Prior law also specifically stated that the Department had to continue to award scholarships after the priority period closed but to prorate those awarded after the start of the school year.

### **System to determine performance-based scholarship eligibility**

(R.C. 3310.07)

The act requires the Department, by February 1, 2022, to establish a system under which an Ed Choice applicant may provide the Department with a student’s address and, within ten days via regular or electronic mail, receive notice whether the student is eligible for a performance-based Ed Choice scholarship. The act prohibits the student’s resident district from objecting to a student’s scholarship eligibility if the Department’s system determines the student is eligible.

To implement this provision, each school district that has an Ed Choice designated school building must, by January 1 of each year, submit to the Department, in the manner prescribed by the Department, the attendance zone for students assigned to that building.

### **Conditional approval scholarships (PARTIALLY VETOED)**

(R.C. 3310.16)

The act requires the Department, in each school year, to accept scholarship applications for conditional approval for that year or the next school year. Within five days of receiving such an application, the Department must grant conditional approval to a student who is eligible for a scholarship and notify the applicant whether or not the approval is granted.

The Governor vetoed a provision that would have required the Department to award a scholarship to a student with an application that has been conditionally approved if the student:

1. Enrolled in a chartered nonpublic school that accepts Ed Choice scholarships within one year of receiving approval; and
2. Did not change addresses after receiving approval and prior to enrolling in that chartered nonpublic school.

### **Miscellaneous application changes**

(R.C. 3310.16)

The act requires the Department, if it determines an Ed Choice scholarship application contains an error or deficiency, to notify the applicant within 14 days of the application’s submission. It also prohibits a school district from having access to any Ed Choice scholarship application.

Finally, the act requires the Departments of Education, Job and Family Services, and Taxation to enter into a data sharing agreement so that the Department of Education may determine, based on the address provided in an application, whether a student (1) is eligible for a performance-based scholarship or (2) meets the residency requirement for an income-based Ed Choice scholarship (that is, the student is not a Cleveland Municipal School District resident).

## **Autism Scholarship Program providers**

(R.C. 3310.41 and 3310.411)

The act expressly subjects registered private providers approved for the Autism Scholarship Program and their 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 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 act adds a “registered behavior technician”<sup>52</sup> and “certified Ohio behavior analyst”<sup>53</sup> to the list of qualified, credentialed providers that may offer intervention services under the program.

## **Cleveland Scholarship Program**

### **Application period**

(R.C. 3313.978)

The act eliminates the two application periods that had been prescribed for the Cleveland Scholarship Program and, instead, prescribes a single application period similar to the one prescribed for the Ed Choice Scholarship Program (see above). The Department must open that application period on February 1 prior to the school year for which a scholarship is sought. Within 45 days of receiving a completed application, the Department must determine whether an applicant is eligible and notify the applicant. Finally, the Department must award a scholarship to each approved applicant. However, the act provides that an applicant who submitted an application after the start of the school year must receive a prorated scholarship amount based on how much of the school year remains.

Under prior law, the first application period opened on February 1 and ran for at least 75 days, and the second application period opened not sooner than July 1 and ran for at least 30 days.

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<sup>52</sup> O.A.C. 5123-9-41.

<sup>53</sup> R.C. Chapter 4783, not in the act.

## **Participating nonpublic schools**

(R.C. 3313.976)

The act expands the number of chartered nonpublic schools that may register to participate in the Cleveland Scholarship Program. Specifically, the act permits a chartered nonpublic school to register if it offers any of grades K-12 and is located in a school district that is located within five miles of Cleveland and in a municipality of at least 15,000. Under prior law, chartered nonpublic schools located in such neighboring municipalities could participate only if they offered any of grades 9-12. Continuing law permits any chartered nonpublic school to participate if it offers any of grades K-12 and is located in the Cleveland Municipal School District.

## **Background on scholarship programs**

The Ed Choice Scholarship Program operates statewide in every school district except Cleveland to provide scholarships for students who (1) are assigned or would be assigned to district school buildings that have persistently low academic achievement (known as “traditional” or “performance-based” Ed Choice) or (2) are from low-income families (known as “income-based” Ed Choice Expansion). Students may use their scholarships to enroll in participating chartered nonpublic schools.

The Pilot Project (Cleveland) Scholarship Program allows students who are residents of the Cleveland Municipal School District to obtain scholarships to attend participating nonpublic schools or public schools in adjacent districts.

The Autism Scholarship Program provides scholarships to autistic students in any of grades pre-K-12 whose parents choose to enroll the student in an approved special education program other than the one offered by the student’s school district.

The Jon Peterson Special Needs Scholarship Program is similar to the Autism Scholarship Program except that it is available to students with any category of disability in grades K-12. It is not available to pre-K students.

## **ACE Educational Savings Account Program**

(R.C. 3310.70; Sections 265.355 and 733.60)

### **Purpose**

The act establishes the Afterschool Child Enrichment (ACE) Educational Savings Account Program to provide eligible students, upon the request of their parents or guardians, with educational savings accounts. As enacted, the program is financed with federal coronavirus relief funds. Each account established for a student may be credited with \$500 for each of FY 2022 or FY 2023. The act qualifies a student for an account if (1) the student is at least 6 years old and under 18 years old, (2) the student’s family income is at or below 300% of the federal poverty level, and (3) the student is enrolled in a public or nonpublic school or is being homeschooled. The parent or guardian of an eligible student may use funds in the account for any of the following purposes, whether secular or nonsecular:

1. Before- or after-school educational programs;



2. Day camps, including camps for academics, music, and arts;
3. Tuition at learning extension centers;
4. Tuition for learning pods;
5. If the student is homeschooled, purchase of curriculum and materials;
6. Educational, learning, or study skills services;
7. Field trips to historical landmarks, museums, science centers, and theaters, including admission, exhibit, and program fees;
8. Language classes;
9. Instrument lessons; or
10. Tutoring.

However, the act prohibits using the funds to purchase electronic devices.

The Department must make available to parents and guardians a list of the purposes for which funds in an account may be spent.

## **Operation**

The act requires the Department, by October 30, 2021, to adopt emergency rules to prescribe procedures for the establishment of ACE educational savings accounts for FY 2022 and FY 2023. By January 28, 2022, the Department must create an online form for parents and guardians to request an account's establishment. If a parent or guardian requests an account for FY 2022 or FY 2023, \$500 must be credited to that account within 14 days of the request and the amount must be disbursed by June 30 of that fiscal year. Accounts must be established on a first-come, first-served basis according to the availability of appropriated funds.

Under the act, the Department must contract with a vendor to administer the program. The Department also may contract with the Treasurer of State for technical assistance. In selecting a vendor, the Department must give preference to vendors that use a smart phone application that is free for parents and guardians, is capable of scanning receipts, allows users to provide program feedback, and includes customer service contact information for users who experience technical issues. For FY 2022 or FY 2023, the Department is prohibited from paying the vendor more than 3% of the amount appropriated for the program for that fiscal year.

The selected vendor must monitor how accounts are used and recoup funds that are used for unauthorized purposes, as determined by the vendor. It also requires the vendor to provide the Department with a comprehensive list of purchases made with accounts. The act prohibits the vendor from authorizing parents or guardians to use funds for unauthorized purposes. If the vendor authorizes parents or guardians to use funds for specified purposes and later determines the purpose is not authorized, the vendor may recoup those funds.

## **Report**

The act requires the Department, by December 31, 2022, to submit to the General Assembly a report regarding the ACE Educational Savings Account Program, including feedback from a random sampling of participating parents or guardians.

## **VIII. Other**

### **Student transportation – pick up and drop off times**

(R.C. 3327.01)

The act requires school districts, educational service centers, and private school transportation contractors to “deliver” students enrolled in grades preschool through 12 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 30 minutes after the close of the day.

Under continuing law, a city, exempted village, or local 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 or STEM schools; or chartered nonpublic schools. There are exceptions, however, such as when transportation to a community or STEM school or chartered nonpublic 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.

### **Community and nonpublic school student transportation**

#### **Transportation plans**

(R.C. 3327.016; conforming change in R.C. 3313.48)

Under the act, community schools and chartered nonpublic schools must establish school start and end times for a school year by April 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 must use those start and end times to develop a transportation plan for community and chartered nonpublic school students whom the district is required to transport within 60 days after receiving the information from those schools. If a community or chartered nonpublic school provides those times after April 1 but before July 1, the district must attempt to provide a transportation plan to the school by August 1 of that school year. For any student who enrolls in a community or chartered nonpublic school after July 1, the district must develop a transportation plan within 14 business days after receiving a request for transportation services from the student’s parent or guardian.

#### **Limits on use of mass transit systems**

(R.C. 3327.017)

The act limits a school district’s use of vehicles operated by mass transit systems to transport community and chartered nonpublic school students. First, it prohibits a school

district from transporting such students enrolled in grades K-8, unless the district enters into an agreement with the students' community or chartered nonpublic school authorizing that transportation. The act expressly requires both the district and school to approve the agreement in order for it to be effective.

Second, for such students enrolled in grades 9-12, the act 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 act requires a school district to transport community or chartered nonpublic school students to and from school on each day that their schools are open for instruction, regardless of whether the district's school buildings are open. However, the act also maintains the 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 transportation responsibility**

(R.C. 3314.091)

Under continuing law, 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 district that it will be providing or arranging its students' transportation. The act adjusts the deadline for that notice at August 1 of the school year for which the community school will be providing or arranging transportation, rather than January 1 of the previous school year as under prior law.

### **Deduction for district noncompliance with transportation law**

(R.C. 3327.021)

The act requires the Department to deduct a portion of a 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 act requires the Department to monitor each district's compliance with:

1. Its general obligations under the law to transport students, including the new obligation under the act "deliver" students no sooner than 30 minutes prior to the beginning of school and to be available to pick them up no later than 30 minutes after the close of the day;
2. Its new obligation under the act to generally transport community school and chartered nonpublic school students on days that those schools are open (see above);

3. Its new obligation under the act regarding transportation plans for community schools and chartered nonpublic schools (see above); and

4. The act'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 by a district to meet those obligations, it must deduct from the district's state transportation funding the total daily amount of that funding for each day the district is noncompliant.

However, the act 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 (see below).

## **Payment in lieu of transportation**

(R.C. 3327.02; Section 265.150)

Under continuing law, a school district, or a community school that has accepted responsibility to provide transportation, may offer a parent payment instead of transportation, if it determines that transporting a particular student is impractical. Statutory law prescribes the following factors that districts and schools must consider in making that determination on a student-by-student basis:

1. Time and distance involved in the transport;
2. Number of students to be transported;
3. Cost of equipment, maintenance, personnel, and administration;
4. Whether similar or equivalent service is provided to other students;
5. Whether and to what extent the additional service unavoidably disrupts current transportation schedules; and
6. Whether other reimbursable types of transportation are available.

## **Procedures**

The act requires a district or school 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 after the first day of instruction, the district or school must make the determination within 14 calendar days after a student's enrollment. The act also authorizes a district 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. Additionally, the district or school must issue to a student's parent or guardian, the student's nonpublic or community school, and the State Board a letter with a detailed description of the reasons why the payment in lieu determination was made.

In the case of a community or nonpublic school student eligible for district transportation, the act permits the student's parent, guardian, or custodian, at any time after requesting transportation for that student, to authorize the community or chartered nonpublic school to act on the student's behalf for purposes of determining payment in lieu of transportation and any related mediation proceedings.

## **Payment**

Prior law, required the annual amount of a payment in lieu of transportation to be at least as high as the amount determined by the General Assembly as the minimum for each school year, and not more than the amount determined by the Department as the average cost of pupil transportation for the previous school year.

Under the act, the annual payment in lieu amount must not be less than 50% but not more than the average cost of pupil transportation for the previous school year, as determined by the Department. Continuing law permits the payment to be prorated if the time period involved is only a part of a school year.

The act specifies that, if the Department must order a district or school to compensate a student's parent, guardian, or custodian, the amount of that payment must be equal to 50% of the cost of providing transportation, as determined by the district board or school governing authority, but must not be more than \$2,500.

## **Transportation contracts**

(R.C. 3327.018)

The act expressly 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:

- Contracts must be entered into under the authority of the school district as a political subdivision;
- Contracts are not considered commerce;
- 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 district board of education may recover expenses from contracting entities, not to exceed the costs of operation and insurance coverage.

## **Online school bus driver training program**

(R.C. 3327.101)

The act requires the Department to develop a permanent online bus driver training program to satisfy the classroom portion of pre-service and annual in-service training for school bus driver certification. Drivers must continue completing on-the-bus training in person.

## **Withdrawal of certain students for failure to take assessments**

(R.C. 3313.6412 and 3314.262)

Beginning with the 2020-2021 school year, the act creates a new starting point for withdrawal determinations made by internet- or computer-based community schools (e-schools) and district-operated internet- or computer-based schools) upon a student's failure to complete the spring administration of any required state assessment for two consecutive school years.

Under continuing law, such schools are required to automatically withdraw any student who has not participated in the spring administration of any required state assessment for two consecutive years and who was not otherwise excused from taking that assessment. A school may not receive any state funds for any student who is subject to automatic withdrawal under this provision but may permit the student to continue to attend the school's program only if the student's parent pays tuition.<sup>54</sup>

## **Online learning**

(R.C. 3301.079, 3302.41, and 3302.42)

The act permits school districts, with the approval of the Superintendent of Public Instruction, to operate a school using an online learning model. The act defines "online learning" as a model in which students work primarily from their residences on assignments delivered via an internet- or other computer-based instructional method.

Under the act, the district superintendent must notify the Department, by July 1 of the school year for which the change is effective, that a school in the district is operated or is ceasing to operate using an online learning model. If any school district is using an online learning model on September 30, 2021, the district superintendent must notify the Department by November 29, 2021, of that fact and request that the school be classified as an online learning school.

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<sup>54</sup> R.C. 3313.6410 and 3314.26, neither in the act. Section 17(A)(4) of H.B. 197 of the 133<sup>rd</sup> General Assembly prohibited these schools from withdrawing students who were unable to complete assessments for the 2019-2020 school year.

## **District requirements to operate online learning**

Districts that operate a school using an online learning model must:

1. Assign all students engaged in online learning to a single school;
2. Provide all students engaged in online learning a computer, at no cost, for instructional use. Districts also must provide a filtering device or install filtering software that protects against internet access to materials that are obscene or harmful to juveniles on each computer provided to students for instructional use;
3. Provide all students engaged in online learning access to the internet, at no cost, for instructional use;
4. Provide a comprehensive orientation for students and their parent or guardian prior to enrollment or by October 30, 2021, for students enrolled as of September 30, 2021; and
5. Implement a learning management system that tracks the time students participate in online learning activities. The act specifies that all student learning activities completed while off-line must be documented with all participation records checked and approved by the teacher of record.

## **State Board standards for online learning**

The act requires the State Board to revise operating standards for school districts to include standards for the operation of online learning models to provide for:

1. Student-to-teacher ratios of not greater than one teacher for every 125 students in online learning classrooms;
2. The ability of all students, at any grade level, to earn credits or advance grade levels upon demonstrating mastery of knowledge or skills through competency-based learning models. The act also prohibits that credits or grade level advancement be based on a minimum number of days or hours in a classroom;
3. Requirement that online schools operated by a school district to have an annual calendar of not less than 910 hours;
4. Requirement that Department to review and adjust state funding payments to districts based upon student participation in online learning; and
5. Adequate provisions for: the licensing of teachers, administrators, and other professional personnel and their assignment according to training and qualifications; efficient and effective instructional materials and equipment; the proper organization, administration, and supervision of each school; admission of pupils; requirements for graduation; and other factors the State Board finds necessary.

## **Blended learning – minimum school year**

The act requires that districts and schools using a blended learning model operate an annual calendar of at least 910 hours. Prior law stated only that schools operating on a blended learning model were exempt from minimum school year and school day requirements. (The

minimum school year for school districts is 1,001 hours for students in grades 7-12 and 910 hours for students in grades 1-6.)<sup>55</sup>

### **Other changes regarding blended and online learning**

The act modifies the definition of “blended learning” by specifying that the delivery of instruction “primarily” should be in a supervised physical location away from home. The definition previously required only that the delivery of instruction be a combination of time in a supervised physical location away from home and online delivery.

It also requires the Department to include information on the use of online learning (in addition to blended and digital learning as under continuing law) in the delivery of standards or curricula to students, whenever the State Board adopts standards or model curricula.

### **FAFSA data system**

(R.C. 3313.6026; conforming changes in R.C. 3314.03, 3326.11, and 3328.24)

The act requires each 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 act, 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 act requires the Department, in consultation with the Chancellor of Higher Education, to establish a committee to develop a state plan for primary and secondary computer science education. The committee must be established by October 30, 2021. 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;

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<sup>55</sup> R.C. 3313.48.



- c. Institutions of higher education;
- d. Businesses; and
- e. State and national computer science organizations.

The act requires the committee to complete the state plan by September 30, 2022. The Department must post the completed state plan in a prominent location on its website.

### **Topics 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;
  - b. Permits the Department and the Chancellor to develop pathways to align computer science education with the state's workforce needs; and
7. Any other topics determined appropriate by the committee.

### **Plan contents**

The state plan must include:

1. An 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;
3. A requirement that the committee determine the best ways to compile data on computer science courses, teachers, and undergraduate students studying computer science in universities; and
4. Any findings the committee determines appropriate based on its consideration of the topics described above.

## **State Board's standards and curriculum**

(R.C. 3301.079)

The act requires the State Board to update its standards and curriculum for computer science education by September 30, 2022.

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

(R.C. 3313.60(A)(5))

The act requires school districts to include instruction on the harmful effects of and legal restrictions against the use of electronic smoking devices (vaping) in its health education curriculum. This is in addition to the continuing requirement to provide instruction on the harmful effects of and legal restrictions against the use of drugs of abuse, alcoholic beverages, and tobacco.

## **Venereal disease instruction**

(R.C. 3313.6011)

The act requires a school district or school to notify all parents and guardians if it chooses to offer additional instruction in venereal disease or sexual education not specified under continuing law. Specifically, the notification must include the name of any instructors, vendor name if there is one, and the name of the curriculum being used.

The act also prohibits a district or school from offering the additional instruction to a student unless a parent or guardian has submitted written permission for that student to receive it.

Moreover, the district or school must provide any instructional materials associated with venereal disease or sexual education to a parent or guardian upon request.

Additionally, the Department must:

1. Conduct an annual audit at the beginning of each school year of school districts to ensure compliance with requirements regarding venereal disease instruction;
2. Publish the findings of the audits not later than 120 days after the start of each school year; and
3. Prominently post the results of the audits on the Department's website.

For a description of the curriculum requirements for venereal disease education under continuing law, see p. 186 of LSC's analysis of H.B. 110, As Passed by the Senate, available at <https://www.legislature.ohio.gov/download?key=17057&format=pdf>.

## **Victim counseling**

(R.C. 3319.47)

The act permits public and chartered nonpublic schools to provide counseling to victims of sexual harassment or sexually related conduct.

## Academic distress commissions

### Moratorium

(Section 265.520)

The act prohibits the state Superintendent from establishing any new academic distress commissions (ADCs) for the 2021-2022 and 2022-2023 school years. Otherwise, under continuing law, the state Superintendent must establish an ADC for certain school districts with persistently low academic performance to guide actions to improve their performance. That law requires each ADC to appoint a chief executive officer (CEO) who has substantial powers to manage the operation of a qualifying district and prescribes progressive consequences for the district, including possible changes to collective bargaining agreements and eventual mayoral appointment of the district board.<sup>56</sup>

For a detailed description of duties and powers of an ADC and the CEO, unchanged by the act, see pp. 10-23 of LSC's Final Analysis of H.B. 70 of the 131<sup>st</sup> General Assembly, available at <https://www.legislature.ohio.gov/download?key=2653&format=pdf>.

The performance measures for triggering an ADC and transitioning out of oversight by an ADC were recently changed as part of revision to the state report card law in H.B. 82 of the 134<sup>th</sup> General Assembly, effective September 30, 2021.<sup>57</sup> See pp. 18-19 of LSC's Final Analysis for H.B. 82, available at <https://www.legislature.ohio.gov/download?key=17325&format=pdf>.

### Improvement plans; early transitioning out of ADC oversight

(R.C. 3302.103; Section 812.20)

The act establishes a process by which school districts currently subject to an ADC may be relieved from the oversight of its ADC prior to meeting the conditions for transitioning out of the oversight of an ADC. Those districts are Youngstown, Lorain, and East Cleveland.

This process does not affect, nor is it affected by, the act's moratorium on the establishment of new ADCs.

### District academic improvement plan development and approval

Under the act, the board of education of a school district currently subject to an ADC, in consultation with the appropriate stakeholders and the district's ADC and CEO, must develop and submit a three-year academic improvement plan to the state Superintendent. That plan must be submitted by September 30, 2021, and must include annual and overall academic improvement benchmarks and strategies for achieving those benchmarks.

Within 30 days after receiving the improvement plan, the state Superintendent must review it and either suggest modifications or approve it. If the state Superintendent suggests modifications, the district board must revise the plan and resubmit it for approval within

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<sup>56</sup> R.C. 3302.10, not in the act.

<sup>57</sup> R.C. 3302.10, as amended by H.B. 82 of the 134<sup>th</sup> General Assembly.

15 days after receiving the suggestions. Not later than 30 days after the modified plan is resubmitted, the state Superintendent must approve it.

Upon approval by the state Superintendent, the district board may begin to prepare to implement the plan, which is in effect from July 1, 2022, to June 30, 2025. The district's ADC and CEO must work with the district in preparing to implement the plan.

Additionally, the district board may submit a request to the state Superintendent to modify the plan while it is being implemented, but no modifications can be made without the state Superintendent's approval.

### **Plan implementation**

While the district is implementing the plan, the district board reassumes all power granted to it under statutory law. Additionally, the district's ADC continues to exist and provide assistance to the district, but has no operational or managerial control of the district. The CEO is removed from the position, and the district is not subject to the ADC for the duration of the academic improvement plan. Finally, the district board must provide annual reports to the State Board of Education on the district's progress toward achieving the academic benchmarks in the plan.

At the end of three school years under the improvement plan, the State Board must evaluate the district's performance. If the district improves but does not meet at least a majority of the academic improvement benchmarks, the district board may apply to the state Superintendent for a one-school-year extension to continue implementing the plan. If the district does not meet at least a majority of the established benchmarks at the end of the extension, the district board again may apply for another one-school-year extension. The act prohibits more than two extensions.

If the district either (1) does not meet at least a majority of the academic improvement benchmarks at the end of five school years under the improvement plan or (2) if the district's application for an extension is not approved by the state Superintendent, the district once again becomes subject to continuing ADC statutory law.

However, if the district meets at least a majority of the academic improvement benchmarks at the end of the initial evaluation or after an extension granted by the State Board, the ADC is dissolved, and the district continues exercising all powers granted under statutory law.

### **Former CEO as district superintendent**

The act permits the district board to employ the former CEO as the district superintendent. If the district enters into a contract with that individual for the district superintendent position, the Department must provide compensation to the individual under the terms of the former CEO contract while the district is implementing its improvement plan. Once the district either becomes subject to an ADC again or its ADC is dissolved, the district board must begin compensating the individual under the terms of the district board's employment contract with the individual for district superintendent.

## Performance audit

The act requires the Auditor of State to complete a one-time performance audit of the district between July 1, 2022, and June 30, 2025, and submit the audit results to the district board and the district's ADC.

## ESC governing board subdistricts

(Section 733.50)

When an educational service center (ESC) is formed by the merger of two or more smaller ESCs, the governing board of the new ESC may divide its electoral territory into subdistricts with each member elected from one of those subdistricts, instead of being elected at large from the ESC's entire territory. However, in compliance with the constitutional one-person, one-vote principle for popular elections, continuing law requires each ESC that has subdistricts to reconfigure them every ten years so that each member fairly represents about the same number of people. Generally, this redistricting must be completed within 90 days after the official announcement of the results of each federal decennial census. If a governing board fails to redistrict its territory by that date, the state Superintendent must redistrict it within 30 days thereafter.<sup>58</sup>

The act temporarily permits an ESC board to delay its next redistricting until July 1, 2022. The state Superintendent, then, has until August 1, 2022, to redistrict an ESC, if a board fails to do so. This provision also delays the first election for board members under the new organization until November 2023.

## ESCs and competitive federal grants

(R.C. 3312.01)

The act specifies that an ESC must be considered a "local education agency" for the purposes of eligibility in applying for *competitive* federal grants. Law retained by the act specifies that an ESC also must be considered a "school district" for the purposes of eligibility in applying for a state grant or federal grant. Prior law, however, did not specify that the authority applies only to federal grants that are competitive.

## Adult Diploma Program minimum age

(R.C. 3313.902)

The act lowers the minimum age to participate in the Adult Diploma Program from 22 to 20. The program provides job training and an alternate pathway for adults who have not received a high school diploma or certificate of high school equivalence to earn an industry-recognized credential aligned to one of Ohio's in-demand jobs and earn a state-issued high school diploma.

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<sup>58</sup> R.C. 3311.054, not in the act.

## Ohio Code-Scholar Pilot Program

(R.C. 3313.905; Section 812.20)

The act requires Southern State Community College (SSCC) to establish and maintain a five-year Ohio Code-Scholar Pilot Program to support technical workforce needs. Eligible counties for the pilot program are Fayette, Clinton, Adams, Highland, Brown, and Pike.

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 must 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;
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;
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 will recruit school districts and other participants from eligible counties for the fall of 2021;
6. Develop a structured timeline by which the pilot program;
7. Determine how to include the College Credit Plus program in the pilot program;
8. Collaborate with the designated department, advisor, and instructor (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.

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.

At the end of the five-year period, the act 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 act requires the Department 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. The act also requires the Department to adopt guidelines and procedures to operate the pilot program.

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 act 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 the student's 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; and

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.

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

(R.C. 3313.6013)

The act specifically requires public and chartered nonpublic high schools to provide information at least annually to students in grades 6 through 11 about their advanced standing programs. Prior law required that students be informed about the programs, but it did not specify the frequency.

## **Interscholastic athletics transfer rules**

(Repealed R.C. 3313.5316)

The act repeals a 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 act subjects chartered nonpublic schools to the same requirements and procedures as school districts related to the administration of prescription drugs to students. Thus, 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.

Like a school district, 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 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; and
6. All other procedures required by the school are followed.

Also as in the case of school district employees under continuing law, the act provides immunity for nonpublic school employees from liability in a civil action for money damages for administering or failing to administer a drug in accordance with the school's policy, unless it is done in a manner that is gross negligence or wanton or reckless misconduct.



## Sale or lease of school district property

(R.C. 3313.411; Section 812.10)

For purposes of the involuntary sale or lease of school district real property, the act adds to the definition of an “unused school facility” any school building that has been used for direct academic instruction but less than 60% of the building was used for that purpose in the preceding school year. This addition to the definition is effective July 1, 2022. Law, not changed by the act, defines “unused school facility” also as real property that has been used by a school district for school operations, including, but not limited to, academic instruction or administration, since July 1, 1998, but has not been used in that capacity for one year.

Continuing law requires a school district to offer to lease or sell “unused” real property to community schools, college-preparatory boarding schools, and STEM schools located within the district. Community schools that meet the statutory definition of “high-performing” must be given priority in such transactions. Districts also may offer the property to existing community schools located outside the district, if those schools have plans, stipulated in their contracts with their sponsors, to relocate to the district.

## 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 act 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</b> <b>(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</b> <b>(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).
<b>R.C. 3301.46</b> <b>(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</b> <b>(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.

Section number	Description
<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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## BOARD OF EMBALMERS AND FUNERAL DIRECTORS

- Exempts, from disclosure under Ohio Public Records Law, preneed funeral contracts, and contract terms and personally identifiable information of a preneed funeral contract, contained in mandatory reports submitted to the Board of Embalmers and Funeral Directors.

### **Preneed funeral contracts – public records exemption**

(R.C. 149.43)

The act exempts, from disclosure under Ohio Public Records Law, preneed funeral contracts, and contract terms and personally identifying information from a preneed funeral contract, that may be contained in a report submitted by or for a funeral home to the Board of Embalmers and Funeral Directors.

A preneed funeral contract is a written contract to provide funeral goods or services to be used in connection with the funeral or final disposition of a dead human body, entered into before the death of the purchaser or intended recipient of the goods or services.<sup>59</sup>

Several ongoing provisions of law require information about preneed funeral contracts to be submitted to the Board. First, a person who holds a funeral home license for a funeral business, after closing or before a change of ownership, must submit to the Board a clearly enumerated account of certain moneys owed to the business including moneys from preneed funeral contracts.<sup>60</sup> Second, every seller of preneed funeral contracts must provide an annual report of such sales to the Board.<sup>61</sup> Finally, to help the Board administer the preneed recovery fund, each funeral home licensee who sells a preneed funeral contract must submit to the Board certain information about each contract.<sup>62</sup>

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<sup>59</sup> R.C. 4717.01, not in the act.

<sup>60</sup> R.C. 4717.13, not in the act.

<sup>61</sup> R.C. 4717.31, not in the act.

<sup>62</sup> R.C. 4717.41, not in the act; O.A.C. 4717-14-07.

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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 the following fees:
  - A \$15 application fee for a registration certificate necessary for certain scrap tire collection facilities;
  - A \$15 application fee for a permit, or variance, or plan approval under the Solid and Hazardous Waste Law; and
  - The \$100 fee for renewal of coverage under an NPDES general permit for a household sewage treatment system.
- Eliminates a non-Title V air contaminant source fee schedule that only applied from January 1, 1994, to December 31, 2003.
- Reduces, from \$1,800 to \$500, the additional survey fee that laboratories must pay to the Ohio Environmental Protection Agency (OEPA) to add analysts or additional accepted analytical techniques between triennial renewal surveys.

- Corrects the definition of “MF” that is associated with lab fees by changing it from “microfiltration” to “membrane filtration.”

### **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 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 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 federal Safe Drinking Water Act, rather than every five years as in prior 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 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 act’s effective date may still be used.
- 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 act extends the period of validity for various OEPA-administered 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 prior law and the act:

Type of fee	Description	Fee under prior law	Fee under the act
Synthetic minor facility: emission fee	Each person who owns or operates a synthetic minor facility must pay an annual fee in accordance with a fee schedule that is based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead. A synthetic minor facility is a facility for which one or more permits to install or permits to operate have been issued for the air contaminant source at the facility that include terms and conditions that lower the facility’s potential to emit air contaminants below the major source thresholds established in rules.	The fee was required to be paid through June 30, 2022.	The act extends the fee through June 30, 2024.

Type of fee	Description	Fee under prior law	Fee under the act
Wastewater treatment works: plan approval application fee	<p>A person applying for a plan approval for a wastewater treatment works is required to pay one of the following fees depending on the date:</p> <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>	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 act extends the tier one fee through June 30, 2024; the tier two fee begins on or after July 1, 2024.
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 act 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 act 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 act 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 applied through June 30, 2022, and is required to be paid annually in January.	The act extends the initial license and license renewal fee through June 30, 2024.

Type of fee	Description	Fee under prior law	Fee under the act
Fee for plan approval to construct, install, or modify a public water system	Anyone who intends to construct, install, or modify a public water supply system must obtain approval of the plans from OEPA. The fee for the plan approval is \$150 plus 0.35% of the estimated project cost. However, continuing law sets a cap on the fee.	The cap on the fee was \$20,000 through June 30, 2022, and \$15,000 on and after July 1, 2022.	The act extends the cap of \$20,000 through June 30, 2024; the cap of \$15,000 applies on and after July 1, 2024.
Fee on state certification of laboratories and laboratory personnel	<p>In accordance with two schedules, OEPA charges a fee for evaluating certain laboratories and laboratory personnel.</p> <p>An additional provision states that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay \$1,800 for each additional survey requested.</p>	<p>The schedule with higher fees applied through June 30, 2022, and the schedule with lower fees applied on and after July 1, 2022.</p> <p>The \$1,800 additional fee applied through June 30, 2022.</p>	<p>The act extends the higher fee schedule through June 30, 2024; the lower fee schedule applies on and after July 1, 2024.</p> <p>The act extends the additional fee through June 30, 2024.</p>
Fee for examination for certification as an operator of a water supply system or wastewater system	A person applying to OEPA to take an examination for certification as an operator of a water supply system or a wastewater system (class A and classes I-IV) must pay a fee, at the time an application is submitted, in accordance with a statutory schedule.	A schedule with higher fees applied through November 30, 2022, and a schedule with lower fees applied on and after December 1, 2022.	The act 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 was submitted through June 30, 2022, the fee was \$100. The fee was \$15 for an application submitted on or after July 1, 2022.	The act 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 was submitted through June 30,	The act extends the \$200 fee through June 30,



Type of fee	Description	Fee under prior law	Fee under the act
		2022, the fee was \$100. The fee was \$15 for an application submitted on or after July 1, 2022.	2024; the \$15 fee applies on and after July 1, 2024.
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 applied through June 30, 2022.	The act 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 were scheduled to sunset on June 30, 2022.	The act extends the fees through June 30, 2024.

The act also eliminates all of the following:

1. A \$15 application fee for registration certificate necessary for certain scrap tire collection;
2. A \$15 application fee for a permit, or variance, or plan approval under the Solid and Hazardous Waste Law;
3. An obsolete non-Title V air contaminant source fee schedule that applied from 1994 to 2003; and
4. The \$100 fee for renewal of coverage under an NPDES general permit for a household sewage treatment system.

Additionally, it reduces, from \$1,800 to \$500, the additional survey fee that laboratories must pay to the OEPA to add analysts or additional accepted analytical techniques between triennial renewal surveys.

Finally, the act corrects the definition of “MF” that is associated with lab fees by changing it from “microfiltration” to “membrane filtration.”

## Scrap tires removed from “no fault” sites

(R.C. 3734.85)

The act 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 act 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 act)

The act eliminates a requirement that the Director adopt rules establishing 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 act shifts reporting and other requirements that the owner or operator of these 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 notifications;
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 act 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 prior law; and
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 prior law.

The act 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.

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)

The Voluntary Action Program (VAP) is a cleanup program 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 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 act eliminates a requirement that OEPA certify laboratories for purposes of the VAP. Instead, it requires each laboratory to hold a valid accreditation from an outside accreditation body, as follows:

1. For analysis of asbestos, accreditation by one of the following:

- 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, accreditation by one of the following:
    - a. An accreditation body recognized by NELAC;
    - b. A NELAP accreditation from an accreditation body recognized by NELAC.

The act 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 act's effective date may still be used for a voluntary action. Because this data may still be used, the act retains the Director's authority to audit any work performed by a certified laboratory before the act'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 act'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 act extends the Director's investigation and auditing authority 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 act 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 act 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 act corrects an incorrect division reference to the Ohio Administrative Code in the law governing isolated wetlands. Prior law referenced 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 act 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 under prior law, to notify the Superintendent of Public Instruction if the district will exceed the limit on net indebtedness.
- Revises the water bottle filling station and drinking fountain requirements for classroom facility construction projects.

### Notification of district net indebtedness

(R.C. 133.06)

The act requires a school district, instead of the Facilities Construction Commission as under prior law, to notify the Superintendent of Public Instruction if the district will exceed the limit on net indebtedness.

Generally, a school district may not incur 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.

School districts, however, may exceed those limits when necessary to raise the district share to participate in a school facilities project.

### School water bottle filling stations

(R.C. 3318.038)

The act revises the recently enacted requirements for water bottle filling stations in a design plan for a state-assisted classroom facility project 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 act retains the requirement that each design plan include a minimum of two water bottle filling stations in each building.

The act 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 act specifically authorizes each district board or school governing authority to issue disciplinary action for misuse of a water bottle.

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## GENERAL ASSEMBLY

### General Assembly intervention in lawsuits (VETOED)

- Would have allowed the Speaker of the House and the President of the Senate to intervene to defend a statute in any court case in which the statute is challenged as unconstitutional or invalid under federal law, or in which the statute's construction or validity is otherwise challenged (VETOED).
- Would have permitted those leaders similarly to intervene in court to defend a General Assembly or congressional district plan, or any such districts, adopted by the Ohio Redistricting Commission (VETOED).
- Would have allowed the leaders to obtain legal counsel independent of the Attorney General and to use public funds appropriated for that purpose (VETOED).
- Would have prohibited any other individual member, or group of members, of the General Assembly or the Ohio Redistricting Commission from intervening in such a case in an official capacity or obtaining independent legal counsel at public expense (VETOED).
- Would have specified that the participation of the Speaker or the President in a case, as described above, does not waive the legislative privilege or immunity of any member, officer, or staff of the General Assembly (VETOED).

### Protection and advocacy system and client assistance program

- Requires the President and the Speaker, every two years, to establish a joint committee to examine the activities of the state's protection and advocacy system and client assistance program.
- Requires the joint committee, every two years, to submit a report containing any recommendations to the President, the Speaker, the Governor, and the members of the Joint Committee on Medicaid Oversight.

### Evaluation of publicly funded child care and Step Up to Quality

- Establishes a study committee to evaluate publicly funded child care and the Step Up to Quality Program and requires the committee to issue a final report of its findings and recommendations by December 1, 2022.

### Joint committee on career pathways and workforce training

- Establishes a joint legislative study committee on career pathways and post-secondary workforce training programs, which must issue a report by November 1, 2022.

### H2Ohio testimony to the General Assembly

- Requires the directors who contribute to the required annual H2Ohio report that addresses H2Ohio projects and the Executive Director of the Lake Erie Commission to



appear before both the House and Senate Finance committees within 45 days after the report is filed with the General Assembly and the Governor.

## **General Assembly intervention in lawsuits (VETOED)**

(R.C. 101.55 and 109.02; Section 323.20)

### **Challenges to statutes (VETOED)**

The Governor vetoed a provision of the act that would have allowed the General Assembly's majority leadership to intervene at any time in certain court cases. Specifically, the act would have allowed them to intervene to defend a statute in any state or federal court case in which the statute was challenged as unconstitutional or invalid under federal law, or in which the statute's construction or validity was otherwise challenged, either as part of a claim or an affirmative defense. The leaders would have been required to serve motion on the parties as provided in the Rules of Civil Procedure.

The act would have allowed the Speaker of the House and the President of the Senate to intervene in a case as follows:

- The Speaker would have been permitted to intervene on behalf of the House;
- The President would have been permitted to intervene on behalf of the Senate;
- The Speaker and the President, acting jointly, would have been permitted to intervene on behalf of the General Assembly.

The act also would have allowed them to obtain legal counsel independent of the Attorney General and to use public funds appropriated for that purpose. Under existing law, the Attorney General is the chief law officer for the state and generally represents the state in any case challenging the constitutionality of statutes.

### **Challenges to redistricting plans (VETOED)**

The Governor vetoed another provision of the act that, similarly, would have allowed legislative leaders to intervene at any time in state or federal court to defend a General Assembly or congressional district plan, or any such districts, adopted by the Ohio Redistricting Commission under the Ohio Constitution. (A congressional district plan adopted by the General Assembly is in the form of a bill, and thus would have been covered under the provisions above concerning challenges to statutes.) The leaders would have been required to serve motion on the parties as provided in the Rules of Civil Procedure.

The act would have allowed the Speaker and the President to intervene as follows:

- The Speaker would have been permitted to intervene on behalf of the House;
- The President would have been permitted to intervene on behalf of the Senate;
- The Speaker and the President, acting jointly, would have been permitted to intervene on behalf of the Ohio Redistricting Commission.

They also could have obtained legal counsel independent of the Attorney General and used public funds appropriated for that purpose.

Under the Ohio Constitution, the Ohio Redistricting Commission consists of the Governor, the Auditor of State, the Secretary of State, one person appointed by the Speaker, one person appointed by the House Minority Leader, one person appointed by the President, and one person appointed by the Senate Minority Leader. The leaders of the two largest political parties in the General Assembly appoint the co-chairpersons of the Commission.<sup>63</sup>

### **Other interventions prohibited (VETOED)**

Another vetoed provision would have prohibited any other individual member, or group of members, of the General Assembly or the Ohio Redistricting Commission from intervening in a case described above in an official capacity or obtaining independent legal counsel at public expense.

### **Legislative privilege and immunity (VETOED)**

The act would have specified that the participation of the Speaker or the President in a case, as described above, does not waive the legislative privilege or immunity of any member, officer, or staff of the General Assembly.

The concepts of legislative privilege and immunity come from the Speech and Debate Clause of the Ohio Constitution, which provides that, “for any speech, or debate, in either House, . . . [Senators and Representatives] shall not be questioned elsewhere.” The courts have interpreted this clause to mean that members of the General Assembly, and to some extent their staff, may not be prosecuted or sued for their legitimate legislative activities and that members of the General Assembly and sometimes their staff enjoy an evidentiary privilege that prevents certain legislative activities from being used in court as evidence against them.<sup>64</sup>

### **Protection and advocacy system and client assistance program**

(R.C. 5123.603; Section 261.190)

The act requires the President and the Speaker, every two years, to establish a joint committee to examine the activities of the state’s protection and advocacy system and client assistance program for individuals with disabilities. The joint committee is to consist of three members of the Senate appointed by the President – two members of the majority party and one member of the minority party – and three members of the House appointed by the Speaker – two members of the majority party and one member of the minority party. The President and the Speaker must determine the dates on which members’ terms are to begin and end. Vacancies must be filled in the manner of the original appointments. In odd-numbered years, the President must designate a committee member from the Senate as the chairperson, and in even-numbered years, the Speaker must designate a committee member from the House to serve as chairperson.

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<sup>63</sup> Ohio Constitution, Article XI, Section 1(A).

<sup>64</sup> Ohio Constitution, Article II, Section 12. See also *Hicksville v. Blakeslee*, 103 Ohio St. 508 (1921) and *Dublin v. State of Ohio*, 138 Ohio App.3d 753 (10<sup>th</sup> Dist. Ct. App. 2000).

The act authorizes the current entity serving as the state's protection and advocacy system and client assistance program (Disability Rights Ohio), in its sole discretion, to appear before and offer testimony to the joint committee.

Every two years, the President and the Speaker must specify a deadline for the joint committee to complete a new report containing any recommendations the joint committee may have. The joint committee is to submit the report to the President, the Speaker, the Governor, and the Joint Committee on Medicaid Oversight by the deadline.

Federal law authorizes allotments of federal funds to states to support protection and advocacy systems for individuals with developmental disabilities. A state must satisfy a number of requirements to be eligible for its allotment, including certain requirements regarding the state protection and advocacy system.<sup>65</sup> The federal requirements generally describe the types of entities that may serve as the state protection and advocacy system and the criteria for redesignation.

The act designates this provision as the "Protection and Advocacy Transparency Amendment."

## **Evaluation of publicly funded child care and Step Up to Quality**

(Section 307.250)

The act establishes a study committee 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;
- The number of child care providers licensed by ODJFS;
- 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 administrative burdens that result from obtaining and maintaining a quality rating;
- Alternative criteria by which a child day-care center or family day-care home that enrolls a low census of children receiving publicly funded child care may obtain a one-star rating in the Step Up to Quality Program;

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<sup>65</sup> 42 U.S.C. 15041 to 15045.

- The manner in which ODJFS establishes reimbursement ceilings for publicly funded child care, including through the use of market rate surveys.

### **Committee membership**

The study committee is to be composed of the following 16 members:

- Three members of the Senate appointed by the President – two from the majority caucus and one from the minority caucus – one of whom must serve as a co-chairperson;
- Three members of the House appointed by the Speaker – two from the majority caucus and one from the minority caucus – one of whom must serve as a co-chairperson;
- The ODJFS Director or the Director’s designee who has experience in child care oversight;
- The Superintendent of Public Instruction or the Superintendent’s designee who has experience in child care or early childhood education;
- Two directors of county departments of job and family services, one appointed by the President and one by the Speaker, who have experience in publicly funded child care oversight;
- A home-based child care provider who provides publicly funded child care, appointed by the President;
- A center-based child care provider who provides publicly funded child care, appointed by the Speaker;
- A representative of the Ohio Society of Certified Public Accountants, appointed by the Speaker;
- Two representatives, each from a child care advocacy organization, one appointed by the President and the other by the Speaker;
- A representative of the business community appointed by the President.

All appointments are to be made not later than 30 days after the act’s June 30, 2021, effective date. Members of the study committee must serve without compensation. If a member ceases to meet the qualifications on which the member was appointed, the member is ineligible to continue to serve on the committee, and a new member must be appointed in the same manner as for the initial appointment.

### **Meetings, hearings and report**

Under the act, the study committee must meet at the call of the co-chairpersons and must have held its first meeting within 30 days after the appointments are made. As part of its evaluation, the committee must hold hearings to receive testimony from the public and relevant state agencies and boards. Not later than December 31, 2021, the committee must evaluate and recommend alternative criteria by which a child day-care center or family

day-care home that enrolls a low census of children receiving publicly funded child care may obtain a one-star rating in the Step Up to Quality Program.

The committee may issue reports as necessary and must issue a final report with any findings or recommendations not later than December 1, 2022. Any report issued by the committee is nonbinding and must be considered only as a recommendation. A copy of each report issued must be provided to the Governor, General Assembly, and Legislative Service Commission.

The staff of the Legislative Service Commission is to provide services to the committee as it performs its duties under the act. The 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 committee on career pathways and workforce training**

(Section 733.30)

The act establishes a joint legislative study committee to review current career pathways and post-secondary workforce training programs. The committee must review the programs offered by post-secondary educational institutions and determine whether they are aligned with local, regional, and statewide workforce needs. It also must review current career pathways, how they align with state, regional, and local labor market demand data, and determine whether they prioritize credentials that carry the most value in the labor market.

The committee must issue a report to the General Assembly by November 1, 2022, that contains findings and recommendations.

The Legislative Service Commission must provide support to the committee.

### **Committee membership**

The committee consists of:

1. Two members of the House appointed by the Speaker;
2. One member of the House recommended by the House Minority Leader and appointed by the Speaker;
3. The chairperson and ranking member of the House Finance Subcommittee on Higher Education;
4. Two members of the Senate appointed by the President;
5. One member of the Senate recommended by the Minority Leader and appointed by the Senate President;
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.

## **Recommendations**

The committee's report must include recommendations on all of the following:

1. The state's workforce education priorities and how they 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 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 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 to increase work-based learning programs such as apprenticeships and programs that permit students to attend post-secondary educational institutions while maintaining their employment; and
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.
8. 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 are appropriate.

## **H2Ohio testimony to the General Assembly**

(R.C. 126.60)

The act requires the directors who contribute to the required annual H2Ohio report to appear before both the House and Senate Finance committees within 45 days after the report is filed with the General Assembly and the Governor. This requirement applies to the Executive Director of the Lake Erie Commission and other directors such as the directors of Agriculture, Environmental Protection, and Natural Resources.

Under continuing law, by August 31 of each year, the directors who receive H2Ohio money for water protection and water management uses and the Executive Director of the Lake Erie Commission must prepare that annual report concerning the activities that were undertaken with respect to the H2Ohio fund during the immediately preceding fiscal year, including the revenues and expenses of the fund for the preceding fiscal year.

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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.

### **Office of Faith-Based and Community Initiatives – TANF report**

(R.C. 107.121)

The act requires the Governor's Office of Faith-Based and Community Initiatives to prepare and submit, not later than each July 30, 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 how each entity used the 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 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 Director to inspect an assisted living facility every 30 (instead of 15) months, once the facility has had two consecutive 15-month inspections without any substantiated violations and other related conditions are met.

### Hospital licensure

- By September 30, 2024, requires a hospital operating in Ohio to be licensed by the Director rather than registered as under current law.
- Specifies that any existing law reference to a hospital that is not included in the act is to be construed as a reference to a hospital licensed under the act's licensure requirements.

### Variations from written transfer agreements

- Regarding variations from the written transfer agreement requirement that applies to ambulatory surgical facilities (ASFs), requires:
  - The local hospital at which a consulting physician has admitting privileges to be within a 25-mile radius of the ASF;
  - The consulting physician to actively practice clinical medicine within a 25-mile radius of the ASF;
  - An ASF with an existing variance to demonstrate compliance with the act's requirements within 90 days or the variance must be rescinded.

### 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 home, such as a nursing home or assisted living facility may request an expedited licensing inspection from the Director when 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.

### **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 May 28, 2022.
- 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 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.
- Provides that screening for any disorder is not required if appropriate laboratory equipment is not available.

### **Smoking and tobacco**

#### **Dispensing nicotine replacement therapy without a prescription**

- Authorizes pharmacists to dispense nicotine replacement therapy 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.
- Exempts retail vapor establishments from the smoking ban with regard to smoking via vapor products and electronic smoking devices.

- Specifies that the smoking ban applies to retail vapor establishments with regard to all other forms of smoking.
- Requires entities to certify that they are eligible for the retail vapor store smoking ban exemption.
- Defines “retail vapor store” as being a retail establishment that derives more than 80% of its gross revenue from the sale of vapor products, electronic smoking devices, or other electronic smoking product accessories and for which the sale of other products is merely incidental.

### **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 act’s revised definition of “smoking.”

### **Certificate of need capital expenditure threshold**

- Increases to \$4 million the maximum amount of a capital expenditure that may be made in renovating or adding to a long-term care facility without being subject to review under the Certificate of Need Law.

### **Children with Medical Handicaps Program eligibility**

- Extends the Children with Medical Handicaps Program age limit from 21 to 23 by July 1, 2022, by increasing the age limit by one year in 2021 and 2022.

### **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.

### **Help Me Grow report**

- Requires the Director to submit a report regarding the Help Me Grow program that includes recommendations for using funds associated with Medicaid and TANF to provide services through Help Me Grow.

### **Rare Disease Advisory Council membership**

- Increases to 31 (from 25) the number of members on the Rare Disease Advisory Council by permitting the appointment of public members by the President of the Senate and the Speaker of the House.

### **Drug overdose fatality review committees**

- Authorizes the establishment of county or regional drug overdose fatality review committees.

- Requires each committee to submit to ODH an annual report containing specified information related to the drug overdose or opioid-involved deaths reviewed by the committee.

### **Suicide fatality review committees**

- Authorizes the establishment of county or regional suicide fatality review committees.
- Requires each committee to submit to ODH an annual report containing specified information related to the suicide deaths reviewed by the committee.

### **Ohio breast and cervical cancer project**

- Requires the Director, as part of the Ohio Breast and Cervical Cancer Project (BCCP), to ensure that a woman who was screened for breast or cervical cancer by a provider outside of the BCCP receives cancer treatment.

## **Summary orders at nursing homes and assisted living facilities**

(R.C. 3721.081)

### **Orders and action**

In circumstances where the Director of Health 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 act 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 Director cannot enter a home unless the Director provides the operator with 24-hours advance notice;
2. The 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 Director is found to have acted in violation of the act'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 act 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 act, 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 continuing law, before a nursing home or assisted living facility may be licensed, it must be inspected by the 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 act extends the period for inspections by the 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 September 30, 2024, the act requires each hospital operating within Ohio to hold a license from the 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 act does not amend all of the references to registered hospitals in the Revised Code, it also specifies that, beginning September 30, 2024, any reference to a hospital is to be construed as a reference to a hospital licensed under the act's licensure requirements.

### Effective date of mandatory licensure and interim period

Until September 30, 2024, existing law requirements are maintained, and the act's new requirements apply only to hospitals that have obtained licenses. As described in more detail below, ODH may begin to consider applications for licensure September 30, 2022. 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 continuing law requirements. Once the act's license mandate becomes effective on September 30, 2024, each hospital within the state must be licensed by the Director in order to operate.

### Definitions

The act 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 either of the following:

- 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; or
- A distinct portion of a hospital that provides general pediatric medical and surgical care, has a total of at least 150 pediatric special care and pediatric acute care beds, and 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 act 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 Director;
- A nursing home or residential care (assisted living) facility licensed by the 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 Director. The act maintains this licensure – but only for the period during which a hospital is not required to be licensed. After hospital licensure is mandatory, the act repeals the law governing maternity unit and newborn care nursery licensure because they will be covered by the hospital’s license.

The act also specifies that an ambulatory surgical facility does not include a hospital provider-based department that is otherwise licensed under the act’s provisions.

### **Penalties for operating without a license**

Should a hospital operate without a license, the act requires the 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 act 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>66</sup> In addition, the act 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 Director for a license. The Director cannot consider any application until September 30, 2022. 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 act does not prohibit the Director from issuing a license to a hospital that either (1) occupies space in a building that is also used by another hospital or hospitals or (2) occupies one or more buildings located on the same campus as buildings used by another hospital or hospitals.

The act 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.

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<sup>66</sup> R.C. 2929.24 and 2929.28, not in the act.



## **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.

## **Hospital inspections**

On the filing of a license application, the Director may inspect the hospital prior to issuing or denying the license. The act 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 final 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 act specifies that a final on-site survey report from the federal Centers for Medicare and Medicaid Services or an accrediting organization that is submitted in accordance with the act’s provisions is confidential and not a public record.

### **Unit inspections**

At least once every 36 months, the act requires the Director to inspect each licensed hospital’s maternity unit, newborn care nursery, and any unit providing health care services, defined under the act 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 act'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 September 30, 2022, the Director must 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 September 30, 2022, the 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.

### **Corrective action plans, penalties, and fees**

In the case of rules regarding the correction of violations, the Director must accept a corrective action plan that also was accepted by the federal Centers for Medicare and Medicaid Services or an accrediting organization, provided that the plan was submitted in response to the same deficiencies identified by the Director.

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 act authorizes the Director to adopt any other rules as necessary to implement the act's provisions.

### **Administrative Procedure Act**

Rules adopted under the act'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.

### **Federal law**

The act prohibits the Director from adopting rules that conflict with requirements under federal statutory or administrative law.

### **Violations**

The act specifically requires each licensed hospital to comply with its provisions and the rules adopted under it. If the Director finds that a license holder has violated any of the act's requirement or the rules adopted under it, the act 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 act 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 act 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 act 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 act 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 act grants a hospital subject to suspension or revocation the opportunity to request an adjudication. If requested, it must be held within seven days after making the request, unless another date is agreed to by the hospital and Director. The suspension or revocation remains in effect, unless reversed by the Director, until a final adjudication order becomes effective.

The act requires the Director to issue a final adjudication order not later than 14 days after the adjudication's completion. If the Director does not issue a final order within the 14-day period, the suspension or revocation is void, but any final adjudication order issued after the 14-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 act authorizes the 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 an imminent threat of harm, conducting inspections to determine if the imminent threat of harm 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 act authorizes the 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 act 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 act’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 act 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 act repeals the law governing the admission and medical supervision of hospital patients, including admissions initiated by advanced practice registered nurses and physician assistants.<sup>67</sup>

## **Opioid reporting**

The act revises the law governing reports of the number of babies diagnosed as opioid dependent at birth. Each licensed maternity unit, newborn care nursery, and maternity home must report those numbers to the Director quarterly. Beginning September 30, 2024, the duty to report will fall instead on hospitals operating maternity units or newborn care nurseries. However, until that date, maternity units, newborn care nurseries, and maternity homes must continue to report to the Director. Note that after September 30, 2024, maternity homes will continue to be required to report.

The act 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 September 30, 2024, each hospital, or a third-party organization on the hospital's behalf, must report to the 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 act 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 act, information that does not identify an individual may be released in summary, statistical, or aggregate form.

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<sup>67</sup> R.C. 3727.06.

Under continuing law not amended by the act, hospitals are among a list of health care providers required to report to local boards of health the existence of certain diseases.<sup>68</sup> Health providers may do this by submitting an electronic report to the Ohio Disease Reporting System.

### **General operations fund**

The act 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 act's provisions.

### **Variations from written transfer agreements**

(R.C. 3702.304; Section 291.80)

The act adds several new restrictions regarding variations from the written transfer agreement requirement for ambulatory surgical facilities (ASFs). Under Ohio law, an ASF is required to have a written transfer agreement with a local hospital specifying a transfer procedure for patients when additional medical care is necessary. An ASF may, however, apply to the Director of Health for a variance if the transfer agreement requirement will cause the facility undue hardship. A variance application must include a letter, contract, or memorandum of understanding signed by the ASF and one or more consulting physicians who have admitting privileges at a local hospital, and who agree to provide back-up coverage when medical care beyond the level the ASF can provide is necessary.

The act makes the following changes regarding variations:

- Requires that the local hospital where the consulting physician has admitting privileges must be within a 25-mile radius of the ASF.
- Requires a consulting physician to actively practice clinical medicine within a 25-mile radius of the ASF.

An ASF with an existing variance must demonstrate compliance with the act's provisions within 90 days, or the Director must rescind the variance.

### **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 September 30, 2022, the act 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 Director specifies by rule. Nonmedical home health services

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<sup>68</sup> R.C. 3701.17 and 3701.23, not in the act, and O.A.C. 3701-3-03 and 3701-3-05.

include bathing or bathing assistance; assistance with dressing, walking, and toileting; catheter care (but not insertion), meal preparation and feeding; personal care services, such as assistance with activities of daily living and other services identified in the act; 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, informal respite care provider, Department of Developmental Disabilities-certified provider, residential facility, shared living provider, 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. Continuing 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. Nonagency provider does not include:

- A caregiver who is an immediate family member of the individual receiving care;
- A person who provides direct care to no more than two individuals who are not immediate family members of the care provider;
- A volunteer;
- A person certified to provide publicly funded child care as an in-home aide;
- A person who provides privately funded child care;
- A caregiver certified by the Department of Developmental Disabilities, such as a supported living 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 (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 September 30, 2021, 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. However, the Director is required to waive the requirements if the home health agency or nonagency provider is certified by the Department of Aging to provide community-based long-term care.

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 September 30, 2021, must provide evidence of a \$20,000 surety bond issued by a company licensed to do business in Ohio.

### **ODH duties**

#### **Licensing**

Under the act, ODH is responsible for reviewing all applications for skilled home health services licenses and nonmedical home health services licenses. For skilled home health services applicants, 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 must issue a license 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 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 act 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 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 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;
- Processes for dispute resolution and appeals related to licensing disputes.

When adopting rules, the Director must consult with the Director of Aging and the Medicaid Director.

### **Criminal penalties**

The act 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 Director before the Director issues the home a license. Law maintained by the act permits an applicant for licensure to request an expedited licensing inspection from the Director. The act extends the ability to request an expedited licensing inspection to existing homes when seeking approval to increase or decrease licensed capacity or to make any other change for which the Director requires a licensing inspection. Under preexisting administrative rules, the expedited licensing inspection process was not available to existing homes requiring an inspection for these types of changes.

The act also clarifies, for both new and existing homes, that the obligation to commence an expedited licensing inspection within ten days applies so long as the request for an expedited inspection is complete.

The act provides that any rules adopted by the Director to implement a process for expedited licensing inspections 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 act eliminates provisions of law describing (1) a process by which a home may request that the 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 act 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 FY 2022 and 2023, the act 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 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, that 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 act 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 act 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.

## **Technological resources**

(R.C. 3701.132 and 3701.61; repealed R.C. 5167.172)

The act 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 act revises the law governing the screening of newborns for genetic, endocrine, and metabolic disorders. Under continuing law, each newborn is to be screened for the disorders specified in rules adopted by the Director. Continuing law also requires the rules to specify Krabbe disease for screening. The act adds X-linked adrenoleukodystrophy and spinal muscular atrophy, with the screenings to begin May 28, 2022.

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 act 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 act 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 act 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.

With respect to any disorder specified for screening in ODH rules, the act provides that screening is not required if appropriate laboratory equipment is not available.

## **Smoking and tobacco**

### **Dispensing nicotine replacement therapy without a prescription**

(R.C. 4729.284 and 4731.90)

#### **Provider and protocol requirements**

The act authorizes a pharmacist to dispense nicotine replacement therapy without a prescription in accordance with a physician-developed protocol to individuals who are 18 years old or older and seeking to quit using tobacco-containing products. The following requirements must be met in order for the authorization to apply:

- The pharmacist must successfully complete an accredited or approved course on nicotine replacement therapy, which is a type of medication that delivers small doses of nicotine;
- The pharmacist must practice in accordance with a physician-established protocol that specifies a definitive set of treatment guidelines and the locations where the nicotine replacement therapy may be dispensed.

The act requires the protocol to include provisions to implement the following requirements:

- Use by the pharmacist of a screening procedure to determine if an individual is a good candidate to receive nicotine replacement therapy dispensed by a pharmacist;

- Referral by the pharmacist 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.

### **Documentation and notice**

The act requires documentation related to screening, dispensing, and follow-up care plans to be maintained in the pharmacy's records for three years. Not later than 72 hours after a screening is conducted, the pharmacist must provide notice to the individual's primary care provider, or to the individual if the primary care provider is unknown.

### **Prohibition**

The act prohibits a pharmacist from dispensing nicotine replacement therapy without a prescription unless the act's requirements are met. It also prohibits a pharmacist from delegating the pharmacist's authority to dispense or supervise the dispensing of nicotine replacement therapy.

### **Rules**

The act requires the Pharmacy Board to adopt rules in accordance with the Administrative Procedure Act to implement its provisions. The rules must specify which nicotine replacement therapies may be included in a protocol. Regarding rules related to requirements for protocols, the Pharmacy Board must consult with the State Medical Board and ODH.

### **Qualified immunity**

The act provides that a physician who in good faith authorizes a pharmacist to dispense nicotine replacement therapy under the act is not liable for or subject to damages in a civil action, criminal prosecution, or professional disciplinary action related to an act or omission of the individual to whom nicotine replacement therapy is dispensed.

### **Moms Quit for Two grant program**

(Section 291.30)

The act continues Moms Quit for Two. Authorized in each biennium since 2015, it is a grant program administered by ODH that awards funds to government or private, nonprofit entities demonstrating the ability to deliver evidence-based tobacco cessation interventions to women who are pregnant or living with children and reside in communities that have the highest incidence of infant mortality, as determined by the Director.

Program funds cannot be used to provide tobacco cessation interventions to Medicaid-eligible women.

### **Smoke-Free Workplace Law**

(R.C. 3794.01)

The act expands the Smoke-Free Workplace Law to include electronic smoking devices and vapor products. Continuing 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 also may sue repeat offenders seeking a court requiring the offender to stop the offending behavior.<sup>69</sup>

The act also 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 act’s revised definition of “smoking.”

### **Retail vapor store**

(R.C. 3794.01 and 3794.03)

The act exempts retail vapor stores from the Smoke-Free Workplace Law, in so far as it applies to vapor products and electronic smoking devices. Retail vapor stores would still be prohibited from allowing all other forms of smoking. A retail vapor store must annually certify its status as such with ODH to qualify for the exemption. The act defines a retail vapor store as being a store that derives more than 80% of its gross revenue from the sale of vapor products, electronic smoking devices, or other electronic smoking accessories.

### **Certificate of need capital expenditure threshold**

(R.C. 3702.511)

Under Ohio’s Certificate of Need (CON) Program, certain activities involving long-term care facilities can be conducted only if a CON has been issued by the Director. One activity that requires a review under the CON Program is the renovation of, or addition to, a long-term care facility involving capital expenditures over a set amount. The act increases to \$4 million the capital expenditure threshold that results in a CON review and the requirement that a CON be obtained to conduct the activity.

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<sup>69</sup> R.C. 3794.02 and 3794.09, not in the act; O.A.C. 3701-52-09.

## **Children with Medical Handicaps Program eligibility**

(R.C. 3701.021 and 3701.022; Section 291.10)

Ohio's Children with Medical Handicaps Program (CMH) is administered by the Department and serves families of children and young adults with special health care needs. The CMH Program has three core components:

- Diagnostic – An individual under age 21 who meets medical criteria, regardless of income, may receive services from CMH-approved providers for up to six months to diagnose or rule out a special health care need or establish a plan of care;
- Treatment – An individual under age 21 who meets both medical and financial criteria may receive treatment from CMH-approved providers for an eligible condition;
- Service coordination – The family of an individual under age 21 who meets medical criteria, regardless of income, may receive assistance locating and coordinating services for the individual with the medical diagnosis.

The act requires the Director to increase the maximum age of CMH participants by establishing eligibility requirements that progressively increase the maximum age of an individual who can be served by the program. In 2021 and 2022 on July 1, the Director's rules must increase the age limit by one year. The final increase, on July 1, 2022, allows individuals under 23 to participate. This annual increase does not apply to the diagnostic component of the CMH Program. The act appropriates an additional \$500,000 to the CMH Program in each fiscal year.

## **Home visiting services**

(R.C. 3701.61 and 3701.613 with conforming changes in R.C. 5167.16)

The act expands eligibility to receive home visiting services through the Help Me Grow Program to include families with pregnant women or children under age five. Former law limited home visits to families with pregnant women or children under age three.

Moreover, the act 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.

## **Help Me Grow report**

(Section 291.70)

The Director is required to submit a report by January 15, 2022, to the chairperson and ranking minority member of the standing health committee and finance committee of each house of the General Assembly. The report must include the number of families being served by the program who are eligible for Medicaid and the number of families who are eligible for programs funded by the TANF block grant. The report also must include recommendations for incorporating a Medicaid component funded in part with state matching funds, and recommendations for using TANF dollars to provide services for TANF eligible families in the Help Me Grow program.

## **Rare Disease Advisory Council membership**

(R.C. 103.60)

The act adds three public members appointed by the President of the Senate and three appointed by the Speaker of the House to serve on the Rare Disease Advisory Council. Of those members, the act requires that one from each chamber be recommended to the President and the Speaker by the minority leaders of the Senate and House, respectively.

## **Drug overdose fatality review committees**

(R.C. 121.22, 307.631, 307.632, 307.633, 307.634, 307.635, 307.636, 307.637, 307.638, 307.639, 3701.0410, 4729.80, 4729.86, and 4731.22)

The act authorizes the board of county of commissioners of a single county or the boards of two or more counties jointly to establish a county or regional committee to review drug overdose and opioid-involved deaths occurring in that county or region. To formally establish a drug overdose fatality review committee, the board or boards must appoint a health commissioner of a board of health located in the county or counties to do so.

The act also recognizes a body acting as a drug overdose fatality review committee on September 30, 2021, and requires the body to continue to function as the county's review committee, with the same duties, obligations, and protections as a review committee established under the act.

### **Purpose**

The purpose of a drug overdose fatality review committee is to decrease the incidence of preventable overdose deaths by doing all of the following:

- Promoting cooperation, collaboration, and communication between all groups, professions, agencies, or entities engaged in drug abuse prevention, education, or treatment efforts;
- Maintaining a comprehensive database of all overdose deaths occurring in the county or region to develop an understanding of the causes and incidence of those deaths;
- Recommending and developing plans for implementing local service and program changes that might prevent overdose deaths; and
- Providing the ODH with aggregate data, trends, and patterns concerning overdose deaths.

### **Membership, chairperson, and meetings**

If established, a review committee must consist of the health commissioner and the following four members:

1. The chief of police or sheriff or designee of the chief or sheriff;
2. A public health official or designee;
3. The executive director of the county's ADAMHS board or designee; and



#### 4. An Ohio-licensed physician.

In the case of a review committee serving two or more counties, the members must be representatives from the most populous county.

The review committee is required by the act to invite the county coroner or, in the case of a review committee serving two or more counties, the county coroner from the most populous county, to serve on the committee.

The health commissioner convenes committee meetings and serves as the committee's chairperson. Committee meetings are not subject to Ohio's Open Meetings Law. Any vacancy on the committee must be filled in the same manner as original appointments. Members are neither compensated for serving on the committee nor reimbursed for expenses incurred, unless compensation or reimbursement is received as part of the member's regular employment. A majority of the members may invite additional members to serve on the committee. Each additional member serves for the period of time determined by the majority and has the same authority, duties, and responsibilities as an original member.

### **Information to be collected**

For each drug overdose or opioid-involved death reviewed by a committee, the committee must collect all of the following:

1. Demographic information of the deceased, including age, sex, race, and ethnicity;
2. The year in which the death occurred;
3. The geographic location of the death;
4. The cause of death;
5. Any factors contributing to the death; and
6. Any other information the committee considers relevant.

On the request of a review committee, any individual, law enforcement agency, or other public or private entity that provided services to a person whose death is reviewed by the committee must submit to the committee a summary sheet of information. In the case of a request made to a health care entity, the summary sheet must contain only information available and reasonably drawn from a medical record created by the entity. With respect to a request made to any other individual or entity, the sheet must contain only information available and reasonably drawn from any record involving the person to which the individual or entity has access.

Also on the request of a review committee, a county coroner must make available to the committee the coroner's full and complete record that relates to the person whose death is being reviewed.

### **Confidentiality**

Any information, document, or report presented to a review committee, all statements made by committee members during meetings, all work products of the committee, and data submitted to ODH, other than the annual report, are confidential and may be used by the

review committee, its members, and ODH only in the exercise of proper committee or departmental functions.

### **Security of information collected**

Each review committee must establish a system for collecting and maintaining information necessary for the review of drug overdose or opioid-involved deaths in the county or region. In an effort to ensure confidentiality, each committee must maintain all records in a secure location; develop security measures to prevent unauthorized access to records containing information that could reasonably identify any person; and develop a system for storing, processing, indexing, retrieving, and destroying information obtained in the course of reviewing a drug overdose or opioid-involved death.

### **Annual reports**

By April 1 of each year, a committee must prepare and submit to ODH a report that includes the following information for the previous calendar year:

1. The total number of drug overdose or opioid-involved deaths in the county or region;
2. The total number of drug overdose or opioid-involved deaths reviewed by the committee along with the total number not reviewed by the committee;
3. A summary of demographic information for the deaths reviewed, including age, sex, race, and ethnicity; and
4. A summary of any trends or patterns identified by the committee.

The report also must include recommendations for actions that might prevent other deaths and may include any other information the review committee determines should be included. The report is a public record for the purposes of Ohio's Public Records Law.

### **Pending investigations or prosecutions**

A review committee may not conduct a review of a death while an investigation of the death or prosecution of a person for causing the death is pending, unless the prosecuting attorney agrees to allow the review. On the conclusion of an investigation or prosecution, the law enforcement agency conducting the criminal investigation or prosecuting attorney prosecuting the case must notify the committee's chairperson of the conclusion.

In addition, an individual, law enforcement agency, prosecuting attorney, or entity cannot provide to a review committee any information regarding the death of a person while an investigation or prosecution is pending, unless the prosecuting attorney has agreed to allow the review.

### **Immunity**

Any individual or entity providing information to a review committee is immune from civil liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of providing the information. Each member of a review committee is also immune from civil liability as a result of the member's participation on the committee.

## **Suicide fatality review committees**

(R.C. 121.22, 307.641, 307.642, 307.643, 307.644, 307.645, 307.646, 307.647, 307.648, 307.649, 307.6410, 2151.421, 3701.0411, 4729.80, 4729.86, and 4731.22)

Similar to the provisions described above with regard to drug overdose fatality review committees, the act authorizes the establishment of suicide fatality review committees. Except as provided below, the process for establishing and conducting suicide fatality review committees and their powers and duties regarding suicide deaths are the same as those described above that apply to drug overdose fatality review committees with regard to drug overdose deaths.

### **Purpose**

The purpose of a suicide fatality review committee is to decrease the incidence of preventable suicide deaths by doing all of the following:

- Promoting cooperation, collaboration, and communication between all groups, professions, agencies, or entities engaged in suicide prevention, education, or mental health treatment efforts;
- Maintaining a comprehensive database of all suicide deaths occurring in the county or region to develop an understanding of the causes and incidence of those deaths;
- Recommending and developing plans for implementing local service and program changes and changes to the groups, professions, agencies, or entities that serve local residents that might prevent suicide deaths; and
- Advising ODH of aggregate data, trends, and patterns concerning suicide deaths.

### **Hybrid committee**

The act authorizes a board of county commissioners to establish a hybrid drug overdose fatality and suicide fatality review committee to review drug overdose, opioid-involved, and suicide deaths occurring in the county. A hybrid committee must follow the same procedures as a drug overdose fatality and suicide fatality review committee.

## **Ohio Breast and Cervical Cancer Project**

(R.C. 3701.145)

The act requires the Director to ensure that, as part of the ODH's Ohio Breast and Cervical Cancer Project (BCCP), a woman who meets all of the following conditions receives treatment for breast or cervical cancer:

1. The woman was screened for breast or cervical cancer by a health care provider who either does not participate in BCCP or was not paid by BCCP for the screening;
2. The woman is in need of treatment for breast or cervical cancer;
3. The woman has a countable income not exceeding 300% of the federal poverty line;
4. The woman is not covered by health insurance;

5. The woman is less than 65 years of age.

The act authorizes the Director to adopt rules as necessary to implement this requirement and directs that the rules be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

Under continuing law, BCCP provides breast or cervical cancer screening and diagnostic services to women meeting certain eligibility criteria.<sup>70</sup>

Federal law allows states the option of providing full Medicaid coverage to certain women diagnosed with breast or cervical cancer, including pre-cancerous conditions. In Ohio, this Medicaid option is available only to women who are diagnosed through BCCP. Rather than expand Medicaid coverage to women who satisfy many of the same eligibility requirements but were screened for breast or cervical cancer outside BCCP, sometimes referred to as the “wrong door,” the act instead requires the Director of Health to ensure treatment for these women as part of BCCP. Women meeting eligibility requirements who are diagnosed through BCCP will continue to be treated for breast or cervical cancer through Medicaid.

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<sup>70</sup> R.C. 3701.144.

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## **DEPARTMENT OF HIGHER EDUCATION**

### **Restriction on instructional fee increases**

- For the 2021-2022 and 2022-2023 academic years, limits increases by state universities, the Northeast Ohio Medical University, and university branch campuses in their instructional and general fees to not more than 2% over the previous academic year.
- For the 2021-2022 and 2022-2023 academic years, limits increases by community colleges, state community colleges, and technical colleges in their instructional and general fees to not more than \$5 per credit hour over the previous academic year.
- Excludes from the fee increase restrictions: student health insurance, auxiliary goods or services fees provided to students at cost, pass-through fees for licensure and certification exams, study abroad fees, elective service charges, fines, and voluntary sales transactions.

### **In-state tuition for certain graduate students**

- Qualifies for in-state tuition a nonresident living in Ohio who, after completing a bachelor's degree at an institution of higher education in the state, immediately enrolls in an eligible graduate program offered at any state institution of higher education.

### **Athlete compensation for name, image, or likeness**

- Allows intercollegiate athletes to earn compensation from their name, image, or likeness (NIL).
- Prohibits an institution of higher education, athletic association, conference, or other group or organization with authority over intercollegiate athletics from taking specified actions regarding an intercollegiate athlete who earns, or obtains representation in relation to earning, compensation from the athlete's NIL.
- Includes limitations with respect to contracts that provide compensation to an intercollegiate athlete for the use of the athlete's NIL.

### **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.

### **Nursing bachelor's degree programs at community colleges**

- Requires the Chancellor of Higher Education to approve any nursing bachelor's degree program proposed by community colleges, state community colleges, and technical colleges that meet certain continuing law requirements.

### **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.
- Makes other changes regarding the administration of and requirements for the Choose Ohio First Scholarship Program.

### **Commercial truck driver student aid**

- 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.

### **Ohio National Guard Scholarship eligibility**

- Qualifies for the Ohio National Guard Scholarship full-time and part-time students who are enrolled for at least three credit hours of coursework in prescribed programs for an in-demand occupation.

### **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) completion 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.

### **Prohibition on withholding student transcripts**

- Prohibits state institutions of higher education from withholding a student’s official transcripts from a potential employer under certain conditions.

### **OhioCorps Pilot Program**

- Prohibits the addition of new students to the OhioCorps Pilot Program after the 2020-2021 academic year and discontinues that program at the end of the 2021-2022 academic year.
- Requires each student that is otherwise eligible to receive a scholarship under the program to receive \$1,000 upon conclusion of the 2021-2022 academic year.

## 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.

## Ohio Farm Financial Management Institute

- Expands content and priority enrollment specifications for the Ohio State University's Farm Financial Management Institute.
- Renames the "Farm Financial Management Institute" to the "Farm Production, Policy, and Financial Management Institute."

## 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.

## Wright State Lake Campus Task Force

- Creates the Wright State University's Lake Campus Task Force to evaluate current campus operational structures and procedures.

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 act 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 act's limits on fee increases explicitly *exclude*:

- Student health insurance;
- Fees for auxiliary goods or services provided to students at the cost incurred to the institution;
- Fees assessed to students as a pass-through for licensure and certification exams;
- Fees in elective courses associated with travel experiences;
- Elective service charges;
- Fines; and
- Voluntary sales transactions.

As in previous biennia when the General Assembly capped tuition increases, the act's provisions do not apply to increases required to comply with institutional covenants related to the institution's obligations or to meet unfunded legal mandates or legally binding prior obligations or commitments. Further, the Chancellor, with Controlling Board approval, may approve an increase to respond to exceptional circumstances identified by the Chancellor.

Additionally, the act specifies that 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. Continuing law requires each state university to establish an undergraduate tuition guarantee program.<sup>71</sup>

## **In-state tuition for certain graduate students**

(R.C. 3333.31)

The act requires the Chancellor, when defining resident tuition status under continuing law, to extend that status to a nonresident individual living in Ohio who completes a bachelor's degree program at an institution of higher education in the state and then immediately enrolls in a graduate degree program that is (1) determined appropriate by the Chancellor and (2) offered at a state institution of higher education. In addition, the individual must reside in Ohio while being enrolled in the graduate degree program.

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<sup>71</sup> R.C. 3345.48, not in the act.



## **Athlete compensation for name, image, or likeness**

(R.C. 3376.01, 3376.02, 3376.03, 3376.04, 3376.05, 3376.06, 3376.07, and 3376.08)

### **Prohibitions**

The act prohibits an institution of higher education from upholding any rule, requirement, standard, or other limitation that prevents a student of that institution from fully participating in intercollegiate athletics because the student earns compensation as a result of the use of the student's name, image, or likeness (NIL).

It also prohibits an athletic association, conference, or other group or organization with authority over intercollegiate athletics, including the National Collegiate Athletic Association (NCAA) or its successor organization (collectively "athletic authority") from doing either of the following:

1. Preventing a student from fully participating in intercollegiate athletics because the student earns compensation as a result of the use of the student's NIL;
2. Preventing an institution from fully participating in intercollegiate athletics because a student of that institution participating in intercollegiate athletics does either of the following:
  - a. Uses the student's NIL;
  - b. Obtains professional representation in relation to contracts or legal matters regarding opportunities to earn compensation for use of the student's NIL.

Additionally, institutions and athletic authorities are prohibited from doing any of the following:

1. Providing a prospective student who intends to participate in intercollegiate athletics with compensation in relation to the prospective student's NIL;
2. Preventing a student who participates in intercollegiate athletics (a student athlete) and resides in Ohio from obtaining professional representation in relation to contracts or legal matters regarding opportunities to be compensated for use of the student athlete's NIL;
3. Interfering with or preventing a student athlete from fully participating in intercollegiate athletics because the student athlete obtains professional representation in relation to contracts or legal matters regarding opportunities to earn compensation for use of the student athlete's NIL.

### **Scholarships**

Under the act, a scholarship from an institution at which a student is enrolled is not considered compensation for use of the student's NIL.

Additionally, an institution cannot revoke or reduce a scholarship as a result of a student earning compensation for use of the student's NIL if the student earns that compensation in accordance with the act. Earning compensation from the use of a student's NIL cannot affect the student's scholarship eligibility or renewal.

## **Contracts with intercollegiate athletes**

### **Contract limitations**

Under the act, an institution's contract with a student athlete cannot prevent the student from using the student athlete's NIL for a commercial purpose when the student is not engaged in official team activities. "Official team activities" means all games, practices, exhibitions, scrimmages, team appearances, team photograph sessions, sports camps sponsored by the institution, and other team-organized activities, regardless of whether the activity takes place on or off campus, including individual photograph sessions and news media interviews.

The act prohibits a student athlete from entering into a contract providing compensation to the student athlete for use of the student's NIL (NIL contract) that requires the student athlete to display a sponsor's product, or otherwise advertise for a sponsor, during official team activities or any other time if that requirement is in conflict with a provision of a contract to which an institution is a party.

### **Disclosure and review**

An institution must designate an official to whom a student athlete who intends to enter into a verbal or written NIL contract must disclose the proposed contract for review. If an institution identifies a conflict between the proposed contract and any existing provisions of a contract to which the institution is a party, the institution has to communicate to the student athlete the relevant contract provision that is in conflict. The student athlete cannot enter into the proposed contract with a conflict, but the student athlete may negotiate a revision to the proposed contract to avoid the conflict. A revised proposed contract is subject to review by the institution to ensure compliance with the act.

An institution may establish reasonable policies or standards to address a student athlete's failure to provide the required disclosure or any other failure to comply with the act's requirements.

### **Companies, brands, and types of contracts**

The act allows an institution or athletic authority to prohibit a student athlete from entering into an NIL contract if under the contract the student athlete's NIL is associated with any of the following:

1. Any company that manufactures, markets, or sells, or brand that is associated with, a controlled substance, marijuana product, medical marijuana product, alcoholic product, tobacco product, electronic smoking device, vapor product, or product or device that consists of or contains nicotine that can be ingested into the body;

2. Any medical marijuana cultivator, processor, laboratory, or retail dispensary licensed under Ohio law<sup>72</sup> or the laws of another state;

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<sup>72</sup> R.C. Chapter 3796.

3. Any business engaged in the sale, rental, or exhibition for any form of consideration of adult entertainment that is characterized by an emphasis on the exposure or display of sexual activity;

4. Any casino or entity that sponsors or promotes gambling activities;

5. Any other category of companies, brands, or types of contracts that are similar to those described above that the institution communicates to the student before the student enrolls at the institution.

## **Exclusions**

The act does not do any of the following:

1. Require an institution or athletic authority to identify, create, facilitate, negotiate, or otherwise enable opportunities for a student to earn compensation for use of the student's NIL;

2. Establish or grant to a student any right to use the name, trademarks, services marks, logos, symbols, or any other intellectual property, regardless of whether the intellectual property is registered with the appropriate authority, that belong to an institution or athletic authority to further the student's opportunities to earn compensation for use of the student's NIL;

3. Limit an institution's rights to establish and enforce any of the following:

a. Academic standards, requirements, regulations, or obligations for its students;

b. Team rules of conduct or other rules of conduct;

c. Standards or policies regarding the governance or operation of or participation in intercollegiate varsity athletics;

d. Disciplinary rules and standards generally applicable to all students of the institution.

## **Other NIL authority**

The NIL provisions take effect September 30, 2021. On June 28, 2021, Governor DeWine signed Executive Order 2021-10D to allow intercollegiate athletes enrolled at Ohio institutions of higher education to earn compensation from their NIL. The Order, which is similar to the NIL provisions, remains in effect until superseded by state or federal law.<sup>73</sup>

Additionally, on June 30, 2021, the NCAA's governance bodies adopted a uniform interim policy that suspends NCAA rules prohibiting intercollegiate athletes from earning compensation for their NIL. Under the policy, student athletes may engage in NIL activities that

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<sup>73</sup> Governor Mike DeWine, *Executive Order 2021-10D*, available [here](#).

are consistent with the law of the state where the institution at which the student is enrolled is located without violating NCAA NIL rules.<sup>74</sup>

## **Textbook auto-adoption at state institutions**

(Section 733.20)

The act 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.

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 institution must transmit a copy of the resolution to the Chancellor.

## **Nursing bachelor's degree programs at community colleges**

(R.C. 3333.051; conforming changes in R.C. 3354.01, 3357.09, and 3358.01)

The act adds nursing bachelor's degree programs to an existing program under which a community college, state community college, or technical college may apply to the Chancellor for authorization to offer applied bachelor's degree programs. The act requires the Chancellor to approve *any* nursing bachelor's degree program proposed by those schools if that program meets the requirements already established for applied bachelor's degree programs and the standards and procedures for academic program approval.

The act also removes the requirement that the Chancellor consult with the Governor's Office of Workforce Transformation, the Inter-University Council of Ohio, the Ohio Association of Community Colleges, and the Association of Independent Colleges and Universities of Ohio before approving an applied bachelor's program.

## **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 – eliminated**

The act eliminates the Ohio Research Scholars Program and references to the Ohio Innovative Partnership, of which it was a part. The Ohio Research Scholars Program awarded grants to state colleges and universities to use in recruiting scientists as faculty members.

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<sup>74</sup> National Collegiate Athletic Association, *NCAA Adopts Interim Name, Image, and Likeness Policy*, available [here](#).

The act retains and revises the Choose Ohio First Scholarship Program, which also was a part of the Ohio Innovative Partnership, and it replaces all references to the Ohio Innovative Partnership with references to the Choose Ohio First Scholarship Program.

### **Choose Ohio First Scholarship Program**

Under continuing law, 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 act removes references to medicine, dentistry, and medical and dental education from the list of academic fields in which students may receive Choose Ohio First scholarships. It also repeals the primary care medical student, primary care nursing student, and primary care dental student components of the scholarship program. But it specifically includes “health professions” in the scholarship program’s purpose statement.

### **Criteria for scholarship proposals**

The act 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 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 act 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 act expands to all students receiving a Choose Ohio First scholarship (rather than half of those students as under prior law) 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.

### **Agreement governing use of scholarships**

The act eliminates a requirement that each participating state and private institution must agree to include performance measures, reporting requirements, and an obligation to fulfill pledges of other resources for the proposal.

It also eliminates 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 act eliminates a 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 act eliminates a provision permitting the Chancellor to authorize an institution to award a scholarship exceeding the maximum amount 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 act 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.

### **Reserve Fund**

The act 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 or the federal government.

## **Commercial truck driver student aid**

(R.C. 3333.125, 3333.38, and 3345.32)

The act establishes the Commercial Truck Driver Student Aid Program under which the Chancellor 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 act 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:

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. Have not plead 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 of 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 act 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 act 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 act 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 act and for administrative expenses.

## **Ohio National Guard Scholarship eligibility**

(R.C. 5919.34)

The act qualifies for the Ohio National Guard Scholarship Program an individual who is actively enrolled as a full-time or part-time student for at least three credit hours of coursework in a semester or a quarter in a credential-certifying program, licensing program, trade certification program, or apprenticeship program for an in-demand occupation.

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.

## **FAFSA data system**

(R.C. 3333.301)

The act 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 act 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 act 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 act requires each 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.)

## **Prohibition on withholding student transcripts**

(R.C. 3345.027)

The act prohibits a state institution of higher education from withholding a student's official transcripts from a potential employer because the student owes money to the institution if the student has authorized the transcripts to be sent to the employer and the employer affirms to the institution that the transcripts are a prerequisite of employment.

## **OhioCorps Pilot Program**

(Section 381.460)

The act prohibits the addition of new students to the OhioCorps Pilot Program after the 2020-2021 academic year. It further states that the program will cease to exist at the

conclusion of the 2021-2022 academic year. Additionally, each student that is otherwise eligible to receive a scholarship under the program must receive \$1,000 upon conclusion of the 2021-2022 academic year.

Enacted in 2018, OhioCorps was designed to guide at-risk high school and middle school students toward a pathway to higher education through mentorship programs, operated by state institutions of higher education in the 2019-2020 and 2020-2021 school years, and future \$1,000 college scholarships upon meeting specified criteria.

Under continuing law, the Chancellor must submit a report regarding the implementation and outcomes of the program to the General Assembly at the conclusion of the 2020-2021 school year (June 30, 2021).<sup>75</sup>

For a more detailed discussion of the reprogram, see pp. 6-9 of the Final Analysis for S.B. 299 of the 132<sup>nd</sup> General Assembly, at <https://www.legislature.ohio.gov/download?key=10217&format=pdf>.

## State university admissions and computer science education

(R.C. 3345.063)

Beginning with the 2022-2023 academic year, the act 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.

The following table indicates how, under the act, 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

<sup>75</sup> R.C. 3333.80, 3333.801, and 3333.802, none in the act.

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 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, each state university must 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 act 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 thereafter 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.

## **Farm Production, Policy, and Financial Management Institute**

(R.C. 3335.38)

The act expands content and priority enrollment specifications for the Ohio State University's Farm Financial Management Institute, which trains individuals related to the agriculture field to help farmers deal with financial management problems.

First, it changes the name of the program to the "Farm Production, Policy, and Financial Management Institute." Further, it expands the role of the Institute to assist farmers in addressing integration of farm production practices, agricultural marketing, farm policy, and financial management in addition to assistance with farm financial management problems, as otherwise required under continuing law. Finally, the act adds "farm owners and managers" to the list of individuals considered for priority enrollment in the program. Individuals who receive priority enrollment in the program currently include employees or representatives of banks and other farm credit agencies, agricultural teachers, and faculty and employees of the Ohio State

University and OSU extension who agree to assist Ohio farmers in completing and understanding the coordinated financial statement and other subjects.<sup>76</sup>

For more information on the Institute see the following from the Ohio State University's website: <https://aede.osu.edu/research/osu-farm-management>.

## **Electronic attendance of board of trustees' meetings**

(R.C. 3345.82)

As a permanent exception to the Open Meetings Act, the act 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 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.

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.

## **Wright State Lake Campus Task Force**

(Section 381.630)

The act creates a task force to evaluate current operational structures and procedures at Wright State University's Lake Campus. The task force consists of 14 members, seven members appointed by the Speaker of the House and seven members appointed by the Senate President.

Membership must include representatives from each of the following sectors:

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<sup>76</sup> R.C. 3335.38.

1. Wright State University's Lake Campus;
2. Primary and secondary education;
3. Business organizations;
4. Nursing;
5. Engineering; and
6. Any other local stakeholders as determined by the Speaker or the Senate President.

While the Chancellor may not serve as a member, the task force may consult with the Chancellor as it determines necessary. Further, the Chancellor must provide any available information the task force requests.

The task force must evaluate current successes, challenges, and opportunities for Wright State's Lake Campus and develop a long-term strategic plan that ensures the Western Ohio region is served with a campus offering high quality educational programs that meet local needs, is affordable and accessible, and positions the region for continued economic and community success. By December 31, 2022, the task force must submit to the General Assembly and the Chancellor a report detailing its findings, including the long-term strategic plan.

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## OHIO HISTORY CONNECTION

- Establishes the Ohio Commission for the United States Semiquincentennial consisting of 29 appointed members and one ex officio, nonvoting member.
- Authorizes the Commission to plan, encourage, develop, and coordinate the commemoration of the 250<sup>th</sup> anniversary of the founding of the U.S. 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 U.S., and also to submit annual reports.
- Permits the chairperson of the Commission to appoint an executive director, who may in turn hire other personnel as necessary.
- Terminates the Commission on June 30, 2027.

### Ohio Commission for the United States Semiquincentennial

(R.C. 149.309)

The act 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 U.S., as well as Ohio's role in U.S. history before and after receiving statehood.

The Commission must consist of 29 appointed, voting members and 1 ex officio, nonvoting member. The 29 appointed members are as follows:

- Two members of the Senate;
- Two members of the House;
- The Governor's designee;
- The Chief Justice of Ohio;
- The President of the Board of Trustees of the Ohio History Connection;
- The President of the Ohio Local History Alliance's designee;
- The President of the County Commissioners Association of Ohio's designee;
- The Chairperson of the Board of the Ohio Arts Council;
- The Director of TourismOhio;
- The Executive Director of the Ohio Travel Association;
- 17 private citizens, of whom:
  - Eight must be appointed by the Governor;

- Four must be appointed by the Senate President, two of whom must be recommended by the Senate Minority Leader;
- Four must be appointed by the Speaker of the House, two of whom must be recommended by the House Minority Leader;
- One must be appointed by the Chief Justice of the Supreme Court of Ohio.

The Governor must designate one of the private citizen members as the chairperson of the Commission and a different private citizen member as the vice chairperson.

The Executive Director or the Deputy Executive Director of the Ohio History Connection must serve as the secretary of the Commission and must be an ex officio, nonvoting member of the Commission.

Each member must serve until the Commission's expiration on June 30, 2027, unless the member no longer holds the office that qualifies the member to serve. Vacancies must be 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 may appoint an executive director, who may in turn hire necessary staff. However, the executive director must be confirmed by an affirmative vote of a majority of the Commission's members. All Commission employees must be employees of the Ohio History Connection and must be subject to its customary personnel policies and procedures. With approval from the Commission, the executive director can authorize the Ohio History Connection to enter into contracts with vendors and consultants to undertake work in service of the Commission's public functions.

The Commission must launch and maintain an official website that is open and available for public viewing. 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. Beyond these considerations, the Commission also must conduct extensive public engagement campaigns throughout Ohio to develop programs. 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 later than September 30, 2022, the Commission must deliver a comprehensive report to the Governor and the General Assembly. The report must include its recommendations for the celebration of the 250<sup>th</sup> anniversary of U.S. independence, a detailed timeline of the Commission's plans and overall program, and estimates of all costs associated with the plans and overall program. The report may include recommendations for (1) legislation that will help the Commission execute its plan and overall program and (2) improvements to the infrastructure of the state or for capital projects necessary for the successful delivery of the

Commission's plan and overall program. The report must be published on the Commission's official website. The Commission can, from time to time, expand upon or revise its initial report as needed.

The Chair of the Commission may request directly from a state agency information deemed necessary by the Commission for the performance of its duties. Upon receipt of a request, the head of the state agency must provide the requested information to the Commission. The Commission also can request personnel or other supportive resources from state agencies, local governments, and public universities.

The Commission can accept, use, and dispose of gifts and donations of money, property, or personal services. The act also enables the Commission to procure supplies, services, and property, and to take necessary actions to execute the Commission's duties. The Commission can, from time to time, request operating and capital appropriations from the General Assembly to aid in the execution of the Commission's duties. Any appropriations received by the Commission will be audited by the Auditor of State in the same manner as the Ohio History Connection is audited.

In addition to the Commission's comprehensive report, it also must deliver to the Governor and General Assembly an annual 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 reports must be made available on the Commission's official website.

Finally, the Commission is terminated on June 30, 2027.



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## DEPARTMENT OF INSURANCE

### Drug data disclosure

- Effective January 1, 2022, requires health plan issuers, including pharmacy benefit managers, to release specified cost-sharing and other information related to drugs covered under a health benefit plan.
- Specifies the format in which the information must be provided.

### Hospital admissions and notification to health plan issuers

- Requires, when a patient covered by a health benefit plan is admitted to a hospital, the hospital to notify the health plan issuer of the admission within 48 hours.

### Insurance agent pre-licensing education

- Authorizes the Superintendent of Insurance, when determining the criteria for pre-licensing education for insurance agents, to include classroom, online, and self-study options.

### 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 or other incentives for the purchase of long-term care insurance would increase the number of Ohioans with such insurance.

### Drug data disclosure

(R.C. 3902.50, 3902.60, 3902.70, and 3902.72)

#### Furnishing data

Effective January 1, 2022, the act requires a health plan issuer, including a pharmacy benefit manager, to furnish the following data for any and all drugs covered under a related health benefit plan upon request of a covered person, their health care provider, or the third-party representative:

- The covered person's eligibility information for any and all covered drugs;

- Cost-sharing information for any and all covered drugs, including a description of any variance in cost-sharing based on pharmacy, whether retail or mail order, or health care provider dispensing or administering the drugs;
- Any applicable utilization management requirements for any and all covered drugs, including prior authorization requirements, step therapy, quantity limits, and site-of-service restrictions.

The data must be furnished regardless of whether the request is made using the drug's unique billing code, such as a national drug code or health care common procedure coding system code, or a descriptive term, such as the brand or generic name of the drug. In addition, a health plan issuer, including a pharmacy benefit manager, may not deny or delay a request as a method of blocking the data from being shared based on how the drug was requested.

Under the act, a health plan issuer, including a pharmacy benefit manager, must ensure that the above data meets all of the following:

- It is current not later than one business day after any change is made;
- It is provided in real time;
- It is provided in the same format that the request is made by the covered person, their health care provider, or their third-party representative.

The act requires the format in which a health plan issuer, including a pharmacy benefit manager, replies to a request to use established industry content and transport standards published by either of the following:

- A standards developing organization accredited by the American National Standards Institute, including the National Council for Prescription Drug Programs, ASC X12, health level 7;
- A relevant federal or state governing body, including the Centers for Medicare and Medicaid Services or the Office of the National Coordinator for Health Information Technology.

## **Prohibitions**

Under the act, a health plan issuer, including a pharmacy benefit manager, furnishing the required data may not do any of the following:

- Restrict, prohibit, or otherwise hinder, in any way, a health care provider from communicating or sharing any of the following:
  - Any of the required data;
  - Additional information on any lower-cost or clinically appropriate alternatives, whether or not they are covered under the covered person's health benefit plan;
  - Additional payment or cost-sharing information that may reduce the covered person's out-of-pocket costs, such as cash price or patient assistance and support programs whether sponsored by a manufacturer, foundation, or other entity.

- Except as may be required by law, interfere with, prevent, or materially discourage access to, exchange of, or use of the required data by doing any of the following:
  - Charging fees;
  - Not responding to a request at the time the request is made, if such a response is reasonably possible;
  - Implementing technology in nonstandard ways;
  - Instituting covered person consent requirements, processes, policies, procedures, or renewals that are likely to substantially increase the complexity or burden of accessing, exchanging, or using such data.
- Penalize a health care provider for disclosing such data to a covered person or for prescribing, administering, or ordering a clinically appropriate or lower-cost alternative.

### **Personal representatives**

The act requires a health plan issuer, including a pharmacy benefit manager, to treat a personal representative of a covered person as the covered person for purposes of the above provisions. In addition, if a person has authority to act on behalf of a covered person in making decisions related to health care, a health plan issuer, including a pharmacy benefit manager, or its affiliates or entities acting on its behalf, must treat that person as a personal representative.

### **Definitions**

**“Covered”** means the provision of benefits related to health care services to a covered person in accordance with a health benefit plan.

**“Covered person”** means a person covered under a health benefit plan.

**“Drug”** means the following:

- Any article recognized in the U.S. Pharmacopoeia and National Formulary, or any supplement to them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
- Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
- Any article, other than food, intended to affect the structure or any function of the body of humans or animals;
- Any article intended for use as a component of any article specified above, but does not include devices or their components, parts, or accessories.

**“Health benefit plan”** means an agreement offered by a health plan issuer to provide or pay for the cost of health care services. “Health benefit plan” includes limited benefit plans, but does not include vision-only, dental-only, specified disease, disability, supplemental, or certain other specified types of limited plans. “Health benefit plan” does not include Medicare or Medicaid plans or any supplement to those plans.

**“Health care provider”** means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner (a physician, physician assistant, registered or licensed practical nurse, dentist, dental hygienist, optometrist, optician, pharmacist, psychologist, chiropractor, hearing aid dealer or fitter; speech-language pathologist, audiologist, specified type of therapist or counselor, dietitian, respiratory care professional, or EMT).

**“Health plan issuer”** means an entity subject to Ohio’s insurance laws that contracts to provide, pay for, or reimburse any of the costs of health care services. The term includes a sickness and accident insurer, a health insuring corporation, a fraternal benefit society, a self-funded multiple employer welfare arrangement, and a nonfederal, government health plan. The term also includes a third-party administrator, such as a pharmacy benefit manager, to the extent that the benefits the administrator is contracted to administer are subject to Ohio insurance laws or to the Superintendent’s jurisdiction.

**“Pharmacy benefit manager”** means an entity that contracts with pharmacies on behalf of an employer, a multiple employer welfare arrangement, public employee benefit plan, state agency, insurer, managed care organization, or other third-party payer to provide pharmacy health benefit services or administration.

**“Prior authorization requirement”** means any practice implemented by a health plan issuer in which coverage of a health care service, device, or drug is dependent upon a covered person or a provider obtaining approval from the health plan issuer prior to the service, device, or drug being performed, received, or prescribed, as applicable. “Prior authorization requirement” includes prospective or utilization review procedures conducted prior to providing a health care service, device, or drug.

## **Hospital admissions and notification to health plan issuers**

(R.C. 3727.80)

The act requires a hospital, when a patient is admitted to that hospital and informs the hospital that the patient is covered by a health benefit plan, to notify the health plan issuer of the admission within 48 hours. If the hospital is *not* informed that a patient is covered by a health benefit plan when the patient is admitted, then the hospital is required to notify the health plan issuer of the patient’s admission within 48 hours of being informed. A hospital is considered to have been informed that a patient is covered under a health benefit plan when the patient provides the hospital the patient’s health benefit plan identification card. The hospital must make the required notification either in writing or through a secure electronic transmission. If written notice is not possible, then the notice is to be made by telephone.

## **Insurance agent pre-licensing education**

(R.C. 3905.04)

In order to qualify to sit for the insurance agent license exam, continuing law requires an insurance agent applicant to meet one of several specified education criteria, one of which is the completion of 20 hours of study in a program of insurance education approved and established by the Superintendent of Insurance. The act explicitly authorizes the

Superintendent, when determining the criteria for pre-licensing education for insurance agents, to include classroom, online, and self-study options.

## **Joint venture title insurance companies**

(R.C. 3953.331 and 3953.36)

Under continuing law, 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>77</sup> The act specifies that for a title insurance company that is a joint venture,<sup>78</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 act. The records must be kept for at least ten years following the transactions to which the records relate. The act 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.

For a title company that is a joint venture that is set to dissolve or terminate on a specified date, the act 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 act requires the Departments of Insurance and Medicaid to complete and submit to the Governor and General Assembly a joint study by July 1, 2022, analyzing whether offering tax credits or other incentives for the purchase of long-term care insurance would increase the number of Ohioans with such insurance. If so, the study must recommend incentive options and amounts that would encourage the purchase of such 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

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<sup>77</sup> R.C. 3953.33, not in the act.

<sup>78</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).

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>79</sup>)

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<sup>79</sup> R.C. 3923.41, not in the act.

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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 and the minority leaders 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.

### **Supplemental Nutrition Assistance Program (SNAP) debit cards**

- Requires JFS to collect information on suspicious electronic benefit transfer card transactions and provide the information to each impacted county department of job and family services for analysis and investigation.

### **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 SNAP.

### **Data matching agreements**

- Requires the JFS Director to enter into several data matching agreements for the purpose of determining eligibility for certain public assistance recipients.

### **Third-party commercial consumer reporting agency**

- Permits JFS to contract with a third-party commercial consumer reporting agency to assist with improving the timeliness of benefit deliveries, maximizing operational efficiencies, increasing cost savings, and minimizing fraud within public assistance programs.
- Requires county departments of job and family services to participate in a no-cost, 90-day pilot program under which the county departments must contract with a third-party commercial consumer reporting agency.
- Following the conclusion of the pilot program, permits JFS to contract with a vendor to provide the services described above.
- Requires both JFS and county departments to undertake efforts to incorporate real-time employment and income information into existing verification and eligibility determination procedures.

## **Public Assistance Benefits Accountability Task Force**

- Establishes the Public Assistance Benefits Accountability Task Force, and requires it to study various aspects of Ohio's public assistance programs and to submit a report to the General Assembly.

### **JFS subgrant**

- Requires JFS to enter into a subgrant agreement with the Ohio Association of Foodbanks to do the following:
  - Provide food distribution via the statewide charitable emergency food provider network;
  - Support transportation of meals for the Governor's Office of Faith-Based and Community Initiatives Innovative Summer Meals programs;
  - Provide capacity building equipment for food pantries and soup kitchens.
- Requires the Association to do all of the following:
  - Purchase food for the Agriculture Clearance and Ohio Food Programs;
  - Provide the cost of transportation of food already purchased in FY 2021 to the Governor's Office of Faith-Based and Community Initiatives Summer and Rural Meals program sites;
  - Support the Capacity Building Grant program and purchase equipment for partner agencies that is needed to increase their capacity to serve more families eligible under the Temporary Assistance for Needy Families program;
  - Submit a quarterly report to JFS not later than 60 days from the close of the quarter to which the report pertains that includes certain performance details;
  - Submit an annual report to the JFS Agreement Manager not later than 120 days from the end of the fiscal year that includes certain performance details.

### **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.

### **Ohio Family and Children First Cabinet Council**

- Transfers fiscal and administrative agent duties for the Ohio Family and Children First Cabinet Council from the Department of Mental Health and Addiction Services to JFS, including transferring the Council's office location and employees.
- 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.



## **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 option that allowed a PCSA to maintain 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 and thus requires the PCSA to maintain a case plan for such a child.

## **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 act prevents a PCSA or PCPA from continuing to 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 a 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) and Kinship Support Program (KSP)**

- Requires the JFS Director, not later than June 30, 2022, 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 December 30, 2022, 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 December 30, 2022, if the amended state plan for federal KGA (described above) is approved.
- Provides that any JFS decision terminating federal KGA for a KG young adult or kinship support program (KSP) payments is subject to a state hearing under continuing law.
- Allows kinship caregivers to participate in the kinship permanency incentive program if they are not receiving federal assistance payments for KGA or for adopted or emancipated young adults or state adoption maintenance subsidy payments.
- Allows for specified relatives receiving federal KGA, State KGA, or KSP payments to participate in Ohio Works First if other conditions are also met.

- Excludes federal KGA, state KGA, and KSP payments from the definition of gross income for child support purposes.
- Provides that benefits and services provided under the following are inalienable and therefore not subject to attachment or garnishment:
  - Kinship guardianship assistance program;
  - Extended kinship guardianship assistance program;
  - Kinship support program;
  - Kinship permanency incentive program;
  - State adoption maintenance subsidy.
- 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 program**

- Recodifies 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**

- Adds, as a result of an LSC error, certain crimes to the Bureau of Criminal Identification and Investigation criminal background check for:
  - Persons whose identities are required to be disclosed for the issuance or transfer of a permit, license, certificate of registration, or certification by the Department of Commerce or applicable Division;
  - Persons employed to be responsible for the care, custody, or control of a child at a Head start agency or preschool program; and
  - Any school district, educational service center, or school employment applicant.
- Failed, due to the error, to apply the additional crimes to the 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 prior law required) of the U.S. Department of Justice’s National Sex Offender Public Website; and

- Obtain a summary report (instead of *request* a summary report as prior law required) 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 September 30, 2021.

### **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;
  - At least once every 12 months after the first determination; and
  - That JFS or its representative made reasonable efforts 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.

### **Foster caregiver certification extension**

- Requires JFS to extend the certification deadline to December 31, 2021, for foster caregivers and prospective foster caregivers who began continuing training or preplacement training between 2019 and 2021, unless their certification deadline is after December 31, 2021.

- Prohibits JFS from requiring foster caregivers and prospective foster caregivers from repeating training or certification requirements that have been previously completed, except JFS may require a new background check and home inspection.

### **Court order to interview and examine a child**

- Allows a juvenile court, if it determines probable cause exists, to issue an order, without a hearing, authorizing a PCSA to interview or examine a child who may be abused, neglected, or dependent if the child's parent, guardian, custodian, or caretaker refuses the PCSA reasonable access to the child.
- Requires that a PCSA request the order and to submit a sworn affidavit detailing the facts that would support the order.
- Specifies that the order is not a final, appealable order, which means that the order may not be reviewed, affirmed, modified, or reversed, with or without trial.

### **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) CDJFSs, (2) child support enforcement agencies, (3) PCSAs, 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;
  - Submit a report to the General Assembly by February 1, 2022.

### **Publicly funded child care**

- Revises the law governing eligibility determinations for publicly funded child care, including by specifying that the eligibility period is to be at least 12 months.

- Revises the law governing income eligibility for publicly funded child care, specifying that the maximum amount of family income for initial eligibility cannot exceed 142% of the federal poverty line, but only until June 30, 2023.
- Repeals the law requiring JFS to ensure that specified percentages of publicly funded child care providers are rated in the Step Up to Quality Program’s third highest tier or above by specified dates, including the provision requiring all of these providers to be rated in the third highest tier or above by June 30, 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.

### **Elder Abuse Commission reporting**

- Removes a requirement that the Elder Abuse Commission review current funding of adult protective services and submit a separate report on the cost of implementing its recommendations.
- Requires instead that the Commission’s biennial report include estimates of the funding necessary to implement its specific recommendations.

### **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**

#### **Applications for unemployment benefits**

- For benefit years beginning on or after July 1, 2022, eliminates from consideration in the first phase of the unemployment eligibility process whether a claimant is disqualified from unemployment benefits for reasons relating to why the claimant is unemployed (this phase examines whether the claimant worked enough and earned enough to qualify for benefits).
- Requires the JFS Director to check the Ohio New Hire Reporting Center, the National Directory of New Hires, and the Integrity Data Hub when determining whether an initial

application is valid or whether a first claim or additional claim qualifies an individual for benefits.

### **Other provisions**

- 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 continuing 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 act 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, the chairperson of a standing committee of the Senate designated by the Senate President, and the minority leaders of the House and Senate.

The act authorizes the chairpersons of the designated standing committees to call the JFS Director to testify before the committees regarding the TANF spending plan.



## **Supplemental Nutrition Assistance Program (SNAP) debit cards**

(R.C. 5101.54)

The act requires JFS to collect information regarding suspicious electronic benefit transfer (EBT) card transactions and provide the information to each impacted county department of job and family services for analysis and investigation. The information collected is required to include the following: (1) transactions of even dollar amounts, (2) transactions of full monthly benefit amounts, (3) multiple same-day transactions, (4) out-of-state transactions, and (5) other suspicious trends.

## **Elderly Simplified Application Project**

(R.C. 5101.545)

The act requires the JFS Director to submit an application to the U.S. Department of Agriculture for participation in the Elderly Simplified Application Project within SNAP. The Elderly Simplified Application Project is a demonstration project, under which participating states may waive the recertification interview requirement and extend the certification period for certain eligible elderly households to 36 months.

## **Data matching agreements**

(R.C. 5101.041 and 5120.212)

The act requires the JFS Director to enter into three separate data matching agreements. The first, with the Department of Rehabilitation and Correction, requires the Director of Rehabilitation and Correction to provide the JFS Director with a searchable list of all individuals committed to the institutions governed by the Department.

The JFS Director also must enter into a data matching agreement with the Director of the State Lottery Commission and the Executive Director of the Ohio Casino Control Commission, requiring that the commissions provide the JFS Director with a searchable list of all individuals with substantial lottery or gambling winnings. The JFS Director is required to check this list at least monthly to determine if the information affects any public assistance recipient's eligibility.

Finally, the JFS Director must enter into a data matching agreement with the Director of Health. Under this agreement, the Director of Health must provide the JFS Director with a searchable list of vital statistics records, including death records. The JFS Director must check this list at least monthly to determine whether any of the vital statistics records affect a public assistance recipient's eligibility.

## **Third-party commercial consumer reporting agency**

(R.C. 5104.04; Section 307.290)

The act permits JFS to contract with a third-party commercial consumer reporting agency, in accordance with federal law,<sup>80</sup> for the purpose of assisting the Department with determining an individual's eligibility for SNAP, benefits funded by the TANF block grant, or unemployment compensation. The purpose of the contract is to improve the timeliness of public assistance benefit deliveries, to maximize operational efficiencies, increase cost savings, and minimize fraud.

Likewise, the act requires county departments of job and family services to participate in a 90-day pilot program, at no cost to them, under which county departments are required to obtain real-time employment and income information from a third-party commercial consumer reporting agency for the purposes described above. At the conclusion of the pilot program, the act permits JFS to contract with a vendor to provide the same or similar services provided to each county department by a third-party commercial consumer reporting agency.

The act requires both JFS and county departments to undertake efforts to incorporate real-time employment and income information into existing verification and eligibility determination procedures.

## **Public Assistance Benefits Accountability Task Force**

(Section 307.300)

The act establishes the Public Assistance Benefits Accountability Task Force consisting of the following 15 members:

- The Medicaid Director, or the Director's designee, serving as an ex-officio, nonvoting member;
- The JFS Director, or the Director's designee, serving as an ex-officio, nonvoting member;
- The Director of the Office of InnovateOhio, or the Director's designee, serving as an ex-officio, nonvoting member;
- A director of a county department of job and family services, appointed by the Senate President;
- A business owner who employs fewer than 100 people, appointed by the Senate President;
- A director of a child support enforcement agency, appointed by the Senate President;
- Three members of the Senate, two from the majority party and one from the minority party, all appointed by the Senate President;

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<sup>80</sup> 15 U.S.C. 1681 *et seq.*

- A business owner who employs fewer than 500 people, appointed by the House Speaker;
- A representative of the Ohio Job and Family Services Directors' Association, appointed by the Speaker;
- A director of a county workforce development agency, appointed by the Speaker;
- Three members of the House, two from the majority party and one from the minority party, all appointed by the Speaker.

By September 28, 2021, the Senate President and the Speaker each must appoint co-chairpersons of the task force from the members they appointed. Thereafter, the task force will meet at the call of the co-chairpersons. Members of the task force serve without compensation.

Under the act, the task force has the power to do all of the following:

- Review the [November 9, 2020, report](#) published by the Auditor of State regarding Medicaid eligibility and determine to what extent the Auditor's recommendations have been adopted. Within 90 days of conducting the review, the task force must report to the Senate President and House Speaker regarding the status of implementation of these recommendations;
- Review past and present welfare to work county programs and their effectiveness on assisting individuals in achieving employment;
- Review existing fraud prevention efforts at both the state and county levels and determine best practices for fraud prevention in SNAP, Medicaid, Ohio Works First, and the publicly funded child care program;
- Review and establish best practices regarding overpayment of benefits in SNAP, Medicaid, and the publicly funded child care program, and determine how these overpayments can be prevented at the state and county levels;
- Review and recommend best practices for processing public assistance cases to create efficiencies and reduce errors through the use of technology;
- Review and evaluate the length of time that individuals receive public assistance in the state and recommend ways to return individuals to the workforce;
- Review existing efforts to ensure compliance with child support enforcement across public assistance benefit programs and recommend additional ways compliance could be improved;
- Review the costs and benefits associated with implementing a requirement that each SNAP debit card include a color photograph of at least one adult member of the household.

Not later than 18 months after first convening, the task force is required to prepare and submit a report to the General Assembly detailing its recommendations regarding the topics

listed above. After submitting its report to the General Assembly, the task force will cease to exist.

## **JFS subgrant**

(Section 307.43)

The act requires JFS to enter into a subgrant agreement with the Ohio Association of Foodbanks to enable the Association to: (1) provide food distribution to low-income families and individuals through the statewide charitable emergency food provider network, (2) support the transportation of meals for the Governor's Office of Faith-Based and Community Initiatives Innovative Summer Meals programs for children, and (3) provide capacity building equipment for food pantries and soup kitchens.

Under the agreement, the Ohio Association of Foodbanks must do all of the following:

- Purchase food for the Agriculture Clearance and Ohio Food Programs. Information regarding the food purchase must be reflected in a plan for statewide distribution of food products to local food distribution agencies;
- Provide the cost of transportation of food already purchased in FY 2021 to the Governor's Office of Faith-Based and Community Initiatives Summer and Rural Meals program sites;
- Support the Capacity Building Grant program and purchase equipment for partner agencies needed to increase their capacity to serve more families eligible under the Temporary Assistance for Needy Families (TANF) program with perishable foods, fruits, and vegetables. Equipment purchases must include shelving, pallet jacks, commercial refrigerators, and commercial freezers.
- Submit a quarterly report to JFS not later than 60 days after the close of the quarter to which the report pertains. The report must include:
  - A summary of the allocation and expenditure of grant funds;
  - Product type and pounds distributed by foodbank service region and county; and
  - The number of households and households with children; a breakdown of individuals served by age, including those over 60, those between 19 and 59, and those up to 18; and the number of meals served.
- Submit an annual report to the Agreement Manager at JFS not later than 120 days after the end of the fiscal year. The report must include:
  - A summary of the allocation and expenditure of grant funds;
  - The number of households and households with children; a breakdown of individuals served by age, including those over 60, those between 19 and 59, and those up to 18; and the number of meals served;
  - The quantity and type of food distributed and the total per pound cost of the food purchased;

- Information on the cost of storage, transportation, and processing; and
- An evaluation of the success in achieving expected performance outcomes.

## **Individual development account (IDA) reports**

(R.C. 329.12 and 5101.971)

The act 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>81</sup>

The act also eliminates the requirement that JFS publish an annual report regarding the counties' IDA programs.

## **Ohio Family and Children First Cabinet Council**

### **Transfer of duties**

(Section 307.109)

The act transfers fiscal and administrative duties for the existing Ohio Family and Children First Cabinet Council to JFS (from the Department of Mental Health and Addiction Services). The transfer does not affect the Council's purpose, powers, or duties.<sup>82</sup> Related to the transfer, the act specifies the following:

- The location of the Council's office will move to JFS;
- No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer;
- Any rules, orders, or determinations pertaining to the Council continue in effect as rules, orders, and determinations of the Council until modified or rescinded;
- All employees of the Council are transferred to JFS and retain current positions and benefits;
- No judicial or administrative action or proceeding to which the Council or an authorized officer is a party that is pending on the effective date of the transfer is affected by the transfer;
- The Director of Budget and Management must make budget and accounting changes necessitated by the transfer;

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<sup>81</sup> O.A.C. 5101:1-3-18(D)(1).

<sup>82</sup> See R.C. 121.37, not in the act.

- All records, documents, files, equipment, assets, and other property of the Council remain in the possession of the Council and are not affected by the transfer.

### **Flexible funding pool**

(Section 307.110)

The act 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.

### **Case plans and family service plans**

(R.C. 2151.412)

#### **Permanency plans**

Beginning January 1, 2023, the act 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 act 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.

#### **Family service plans**

The act 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 act removes the requirement that the Director adopt rules for family service plans.

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>83</sup>

## **Caseworker in-service training**

(R.C. 5153.122 and 5153.124)

The act requires the JFS Director, not later than June 30, 2022, 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 continuing law in-service training waiver for PCSA caseworkers in their first year.

Under continuing 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. 2151.416, 2151.4115, 2151.4116, 2151.4117, 2151.4118, 2151.4119, 2151.4120, 2151.4121, and 2151.4122)

### **Finding kinship caregivers**

#### **Intensive efforts**

The act requires each PCSA and PCPA to make intensive efforts to identify potential kinship caregivers whenever the agency has temporary custody (TC) 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";

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<sup>83</sup> R.C. 2151.011(B)(4).

- First cousins and first cousins once removed.
- 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 act 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 act defines as any locate-and-research tool, search engine, electronic database, or social media search tool available to the PCSA or PCPA.

### **Exemption**

The act 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>84</sup>

The act provides, however, that nothing in its provisions prevents a PCSA or PCPA from continuing to search or consider kinship caregivers.

### **Court review**

The act 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>84</sup> R.C. 2151.33, not in the act.



## **Court determination**

The act 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 consecutive 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 act 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 act, 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 service, 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 act 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) and Kinship Support Program (KSP)**

(R.C. 3119.01, 5101.141, 5101.1411, 5101.1415, 5101.1416, 5101.1417, 5101.802, 5101.8812, 5107.10, and 5153.163)

### **Provisions affecting KGA only**

#### **Federal KGA**

The act 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 act 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 continuing 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 act requires the JFS Director, not later than June 30, 2022, 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 act requires implementation of the state plan amendments to begin December 30, 2022, 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 act 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.”

### ***On behalf of an eligible child***

#### ***State plan amendment requirement***

The act requires JFS, not later than June 30, 2022, 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 act requires implementation of the amendments to the plan to begin December 30, 2022, if the plan, as amended, is approved by the Secretary of Health and Human Services.

### ***County expenditure reports***

The act 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 act 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 act 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 act requires JFS, not later than June 30, 2022, 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;
- 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 act 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 December 30, 2022, if the state plan is amended as described above to provide federal KGA to eligible children.

## **Provisions affecting both KGA and KSP**

### **State hearing**

The act provides that any determination that JFS makes denying or terminating federal KGA for a KG young adult or kinship support program (KSP) payments is subject to a state hearing for an administrative appeal under continuing law. Under continuing law, KSP provides for time limited payments to a kinship caregiver (a relative, as defined in the act, who is caring for a child in place of the child's parents) who takes care and placement of a child and who does not have foster home certification.<sup>85</sup>

### **Kinship Permanency Incentive Program**

The act prohibits a kinship caregiver from participating in the kinship permanency incentive program under continuing law if the kinship caregiver is a relative receiving payments under Title IV-E for KGA or for adopted or emancipated young adults or state adoption maintenance subsidy payments. 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.

### **Ohio Works First**

The act 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 or KSP payments, may participate in the Ohio Works First Program.

### **Gross income and KGA for child support**

The act excludes any federal KGA, State KGA, and KSP payments from the definition of gross income for child support calculation purposes. Under continuing law, federal adoption assistance and foster care maintenance payments are already excluded.

### **Inalienability of benefits**

The act provides that the following benefits and services are inalienable, whether by way of assignment, charge, or otherwise and exempt from execution, attachment, guardianship and other like processes:

- KGA;
- Extended KGA;
- KSP;

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<sup>85</sup> See R.C. 5101.88 to 5101.8811, not in the act.

- Kinship permanency incentive program;
- State adoption maintenance subsidy.

### **PCSA duties regarding impossibility of adoption**

The act 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 act 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 program**

(R.C. 5101.1418 and 5153.163)

The act recodifies, 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 act 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; and
- Any other rule, requirement, or procedure JFS considers appropriate for the implementation of this section.

Finally, the act 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 act 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 continuing law.

The act 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 continuing 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;
6. 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 act 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 act 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 act 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 act 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 checks**

(R.C. 109.572)

The act adds several crimes to those for which the Bureau of Criminal Identification and Investigation must check when conducting certain background checks. The Superintendent of the Bureau must conduct a criminal records check to determine whether any information exists that indicates a previous conviction or guilty plea 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.

Due to an LSC processing error, the persons subject to the expanded-offense criminal background check under the act are not those in the As Introduced version of H.B. 110. As Introduced, the background check applied to persons responsible for out-of-home child care and members of a household for a family hosting a child under a host family agreement. Because of the processing error, the background check instead applies to the following:

- Persons whose identities are required to be disclosed for the issuance or transfer of a permit, license, certificate of registration, or certification by the Department of Commerce or applicable Division thereof (R.C. 121.08(K));
- Persons employed to be responsible for the care, custody, or control of a child at a Headstart agency or preschool program (R.C. 3310.32 and 3301.541); and
- Any applicant who has applied to a school district, educational service center, or school for employment in any position (R.C. 3319.39).

## **Background checks for institutions and associations**

(R.C. 5103.0310)

### **Requirement to obtain information**

The act 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 act requires an institution or association described above, regarding the background information, to (1) *obtain* a search (instead of *conduct* a search as prior law required) 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 prior law required) of a search of the uniform statewide automated child welfare information system (SACWIS).

### **Further action**

The act allows an institution or association described above to refuse to employ (instead of “hire” as prior law required) 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 act 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 September 30, 2021.

## **Federal foster care assistance for emancipated young adults**

(R.C. 2151.451, 2151.452, 2151.453, 5101.141, and 5101.1412)

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.

### **Jurisdiction**

The act 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 continuing law, the juvenile court of the county where an EYA resides may still exercise jurisdiction.

## **Voluntary participation agreements**

An EYA who receives Title IV-E payments may enter into a “voluntary participation agreement” (VPA) with JFS or its representative (JFS/Rep) regarding the EYA’s care and placement. As part of the process, JFS/Rep must seek periodic determinations from the court concerning the young adult’s best interests. The act makes two revisions to the statutory terms of the judicial interactions, as follows:

1. It rewords the mandate to require JFS/Rep to petition for and obtain a judicial determination – rather than to “seek approval from the court” as under former law – that the EYA’s best interest is served by continuing his or her care and placement; and

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**

The act 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**

The act revises the timing of the court’s determination whether JFS/Rep has made reasonable efforts to prepare the EYA for independence, as follows:

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 prior law; and

2. It requires determinations “at least once every 12 months” thereafter, rather than merely “annually” as under prior law.

## **Payment suspension**

The act 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 prior law, only if the reasonable efforts determination regarding preparing the EYA for independence was not timely made, would 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 act, a subsequent best interest determination will not result in the resumption of payments.

## **Foster caregiver certification extension**

(Section 751.20)

The act requires JFS, if a foster caregiver or prospective foster caregiver began continuing training or preplacement training between 2019 and 2021, to extend the certification deadlines for the foster caregivers and prospective foster caregivers to December

31, 2021. The extension does not apply to foster caregivers or potential foster caregivers whose certification deadline is after December 31, 2021.

Additionally, JFS cannot require such extension-eligible foster caregivers or prospective foster caregivers to repeat training or requirements for certification that the caregiver has previously completed. But JFS may require the foster caregiver or prospective foster caregiver to undergo a new background check and home inspection.

## **Court order to interview and examine a child**

(R.C. 2151.23 and 2151.25)

### **PCSA request to juvenile court**

The act permits a PCSA, if it receives a report of child abuse or neglect or a report that a child may be a dependent child, and is denied reasonable access to the child by a parent, guardian, custodian, or caregiver of the child, or to any other information necessary to determine if the child is, or at risk of becoming, an abused, neglected, or dependent child, to request a juvenile court to issue an order granting the PCSA access to examine and interview the child, or to conduct other activities necessary to determine the risk to the child. The PCSA must make the request by submitting a sworn affidavit explaining the need for the order in the juvenile court of the county in which:

- The child has a residence or legal settlement; or
- The reported abuse or neglect of the child occurred or the reported conditions exist regarding the child's dependency.

Under the act, the juvenile court has exclusive original jurisdiction to hear and determine a request for a court order to examine and interview a child who may be an abused, neglected, or dependent child.

### **Affidavit requirements**

Under the act, the affidavit must include the following:

- The particular facts of the allegation or allegations in the report that may indicate the child is an abused, neglected, or dependent child;
- The PCSA's efforts to gather additional information to determine whether or not the child may be, or at risk of becoming, an abused, neglected, or dependent child;
- The PCSA's efforts to obtain consent from a parent, guardian, custodian, or caregiver to examine and interview the child, or to conduct other activities necessary to determine the risk to the child;
- The activities the PCSA deems necessary to determine the current risk to the child.

The act prohibits the affidavit from identifying the source of the allegation or allegations in the report that may indicate the child is an abused, neglected, or dependent child.

## **Court determination and order**

The act permits the court, on receipt of a request and a sworn affidavit submitted in accordance with the act's requirements, if it determines that probable cause exists, to, without a hearing, issue an order requiring the parent, guardian, custodian, or caregiver of the child to comply with the PCSA's investigation, including an interview and examination of the child and other activity the court deems necessary to determine the current risk posed to the child.

Under the act, the court may include within the order specific instructions on the manner and location of the interview and examination of the child, as well as detail any other necessary activities.

The act specifies that such an interview and examination order is not a final, appealable order, which means that the order may not be reviewed, affirmed, modified, or reversed, with or without trial.

## **Reimbursement for federal juvenile court programs**

(R.C. 2151.152)

The act 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 act 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 act creates the Task Force on Streamlining County Level-Information Access to make recommendations on how CDJFSs, child support enforcement agencies, PCSAs, and county OhioMeansJobs centers can streamline access to information across information technology systems.

### **Membership**

The Task Force must consist of 21 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;
9. Three representatives of the County Commissioners Association of Ohio, appointed by the Association, with one representative each from a small, medium, and large county, respectively; and
10. Two representatives from the Ohio Workforce Association, appointed by the Association, with one representative from a rural workforce area and one representative from a metro workshop area.

## **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 the public records and open meetings laws.

## **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**

### **Determination of eligibility**

(R.C. 5104.34)

The act makes the following three changes to the law governing eligibility determinations for publicly funded child care:

1. Specifies that the eligibility period is to be at least 12 months. Prior law contained 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 but not more than four months, rather than for 13 weeks as under prior law; and

3. Removes an obsolete reference to part-time child care programs participating in the Step Up to Quality Program.

### **Income eligibility**

(Section 307.280)

The act revises the law governing income eligibility for publicly funded child care, but only until June 30, 2023. Until then, the maximum amount of income that a family may have for initial eligibility must not exceed 142% of the federal poverty line (or 150% in the case of a family with a special needs child). It also specifies that the maximum amount of income for continued eligibility must not exceed 300% of the federal poverty line. Under continuing law unchanged by the act, JFS must adopt rules specifying the maximum amount of income a family may have for initial and continued eligibility, with the maximum amount not exceeding 300% of the federal poverty line.<sup>86</sup>

### **Step Up to Quality**

(R.C. 5104.29)

The act repeals the law requiring ODJFS to ensure that specified 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, including that all such providers be so rated by June 30, 2025.

### **Federal coronavirus relief funds**

(Section 307.270)

Under the act, ODJFS may use specified federal coronavirus relief funds only for the following purposes – to assist with stabilizing and sustaining the child care program, improve

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<sup>86</sup> R.C. 5104.38.



workforce recruitment and retention, and increase access for families. The funds subject to those limits are the following:

- Any funds remaining from the “Consolidated Appropriations Act, 2021”;
- Any federal Child Care Development Fund supplemental discretionary funds Ohio receives from the “American Rescue Plan Act of 2021.”

## **Type A family day-care homes**

(R.C. 5104.017)

The act 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 act 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 act instead requires them to be made a part of the statewide plan for child care resource and referral services that JFS must develop under continuing 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 act 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 prior law; and

2. Updating citations to the federal statutes.

## **Elder Abuse Commission reporting**

(R.C. 5101.741)

The Elder Abuse Commission is responsible for examining elder abuse and identifying ways to reduce its prevalence. It had been required to submit two reports, one addressing the cost to state and county departments of job and family services of implementing its recommendations, and one with a plan of action that may be used by local communities to reduce elder abuse. The act removes the requirement that the Commission submit a separate report estimating the cost of implementing its recommendations, and instead requires that cost estimates be included in the biennial report detailing a plan of action to reduce elder abuse.

## **Ohio Commission on Fatherhood**

(R.C. 5101.341)

The act extends the timeline for appointing the chairperson of the Ohio Commission on Fatherhood to every other year, occurring in odd-numbered years. Prior law required the chairperson to be appointed every year.

## **Applications for unemployment benefits**

(R.C. 4141.01 and 4141.286)

### **Determination of benefit rights**

The act revises the process for determining whether a claimant is eligible for unemployment benefits. Determining eligibility is a two-phase process. In the first phase, a claimant files an application for determination of benefit rights, which, except as discussed below, generally examines whether the individual worked and earned enough to be eligible for benefits (“monetary eligibility”). This application is used to establish the claimant’s benefit rights and benefit year, which is the 52-week period during which the claimant may file claims for benefits based on satisfying the monetary eligibility requirements. A claimant does not have to satisfy these monetary eligibility requirements again during a benefit year.

Under the act, beginning July 1, 2022, a claimant establishes a benefit year based on the monetary factors alone, and whether the claimant is disqualified from receiving benefits based on the reason for separating from work, as discussed below, will not be a factor in completing

this first part of the process. This may allow a claimant to start the claimant's benefit year sooner than under former law.

Until July 1, 2022, to complete phase one and establish a benefit year, JFS also examines the reason why the claimant is unemployed. If that reason disqualifies the claimant from receiving benefits, the claimant's application is not valid and the claimant does not establish benefit rights or a benefit year until the disqualification is "removed" – that is, the claimant separates from other work for a reason that does not disqualify the claimant for benefits, an exception applies that negates the disqualification, or the disqualification is overturned. Reasons that disqualify a claimant include unemployment due to a labor dispute, quitting work without just cause or being discharged with just cause, or quitting to marry or because of other domestic obligations.<sup>87</sup>

Thus, it appears that until July 1, 2022, if a claimant does not establish a valid application because the claimant was disqualified based on the reason for unemployment, if the claimant subsequently applies in the near future, the claimant has to re-establish monetary eligibility as well as not be unemployed for a disqualifying reason.

However, the act does not eliminate the requirement that, to qualify for benefits, a claimant must not have separated from work for a disqualifying reason. After filing a valid initial application and establishing a benefit year, a claimant enters the second phase of the process. In the second phase, the individual must file a claim for benefits each week the individual seeks benefits during the individual's benefit year. On filing the first claim in the benefit year, JFS examines whether the reason the claimant separated from work qualifies the claimant for benefits. For each claim, JFS examines other factors including whether the claimant is available, able, and searching for work. If a claimant is re-employed but then separates from reemployment and files a claim for benefits before the benefit years ends (referred to as an "additional claim"), JFS again looks at the reason for the separation from employment to determine whether the claimant qualifies.<sup>88</sup> If the claimant is disqualified in this phase, the claimant's benefit year continues and the claimant does not have to re-establish meeting the monetary eligibility requirements when filing a future claim in that year.

### **Employment checks**

The act adds a requirement that the JFS Director must check all of the following sources, in addition to checking other sources under continuing law, when determining whether an initial application is valid or whether a first claim or additional claim for benefits qualifies a claimant for benefits:

- The Ohio New Hire Reporting Center maintained by JFS;

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<sup>87</sup> R.C. 4141.29 and 4141.291, not in the act.

<sup>88</sup> R.C. 4141.28, not in the act.

- The National Directory of New Hires maintained by the federal Office of Child Support Enforcement;
- The Integrity Data Hub maintained by the National Association of State Workforce Agencies (NASWA) or a similar database maintained by a successor organization.

The Ohio New Hire Reporting Center and the National Directory of New Hires are part of a reporting system created by the federal “Personal Responsibility and Work Opportunity Reconciliation Act of 1996” and state law implementing that Act.<sup>89</sup> Under the system, Ohio employers report their new hires and rehires to the state directory within 20 days after an individual is hired or the employer engages or re-engages a contractor.<sup>90</sup> The Ohio Child Support office matches the reports against open child support cases to locate parents, establish medical, paternity and child support orders, and enforce existing orders. Once the state matches are complete, the new hire information is sent to the National Directory of New Hires and is utilized by child support agencies nationwide.<sup>91</sup>

NASWA is a national organization representing workforce agencies from all 50 states, Washington D.C., and several U.S. territories. The NASWA Integrity Data Hub provides information on the prevention, detection, and recovery of improper unemployment benefit payments, fraud, and delinquent employer contribution.<sup>92</sup>

Under former law, the JFS Director could use all of these sources for information when making eligibility determinations but was not required to do so.<sup>93</sup>

## **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 act expands a continuing 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.

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<sup>89</sup> Pub. L. No. 104-193, 42 U.S.C. 653, and R.C. 3121.89 through 3121.89111, not in the act.

<sup>90</sup> R.C. 3121.893, not in the act.

<sup>91</sup> Ohio Department of Job and Family Services, *New Hire Reporting: State and Federal Requirements & FAQs*, available [here](#).

<sup>92</sup> NASWA, *Integrity Home*, available [here](#).

<sup>93</sup> R.C. 3121.898, not in the act; see also 42 U.S.C. 653 and Unemployment insurance Program Letter 03-20, available [here](#).

## Prohibitions

The act expands a continuing law provision to prohibit 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. Under continuing law, the prohibition applies to information maintained by, or furnished to, the JFS Director. The act also expands a continuing law provision to prohibit 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. Under continuing law, the 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 act.

## 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 act increases the maximum percentage a participating employer may reduce an affected employee’s hours. Under former law, the proposed reduction percentage permitted in a shared work plan was required to be between 10% and 50%. Under the act, the reduction must be between 10% and 60%.

The act also reduces the time period for the JFS Director to approve or deny a shared work plan. Under the act, 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. Under former law, the Director had 30 days.

Under the act, 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. Shared work benefits can also be charged to the mutualized account under

continuing law 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>94</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>95</sup>

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<sup>94</sup> Section 2162 of the “Layoff Prevention Act of 2012,” Pub. L. No. 112-96.

<sup>95</sup> See R.C. 4141.25, not in the act.

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## JUDICIARY/SUPREME COURT

### **Lima Municipal Court clerk**

- Specifies that the Lima Municipal Court clerk is an elected position.
- Includes the Lima Municipal Court clerk within the procedure for filling a vacancy.

### **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 how a court may use surplus money in an indigent drivers alcohol treatment fund by allowing expenditures 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.

### **Clerks of court deputy appointments**

- Requires that the appointments of deputies to a clerk of a court of common pleas be “endorsed” by the clerk.

### **Lima Municipal Court clerk**

(R.C. 1901.31)

The act makes the Lima Municipal Court clerk an elected position, rather than an appointed position. The clerk is nominated and elected by the qualified electors of the territory in the manner that is provided under Ohio law for the nomination and election of municipal court judges. The clerk holds office for a term of six years and commences on January 1 following the clerk’s election and continues until the clerk’s successor is elected and qualified.

The act includes the Lima Municipal Court clerk within the procedure for filling a vacancy. If a vacancy occurs because the clerk ceases to hold office before the end of the clerk’s term or because a clerk-elect fails to take office, the vacancy is filled, until a successor is elected

and qualified, by a person chosen by the residents of the territory of the court who are members of the county central committee of the political party by which the last clerk or clerk-elect was nominated.

### **Jefferson County County Court**

(R.C. 1907.15; Section 812.10)

The act 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 act expands how a court may use surplus money in an indigent drivers alcohol treatment fund. Under the act, 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 act 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.



## **Clerks of court deputy appointments**

(R.C. 2303.05)

The act requires that the appointments of deputies to a clerk of a court of common pleas be “endorsed” by the clerk. Prior law required that such appointments be in writing.

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## LEGISLATIVE SERVICE COMMISSION

- Codifies the traditional practice that in even-numbered general assemblies, the Senate President serves as chairperson of the Legislative Service Commission (LSC) and the Speaker of the House serves as vice-chairperson, and vice-versa in odd-numbered general assemblies.
- Eliminates the requirement that LSC meet at least quarterly.

### **LSC chair, meetings**

(R.C. 103.11 and 103.22)

The act requires that in even-numbered general assemblies, the Senate President serves as chairperson of the Legislative Service Commission (LSC) and the Speaker of the House serves as vice-chairperson. In odd-numbered general assemblies, it requires the Speaker to serve as chairperson and the Senate President to serve as vice-chairperson. This codifies a traditional practice.

The act also eliminates a requirement that LSC meet at least quarterly. Continuing law otherwise requires LSC to meet as often as is necessary to perform its duties.

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## JOINT LEGISLATIVE ETHICS COMMITTEE

- Specifies that the Joint Legislative Ethics Committee (JLEC) and the Office of Legislative Inspector General are not occupational licensing boards.
- Specifies that a registration to be a legislative agent, retirement system lobbyist, or executive agency lobbyist is not a license.
- Prevents occupational licensing provisions of H.B. 263 of the 133<sup>rd</sup> General Assembly, which take effect October 9, 2021, from applying to these registrations, thereby allowing JLEC to continue to prohibit registration of persons convicted of specified offenses and automatically ban a person from serving as a legislative agent, retirement system lobbyist, or executive agency lobbyist if convicted of specified offenses.

### JLEC registrations

(R.C. 9.78, 9.79, 101.721, 101.921, 121.621, and 4798.01; Sections 130.20 to 130.28)

The act specifies that the Joint Legislative Ethics Committee (JLEC) and the Office of Legislative Inspector General are not occupational licensing boards. Additionally, the act specifies that the registration to be a legislative agent, retirement system lobbyist, or executive agency lobbyist is not a license.

Accordingly, it prevents provisions of [H.B. 263 of the 133<sup>rd</sup> General Assembly](#), known as the “Fresh Start Act,” that take effect October 9, 2021, from applying to these registrations. Generally, the “Fresh Start Act,” prohibits any state licensing authority from refusing to issue an initial license or other authorization to a person to engage in any profession, occupation, or occupational activity regulated by the licensing authority as a result of being convicted of certain offenses.

Therefore, the act preserves JLEC’s ability to prohibit registration of persons convicted of specified offenses and automatically ban a person from serving as a legislative agent, retirement system lobbyist, or executive agency lobbyist if:

- The person is convicted of bribery, intimidation, retaliation, theft in office, unlawful interest in a public contract, engaging in a pattern of corrupt activity, or conspiracy, complicity, or an attempt to commit any of those offenses; or
- The person is convicted of, while holding any government public office and the offense was in relation to their official duties, tampering with records, intimidation of attorney, victim, or witness, perjury, tampering with evidence, obstructing official business, obstructing justice, conspiracy, complicity, or an attempt to commit any of those offenses.

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## DEPARTMENT OF MEDICAID

### Medicaid managed care contracting entities (VETOED)

- Would have required the Department of Medicaid to contract with Medicaid managed care organizations (MCOs) that (1) are domiciled in Ohio, (2) are currently Medicaid MCOs, and (3) have a proven history of providing quality services and customer satisfaction.
- Would have required any Medicaid MCO to participate, at minimum, in the geographic regions of Ohio where it is already providing services.
- Would have required the Department to establish an appeals process under which applicants can appeal the Department's award of Medicaid MCO contracts.

### Duties of area agencies on aging

- Requires the Department, if it adds to the Medicaid managed care system during FY 2022 and FY 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.

### Medicaid coverage of women postpartum

- Expands Medicaid coverage for pregnant women to include the maximum period permitted under federal law, instead of for 60 days after giving birth.

### Medicaid eligibility

- Requires the Department to take certain actions in the event that it receives federal funding for the Medicaid program that is contingent upon a restriction that limits the Department's ability to disenroll ineligible Medicaid recipients.

### Post-COVID Medicaid redetermination

- Requires the Department to seek controlling board approval to permit ODM to use third-party data to conduct an eligibility redetermination of all Ohio Medicaid recipients within 90 days after the conclusion of the COVID-19 emergency period.
- Requires the Department to conduct an expedited eligibility review of those recipients identified as likely ineligible for the program based on that verification and (to the extent permitted under federal law) to disenroll those recipients who are no longer eligible.
- Requires the Department to conduct an expedited eligibility review of those recipients who were newly enrolled in Medicaid for three or more months during the COVID-19 emergency period and (to the extent permitted under federal law) to disenroll those recipients who are no longer eligible.
- Requires the Department to complete a report containing its findings from the verification and submit it to various state agencies.

- Provides that any third-party vendor expenses incurred by the verification is entirely contingent on the Department realizing cost savings, and limits vendor expenses to 20% of those savings.

### **Medicaid waiver component definition**

- Specifies that the definition of a “Medicaid waiver component” does not include services delivered under a prepaid inpatient health plan.

### **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 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.

### **Medicaid Cost Assurance Pilot Program**

- Establishes the Medicaid Cost Assurance Pilot Program to be available to the Medicaid expansion eligibility group population during the FY 2022-FY 2023 biennium.
- 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.

## **Hospital Care Assurance Program, franchise permit fee**

- Continues, until October 2023, the Hospital Care Assurance Program and the franchise permit fee imposed on hospitals under Medicaid.

## **Medicaid rates for community behavioral health services**

- Permits the Department to establish Medicaid rates for community behavioral health services provided during FY 2022 and FY 2023 that exceed the Medicare rates paid for the services.

## **Home and community-based services payment rates (VETOED)**

- Would have earmarked \$5 million to increase the payment rates during FY 2022 and FY 2023 for adult day care services provided under the PASSPORT, Ohio Home Care, MyCare Ohio, and Assisted Living waivers.
- Would have increased the payment rates for providers of certain services under the PASSPORT program, the Ohio Home Care waiver program, the MyCare Ohio Waiver program, and the Assisted Living waiver by 4% in FY 2022 and another 2% in FY 2023.

## **Value-based purchasing supplemental rebate**

- Requires the Department to submit to the U.S. Centers for Medicare and Medicaid Services (CMS) a Medicaid state plan amendment to allow the Department to enter into value-based purchasing supplemental rebate agreements with pharmaceutical manufacturers.

## **Medicaid reports**

- Requires the Director to notify JMOC and be available to testify to JMOC before making any Medicaid payment rate increases greater than 10%.
- Requires the Director to report quarterly to JMOC the fee rates and the aggregate total of certain Medicaid program fees and if there is a rate increase pending before CMS for any of those fees.

## **Pharmacy supplemental dispensing fee (PARTIALLY VETOED)**

- Requires the Department to establish for the FY 2022-FY 2023 biennium a supplemental dispensing fee with three payment levels for retail pharmacies under the care management system.
- Would have required the payment levels to be based on (1) the ratio of Medicaid prescriptions filled compared to total prescriptions filled for each pharmacy and (2) the number of retail pharmacies participating in the care management system (VETOED).
- Would have prohibited the supplemental dispensing fee from causing a reduction in other payments made to the pharmacy (VETOED).

## **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 during the calendar year identified in the nursing facility’s cost report.

### **Medicaid payment formula**

- Removes provisions that require the Department to include in a nursing facility’s occupancy rate any beds that the facility removes from its Medicaid certified capacity, unless the beds are also removed from the facility’s licensed capacity.

### **Resident assessment data**

- Requires rules relating to the resident assessment data that nursing facilities must compile quarterly 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 federal SFF list and fails to make improvements or graduate from the program within certain periods of time.
- As part of the modifications, requires a nursing facility 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 – repealed**

- Repeals the quality payments nursing facilities received under former law for meeting at least one of five quality indicators.

### **Quality incentive payments (PARTIALLY VETOED)**

- Extends the nursing facility quality incentive payments from FY 2021 through the FY 2022-FY 2023 biennium.
- Clarifies that the data used to calculate a nursing facility’s quality score is based on CMS data from the most recent month of the calendar year during which the fiscal year for the rate begins, instead of May of the calendar year during which the fiscal year begins.
- Provides that a nursing facility receives zero quality points if its total number of points for FY 2022 or FY 2023 for the quality metrics is less than the number equal to the bottom 25% of all nursing facilities.
- Replaces the previous disqualifications from the quality incentive payments with a new disqualification for a nursing facility that is on CMS’s SFF list in that fiscal year.

- Would have defined SFF Table A, Table B, and Table C, for purposes of the above disqualification (VETOED).
- Suspends, after FY 2023, a provision of continuing law that disqualifies a nursing facility from receiving a quality incentive payment if its licensed occupancy percentage is below 80% for the applicable fiscal year, unless certain exceptions are met.
- Subtracts \$1.79 from the nursing facility's base rate calculation, which is used to determine the total amount to be spent on quality incentive payments.
- 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 step of the calculation using the number that is 5.2% of each nursing facility's base rate and (2) including a \$25 million add-on in FY 2022 and \$125 million in FY 2023 to the total in each fiscal year.
- Clarifies that if a nursing facility is new or undergoes a change of operator during FY 2022 or FY 2023, it receives no quality incentive payment for that fiscal year.

### **Nursing facility rebasing**

- Requires the Department to rebase only the direct care, ancillary and support, and tax cost centers when conducting a rebasing.
- Requires a nursing facility to spend money received from the rebasing conducted in FY 2022 on those cost centers only.
- Requires a nursing facility operator to spend 70% of additional dollars received as a result of a rebasing on direct care costs, including employee salaries, and permits the Department to recover any amounts that do not comply with this requirement.
- Requires the Medicaid Director to adopt rules to ensure that nursing facility operators comply with this requirement.
- Requires the Department to conduct its next nursing facility rebasing on June 30, 2021, using nursing facility calendar year 2019 data.
- Earmarks \$125 million in each fiscal year during FYs 2022 and 2023 for that rebasing and requires the rebasing determinations to be paid in the following order: (1) direct care costs, (2) ancillary and support costs, and (3) tax costs.
- Requires nursing facility payments based on the rebasing calculations to be prorated in order to stay within that earmark.
- Requires nursing facility operators to submit quarterly reports to the Department identifying the amounts spent on each cost center.
- Permits the Department to review the quarterly reports and requires an operator to reimburse to the Department any amounts, plus interest, not spent in accordance with these requirements.



## **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.

## **Medicaid managed care contracting entities (VETOED)**

(R.C. 5167.10)

The Governor vetoed provisions that would have imposed additional requirements on the Department of Medicaid's contracts with Medicaid managed care organizations (MCOs) to provide health care services to Medicaid enrollees under the care management system. To the extent permitted under federal law, beginning September 30, 2021, the act would have required the Department to include contracts with Medicaid MCOs that:

- Were domiciled in Ohio, including their parent entities;
- Were currently Medicaid MCOs; and
- Had a proven history of providing quality services and customer satisfaction, as reported by (1) the Department's Medicaid Managed Care Plans Report Card and (2) the National Committee for Quality Assurance (NCQA) Medicaid health insurance plan ratings.

Additionally, beginning on that date, any organization included as a Medicaid MCO would have been required to participate, at minimum, in the geographic regions of Ohio where they were already providing services.

The act would have exempted from these requirements a behavioral health managed care plan selected to assist the Department in implementing the Ohio Resilience Through Integrated Systems and Excellence (OhioRISE) Program for children and youth involved in multiple state systems or children and youth with complex behavioral health needs.

The Department would have been required to establish an appeals process under which applicants could appeal an adverse decision by the Department regarding an application for up to 30 days after the decision date.

## **Duties of area agencies on aging**

(Section 333.170)

The act requires the Department, 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 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.

## **Medicaid coverage of women postpartum**

(R.C. 5163.06 and 5163.061; Section 333.253)

The act expands Medicaid coverage to women postpartum from 60 days after giving birth to the maximum postpartum period permitted by federal law. If federal law provides Medicaid coverage for a postpartum period longer than 60 days, the act requires the Medicaid Director to amend the Medicaid state plan and seek any necessary waiver from the U.S. Centers for Medicare and Medicaid Services (CMS) to provide Medicaid coverage for this extended period.

The federal American Rescue Plan Act of 2021 established an option under which states may extend Medicaid coverage for pregnant women for one year after giving birth. This option will take effect on April 1, 2022, and remain in effect for five years.<sup>96</sup>

## **Medicaid eligibility**

(R.C. 5163.52; Section 812.10)

Effective January 1, 2022, the act establishes requirements the Department must follow if it receives federal funding for Medicaid that is contingent upon a temporary maintenance of effort restriction or otherwise restricts the Department's ability to disenroll ineligible Medicaid recipients (such as the requirements under the Families First Coronavirus Response Act).<sup>97</sup> First, the Department must continue to conduct eligibility redeterminations for the Medicaid program and act on those redeterminations to the fullest extent permitted under federal law. Second, within 60 days of the expiration of the restriction or limitation, the Department must complete an audit that does both of the following:

- Completes and acts on all eligibility redeterminations for Medicaid recipients for whom an eligibility redetermination has not been conducted in the past 12 months; and
- Requests approval from CMS to conduct and act on eligibility redeterminations for all Medicaid recipients who were enrolled for a period of at least three months, or other period of time consistent with federal law or guidelines, during a period of restriction or limitation. If approved by CMS, the Department must conduct and act on any redetermination within 90 days of receiving approval.

Any county department of job and family services assisting ODM with conducting the redeterminations described above may request from the Department of Job and Family

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<sup>96</sup> American Rescue Plan Act of 2021, Pub. L. No. 117-2, Section 9812.

<sup>97</sup> Section 6008, Pub. L. No. 116-127.

Services, in consultation with the Department of Medicaid, an additional 30 days to act on any redetermination.

The Department must submit a report to the Speaker of the House and the President of the Senate summarizing the results of this audit.

## **Post-COVID Medicaid redetermination**

(Section 333.255)

Not later than 90 days after the expiration of the federal COVID-19 emergency period,<sup>98</sup> the act requires the Department or its designee to use third-party data sources and systems to conduct eligibility redeterminations of all Medicaid recipients. The act requires the Department, not later than November 1, 2021, to seek Controlling Board approval to permit the Department or its designee to use the third-party data sources and systems. To the extent permitted by state and federal law, the Department or its designee must verify each Medicaid recipient's enrollment records against all of the following: (1) information and databases available to the Department under federal law, (2) identity records, (3) death records, (4) employment and wage records, (5) lottery winning records, (6) residency checks, (7) household composition and asset records, and (8) any other records the Department considers appropriate to strengthen program integrity, reduce costs, and reduce fraud, waste, and abuse in the Medicaid program.

Following this verification and not later than 120 days after the expiration of the federal COVID-19 emergency period, the Department must prepare and submit a report regarding its findings from the verification, including any findings regarding fraud, waste, or abuse in the Medicaid program. The Department must submit the report to all of the following:

- The Governor and Lieutenant Governor;
- The members of JMOC;
- The Senate President and Speaker of the House;
- The chairpersons of the House and Senate finance committees; and
- The chairpersons of any other standing committees of the House and Senate that have jurisdiction over the Department.

Within 90 days after the expiration of the federal COVID-19 emergency period, the act requires the Department or its designee to conduct an expedited eligibility review of Medicaid recipients that are identified as likely ineligible for continued participation in the Medicaid program based on the verification described above to determine whether or not a recipient remains eligible for Medicaid. To the extent permitted by federal law, the Department must disenroll those Medicaid recipients who are determined to no longer be eligible based on this expedited review.

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<sup>98</sup> See 42 U.S.C. 1320b-5(g)(1)(B).

Additionally, not later than six months after the expiration of the federal COVID-19 emergency period, the act requires the Department or its designee to conduct an expedited eligibility review of Medicaid recipients who were newly enrolled in the Medicaid program for three or more months during the emergency period, but who were not newly enrolled during the last six months of the emergency period, to determine whether or not a recipient remains eligible for Medicaid. To the extent permitted by federal law, the Department must disenroll those Medicaid recipients who are determined to no longer be eligible based on this expedited review.

The act provides that any third-party vendor expenses incurred from conducting the verification procedures described above are entirely contingent on validated cost savings realized by the Department. Any vendor expenses paid related to the verification procedures may not exceed 20% of the cost savings realized by the Department.

### **Medicaid waiver component definition**

(R.C. 5166.01)

The act specifies that the definition of a “Medicaid waiver component” does not include services that are delivered under a prepaid inpatient health plan.<sup>99</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.

### **Voluntary community engagement program**

(Section 333.210; R.C. 5166.37, not in the act)

As a result of the COVID-19 public health emergency, the act 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.

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<sup>99</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 Code of Federal Regulations (C.F.R.) 438.2.)

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 the FY 2022-FY 2023 biennium, or until the Department is able to implement the Work Requirement and Community Engagement Section 1115 Demonstration waiver, whichever is sooner.

Ohio 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>100</sup> Pursuant to this requirement, the Department submitted a waiver request to 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 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 act requires the Department to establish the Medicaid Cost Assurance Pilot Program to operate during the FY 2022-FY 2023 biennium. The Department must open the program to Medicaid enrollees in the expansion eligibility group, initially. It may expand the program based on the program outcome data and cost findings in its report (see “**Report**” 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 MCO 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, and (4) improve the Medicaid program experience for providers and enrollees;

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<sup>100</sup> R.C. 5166.37, not in the act.

- 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, as a health insuring corporation 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 a health insuring corporation licensed in Ohio;
- Be a start-up company domiciled in Ohio; and
- Meet the solvency requirements under Ohio law for health insuring corporations.

### **Report**

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 the members of JMOC by December 31, 2022.

### **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 act 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>101</sup>

Any nonprofit hospital agency affiliated with a state university and any public hospital agency may volunteer to participate in the program if the hospital has a Medicaid provider agreement. The agencies that participate are responsible for the state share of the program's costs and must make or request that appropriate government entity to make intergovernmental transfers to pay for the costs. The Director must establish a schedule for making the transfers.

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<sup>101</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.

Rather than being required to perform specific tasks delineated for the program in prior budget acts, the act requires each participating hospital agency to jointly participate in quality improvement initiatives that align with and advance the goals of the Department's quality strategy.

Under the program, each participating hospital agency receives supplemental Medicaid payments for physician and other professional services that are covered by Medicaid and provided to Medicaid recipients. The payments must equal the difference between the Medicaid rate and the average commercial payment rates for the services. The Director may terminate, or adjust the 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 act 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 of supplemental Medicaid payments made through the program. All data contained in the report must 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 act 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 program, participating hospitals receive payments directly (instead of through the contracted Medicaid MCO) for inpatient and outpatient hospital services provided under the program and remit to the Department the nonfederal share of payment for those services. The hospital must pay the Department through intergovernmental transfer. Funds transferred under the program must be deposited into the Hospital Directed Payment Fund.



In general, under federal law, states are prohibited from (1) directing Medicaid MCO expenditures or (2) making payments directly to providers for Medicaid MCO services (“directed payments”) unless permitted under federal law or subject to federal authorization.<sup>102</sup> Therefore, the act requires the Medicaid Director to seek approval from CMS to operate the program.

## **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 act continues the Hospital Care Assurance Program (HCAP) for two additional years. The program had been scheduled to end October 16, 2021. The act 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 charge) basic, medically necessary, hospital-level services to Ohio residents who are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty line.

The act also continues for two additional years another assessment imposed on hospitals; that assessment is to end on October 1, 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.

## **Medicaid rates for community behavioral health services**

(Section 333.160)

The act 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.

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<sup>102</sup> Centers for Medicare and Medicaid Services, *Letter Re: Additional Guidance on State Directed Payments in Medicaid Managed Care*, January 8, 2021, <https://www.medicaid.gov/Federal-Policy-Guidance/Downloads/smd21001.pdf>.



## **Home and community-based services provider payment rates (VETOED)**

### **Adult day care services (VETOED)**

(Section 333.165)

The Governor vetoed a \$5 million earmark to increase the payment rates during the FY 2022 – FY 2023 biennium for adult day care services provided under the PASSPORT, Ohio Home Care, MyCare Ohio, and Assisted Living waivers. The increase would have applied to both Medicaid waiver-funded and state plan-funded providers. The Department would have been required to establish a methodology for calculating the rate increase from those funds.

### **Other services (VETOED)**

(Section 333.166)

The Governor vetoed a provision that would have increased the payment rates under the PASSPORT program, the Ohio Home Care waiver program, the MyCare Ohio Waiver program, and the Assisted Living waiver for waiver- and state plan-funded providers of the following services:

- Private duty nursing;
- Nursing;
- Home health aide;
- Personal care;
- Home care attendant and homemaker;
- Assisted living;
- Speech therapy;
- Occupational therapy; and
- Physical therapy.

For FY 2022, the payment rates for those services would have been 4% higher than the rates in effect on June 30, 2021. For FY 2023, the payment rates for those services would have been 2% higher than the rates in effect on June 30, 2022.

## **Value-based purchasing supplemental rebate**

(Section 333.215)

Not later than August 30, 2021, the act requires the Department 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 payment of supplemental rebates. 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 act provides that the Department is not required to enter into these supplemental rebate agreements.

## **Medicaid reports**

### **Payment rate increase report to JMOC**

(R.C. 5162.82)

The act requires the Director to notify JMOC and be available to testify before JMOC before making any payment rate increases of greater than 10% under the Medicaid program.

### **Franchise permit fees report to JMOC**

(R.C. 5168.90)

The act requires the Director to submit a quarterly report to the members of JMOC and the executive director of JMOC with the fee rates and the aggregate total of the following fees:

- The hospital assessment fee;
- The nursing home and hospital long-term care unit franchise permit fee;
- The ICF/IID franchise permit fee; and
- The health insuring corporation franchise fee.

The Director also must report if there is a rate increase pending before the CMS for any of the above-listed fees.

The Director can adopt rules related to compiling and submitting the quarterly reports, including adopting rules specifying the information that must be submitted to the Director by the Department of Developmental Disabilities regarding the ICF/IID franchise permit fee.

## **Pharmacy supplemental dispensing fee (PARTIALLY VETOED)**

(Section 333.245)

The act requires the Department to establish a supplemental dispensing fee for retail pharmacies under the care management system for the FY 2022-FY 2023 biennium. The fee is being continued from last biennium's main operating budget. The Governor vetoed provisions in the act that would have required the three payment levels for the fee to be based on (1) the ratio of Medicaid prescriptions compared to total prescriptions a pharmacy location fills and (2) the number of pharmacy locations participating in the care management system in the geographic area, as determined by the Department. Also vetoed is a provision specifying that the supplemental dispensing fee cannot cause a reduction in other payments made to a pharmacy for providing prescribed drugs under the care management system.

The act provides that the Medicaid Director must adjust the fee if the Department receives reduced federal funds for the supplemental dispensing fee.

## **Nursing facilities**

### **Critical access nursing facilities**

(R.C. 5165.01)

The act clarifies terminology relating to the critical access incentive payment received by nursing facilities that qualify as critical access nursing facilities. To qualify as a critical access nursing facility, a nursing facility must meet certain occupancy and Medicaid utilization rate metrics. For purposes of calculating the occupancy and utilization rates, the act clarifies that “as of the last day of the calendar year” refers to the rates during the calendar year identified in the nursing facility’s annual cost report filed with the Department, rather than the entire reporting period.

### **Medicaid payment formula**

(R.C. 5165.01, 5165.15, and 5165.17)

In definitions relating to nursing facility payment rate calculations, the act 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 act 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 act 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 act 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 U.S. Department of Health and Human

Services SFF Program for nursing facilities identified as having substantially failed to meet federal requirements.<sup>103</sup>

### **SFF tables**

The act removes effective date references regarding the SFF tables. As a result, the Department must terminate a nursing facility's Medicaid participation if:

1. The nursing facility is placed in Table A or Table B and fails to be placed in Table C within 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 within 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 within 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 within 24 months after the nursing facility is placed in Table A.

The act requires a nursing facility to take all necessary steps to avoid having its Medicaid participation terminated. As part of that requirement, the act provides that technical assistance and quality improvement initiatives to help a nursing facility are available through the Nursing Home Quality Initiative (NHQI) and through a quality improvement organization under the NHQI. Former law required the Department of Aging to provide assistance through the NHQI at least four months before the Department was required to terminate the facility's Medicaid participation.

The act 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 process for those appeals, notwithstanding the Administrative Procedure Act's time limits. Under former law, an order terminating a nursing facility's Medicaid participation was not subject to appeal under the Administrative Procedure Act (R.C. Chapter 119).<sup>104</sup>

### **Quality payments – repealed**

(R.C. 5165.25, repealed)

The act repeals the quality payments nursing facilities received under former law. Those payments were made to nursing facilities for meeting at least one of five quality indicators. The largest quality payment was paid to nursing facilities that met all of the quality indicators for the measurement period (the calendar year preceding the year in which the fiscal year begins).

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<sup>103</sup> 42 U.S.C. 1396r(f)(10).

<sup>104</sup> In October 2020, the Ohio Tenth District Court of Appeals found that the prior version of R.C. 5165.771 violates the due process protections of the U.S. and Ohio Constitutions due to a lack of procedural protections and upheld a permanent injunction prohibiting its enforcement. *CT Ohio Portsmouth, LLC v. Ohio Dept. of Medicaid*, 2020-Ohio-5091 (10<sup>th</sup> Dist.).

The act repeals the quality payments; therefore, after FY 2021, nursing facilities will no longer receive quality payments.

### **Quality incentive payments (PARTIALLY VETOED)**

(R.C. 5165.26 and 5165.15)

The act modifies the calculations for quality incentive payments that are added to a nursing facility's Medicaid payment rates. The payment amount is based on the score the nursing 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). With certain adjustments, a nursing facility's quality score is the total number of points that CMS assigned to it under its nursing facility five-star quality rating system, based on the most recent four-quarter average data in its Nursing Home Compare, for the following:

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

First, the act extends the payments through the FY 2022 – FY 2023 biennium. Under former law, the payments were scheduled to end after FY 2021.

Second, the act provides that the nursing facility data from CMS used to determine a nursing facility's quality incentive payment amount is the data from the most recent month of the calendar year during which the fiscal year begins, instead of May of the calendar year during which the fiscal year begins, as under former law.

Third, the act adds an additional circumstance under which a nursing facility is to receive zero quality points. Under the act, a nursing facility receives zero quality points for a fiscal year if its total number of points for FY 2022 or FY 2023 for all of the quality metrics is less than the bottom 25% of all nursing facilities. Continuing law, unchanged by the act, also provides that a nursing facility receives zero quality points for a quality metric if CMS assigned the nursing facility to the lowest percentile for that quality metric.

Fourth, the act replaces two former law disqualifications from the quality incentive payments with a new disqualification. Under the act, a nursing facility is ineligible for a quality incentive payment in a fiscal year if the Department of Health assigned the nursing facility to the SFF list on May 1 of the applicable calendar year. The Governor vetoed a provision that would have defined SFF "Table A," "Table B," and "Table C," for purposes of this provision, because the definitions contained terminology that was inconsistent with the federal table designations. Under former law, a nursing facility was disqualified from receiving a quality incentive payment if it is receiving its initial per Medicaid day payment rate or it underwent a change of operator.

Fifth, the act suspends after FY 2023 a provision of former law that disqualified a nursing facility from receiving quality incentive payments in FY 2021 if its licensed occupancy percentage is below 80%.

This disqualification does not apply if:

- The nursing facility has a quality score of at least 15 points;
- The nursing facility was initially certified for participation in Medicaid after January 1, 2019;
- One or more of the beds counted in the licensed occupancy percentage could not be used for resident care due to causes beyond the control of the facility operator, such as a force majeure event; or
- The nursing facility underwent a renovation involving capital expenditures of at least \$50,000 that directly impacted the part of the facility in which the beds counted in the licensed capacity were located.

Sixth, the act subtracts \$1.79 from the base rate used as part of the calculation for the total amount to be spent on quality incentive payments. Under the act, 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.

Former law did not include step (3) as part of the base rate calculation.

Seventh, the act modifies the calculation used to determine the total amount to be spent on quality incentive payments in a fiscal year. Under the act, 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 (described above) 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 \$25 million in FY 2022 and \$125 million in FY 2023.

Current law does not add \$1.79 as part of the calculation in (1) above or include the add-ons to the total to be spent on the payments in each fiscal year in (4) above.

Finally, the act disqualifies a new nursing facility or a nursing facility that undergoes a change of operator during FY 2022 or FY 2023 from receiving a quality incentive payment for the fiscal year in which the new facility obtains an initial provider agreement or the change of

operator occurred. In the following fiscal year, the nursing facility is to receive a quality incentive payment under the normal calculation.

The above provisions take effect on June 30, 2021.

### **Nursing facility rebasing**

(R.C. 5165.36; Section 333.240)

The act makes changes to the nursing facility rebasing process, which must be conducted at least once every five state fiscal years as a redetermination of the cost components (called “cost centers”) used to calculate a nursing facility’s per Medicaid day payment rate.<sup>105</sup> The act requires the Department to conduct a rebasing of the direct care, ancillary and support, and tax cost centers only. Former law required the Department to rebase all four cost centers (the above three plus the capital costs center).

The act requires a nursing facility provider to spend 70% of any additional dollars received as the result of a rebasing on direct care costs, including employee salaries, and permits the Department to recover any amounts that are not spent in accordance with that requirement. This requirement applies to the Department’s FY 2022 rebasing and all subsequent rebasings. The act requires the Medicaid Director to adopt rules to ensure that nursing facility operators spend at least 70% of the additional dollars on direct care costs.

#### **Current rebasing**

The act requires the Department to conduct its next rebasing on June 30, 2021, based on calendar year 2019 nursing facility data. The act earmarks \$125 million in each fiscal year during FY 2022 and FY 2023 for the rebasing calculation and requires the Department to pay nursing facilities based on the rebasing calculations in the following order:

1. Direct care costs;
2. Ancillary and support costs; and
3. Tax costs.

The Department must prorate the rebasing determinations as necessary to stay within the earmark.

The act requires nursing facility providers to submit quarterly reports to the Department during FY 2022 and FY 2023 identifying the amounts spent by the provider on each cost center included in the FY 2022 rebasing. The Department can conduct a review of the reports to determine whether the reported amounts comply with the act’s requirements. If a nursing facility provider spends any amounts on cost centers in a manner that violates these requirements, the act requires the provider to reimburse those amounts to the Department, plus interest. The act permits the Medicaid Director to adopt rules to implement the above requirements.

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<sup>105</sup> 42 U.S.C. 1396r(f)(10).

## **Nursing Facility Payment Commission**

(R.C. 5165.261)

The act requires the Department to establish the Nursing Facility Payment Commission consisting of the following members:

- Four members appointed by the Speaker of the House; and
- Four members appointed by the Senate President.

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. At the initial meeting, Commission members must elect one member of the majority party of the House and one member of the majority party of the Senate to serve as co-chairpersons.

The Commission must analyze the efficacy of the following:

1. The current quality incentive payment formula;
2. The nursing facility base rate calculation;
3. The nursing facility cost centers used to calculate a nursing facility's per Medicaid day payment rate; and
4. Establishing a bed buyback program under which a nursing facility operator can permanently surrender one or more long-term care beds due to a decrease in bed utilization.

By August 31, 2022, the Commission must submit a report to the General Assembly with its recommendations and determinations regarding those items.



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## JOINT MEDICAID OVERSIGHT COMMITTEE

- Requires appointment of a Joint Medicaid Oversight Committee vice-chairperson.

### **JMOC vice-chairperson**

(R.C. 103.41)

The act requires that a Joint Medicaid Oversight Committee vice-chairperson be appointed from the majority party members serving on the Committee. In odd-numbered years, the Senate President is required to appoint the vice-chairperson, and in even-numbered years, the Speaker of the House has this responsibility.

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## MEDICAL BOARD

- Permits a physician assistant to personally furnish supplies of specified drugs and therapeutic devices at an employer-based health care clinic.
- Recognizes the authority of a medical practitioner, health care institution, or health care payer to decline to perform, participate in, or pay for any health care service that violates the practitioner's, institution's, or payer's conscience.
- Allows a physician to delegate the use of light-based medical devices for hair removal to specified persons, including cosmetic therapists, under certain circumstances.
- Creates the Massage Therapy Advisory Council to make recommendations to the State Medical Board regarding issues affecting the practice of massage therapy.

### Physician assistants personally furnishing drugs

(R.C. 4730.43)

The act permits a physician assistant with prescriptive authority to personally furnish supplies of certain drugs and therapeutic devices at an employer-based clinic that provides health care services to the employer's employees. Under prior law, a physician assistant is authorized to personally furnish only at a health department operated by a board of health, federally funded comprehensive primary care clinic, or a nonprofit health care clinic or program. The drugs and devices that may be personally furnished under the act at an employer clinic are the same as those that may be personally furnished at other locations under continuing law: antibiotics, antifungals, scabicides, contraceptives, prenatal vitamins, antihypertensives, drugs and devices used in the treatment of diabetes, drugs and devices used in the treatment of asthma, and drugs used in the treatment of dyslipidemia.

### Conscience clause

(R.C. 4743.10)

The act specifies that a medical practitioner, health care institution, or health care payer has the freedom to decline to perform, participate in, or pay for any health care service that violates the practitioner's, institution's, or payer's conscience as informed by the moral, ethical, or religious beliefs or principles held by the practitioner, institution, or payer. It further specifies that exercising the right of conscience is limited to conscience-based objections to a particular health care service.

### Definitions

**Medical practitioner** means any person who facilitates or participates in the provision of health care services, including nursing, physician services, counseling and social work, psychological and psychiatric services, research services, surgical services, laboratory services, and the provision of pharmaceuticals and may include any of the following: any student or faculty at a medical, nursing, mental health, or counseling institution of higher education or an

allied health professional, paraprofessional, or employee or contractor of a health care institution.

**Health care service** means medical care provided to a patient at any time over the entire course of the patient's treatment and may include one or more of the following: testing; diagnosis; referral; dispensing or administering a drug, medication, or device; psychological therapy or counseling; research; prognosis; therapy; record making procedures and notes related to treatment; preparation for or performance of a surgery or procedure; or any other care or service performed or provided by any medical practitioner.

**Participation in a health care service** means to provide, perform, assist with, facilitate, refer for, counsel for, advise with regard to, admit for the purposes of providing, or take part in any way in providing, any health care service.

The act does not define a health care institution or health care payer.

### **Actions in case of a conflict**

Under the act, whenever a situation arises in which a requested course of treatment includes a particular health care service that conflicts with a medical practitioner's moral, ethical, or religious beliefs or convictions, the practitioner must be excused from participating in the particular health care service.

And when the practitioner becomes aware of the conflict, he or she must notify his or her supervisor, if applicable, and request to be excused from participating in the particular health care service. When possible and when the practitioner is willing, he or she must seek to transfer the patient to a colleague who will provide the requested health care service.

If participation in a transfer of care for a particular health care service violates the practitioner's beliefs or convictions or a willing colleague is not identified, the patient must be notified and provided the opportunity to seek an alternate medical practitioner. Upon a patient's request, the patient's medical records must be promptly released to the patient.

The medical practitioner is responsible for providing all appropriate health care services, other than the particular health care service that conflicts with the medical practitioner's beliefs or convictions, until another medical practitioner or facility is available.

The act does not outline any actions to be taken in the event the moral, ethical, or religious beliefs of an institution or payer conflict with a particular health care service.

### **Liability**

A medical practitioner, health care institution, or health care payer is not civilly, criminally, or administratively liable for exercising the practitioner's, institution's, or payer's right of conscience. Moreover, an institution is not civilly, criminally, or administratively liable for the exercise of conscience rights by a practitioner employed by, under contract with, or granted admitting privileges by the institution.

## **Discrimination**

The act prohibits a medical practitioner, health care institution, or health care payer from being discriminated against or suffering any other adverse action as a result of declining to participate in or pay for a particular health service on the basis of conscience.

It also prohibits a medical practitioner from being discriminated against or suffering any adverse action for disclosing any information that the practitioner reasonably believes evinces the following:

- Any violation of the act's provisions or any other law;
- Any violation of any standard of care or other ethical guidelines for the provision of any health care service;
- Gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

## **Violations**

In the event of a violation of the act's provision, the act authorizes a medical practitioner, health care institution, or health care payer to bring a civil action for damages, injunctive relief, or any other appropriate relief.

Upon a finding of a violation, a court must award treble damages as well as reasonable costs and attorney's fees. A court considering the civil action also may award injunctive relief, including reinstatement of a medical practitioner to his or her previous position, reinstatement of board certification, and relicensure of a health care institution or health care payer.

## **EMTALA**

The act specifies that its provisions are not to be construed to override the requirement under the federal Emergency Medical Treatment and Labor Act (EMTALA)<sup>106</sup> to provide emergency medical treatment to all patients.

## **Health care payer contracts**

With respect to the right of a health care payer to decline to pay for a health care service as established under the act, the payer's right to decline applies only to payments and health care services for which a contract has been entered into between the payer and policyholder on or after September 30, 2021.

## **Use of light-based medical devices for hair removal**

(R.C. 4731.33)

The act allows a physician to delegate the application of light-based medical devices for the purpose of hair removal to specified persons under certain circumstances. Current

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<sup>106</sup> 42 U.S.C. 1395dd.

administrative rules adopted by the State Medical Board allow for physician delegation of light-based medical devices, including for the purpose of hair removal (see “**Background on cosmetic therapist licensure**,” below). The act largely mirrors provisions from a new rule recently adopted by the Board, except that it exempts certain persons from the act’s education and training requirements who are not exempt under the new rule, [O.A.C. 4731-18-03](#).

The act allows a physician to delegate the application of light-based medical devices for the purpose of hair removal if all of the following conditions are met:

- The light-based medical device has been specifically cleared or approved by the U.S. Food and Drug Administration for the removal of hair from the human body;
- The use of the light-based medical device for the purpose of hair removal is within the physician’s normal course of practice and expertise;
- The physician has seen and evaluated the patient to determine whether the proposed application of the specific light-based medical device is appropriate;
- The physician has seen and evaluated the patient following the initial application of the specific light-based medical device, but before any continuation of treatment, to determine that the patient responded well to that initial application;
- The person to whom the delegation is made is one of the following:
  - A person who is licensed in Ohio as a physician assistant with whom the physician has an effective supervision agreement;
  - A person who was licensed as a cosmetic therapist on April 11, 2021 (see “**Background on cosmetic therapist licensure**,” below);
  - A person who has completed a cosmetic therapy course of instruction for a minimum of 750 clock hours and received a passing score on the Certified Laser Hair Removal Professional Examination administered by the Society for Clinical and Medical Hair Removal;
  - A person who is licensed in Ohio as a registered nurse or licensed practical nurse.

### **Delegation to a cosmetic therapist – education and training**

For delegation to a person who was licensed as a cosmetic therapist on April 11, 2021, or who has the cosmetic therapy training and education described above, the act requires the physician to ensure that the person to whom the delegation is made has received adequate education and training to provide the level of skill and care necessary, including all of the following:

- The person has completed eight hours of basic education that includes specified topics related to the use light-based medical devices;
- The person has observed 15 procedures for each specific type of light-based medical device procedure for hair removal that the person will perform under the delegation

(a physician who uses the specific light-based medical device procedure in the physician's normal course of practice and expertise must perform the procedures).

- The person must perform at least 20 procedures under the direct physical oversight of the physician on each specific type of light-based medical device procedure for hair removal delegated (the physician overseeing the performance of these procedures must use the specific light-based medical device procedure within the physician's normal course of practice and expertise).

Each delegating physician and delegate must document and retain satisfactory completion of the requirements discussed above. The basic education requirement only needs to be completed once by the delegate regardless of the number of types of specific light-based medical device procedures for hair removal delegated and the number of delegating physicians. The procedure observation and performance requirements described above must be completed by the delegate once for each specific type of light-based medical device procedure for hair removal delegated regardless of the number of delegating physicians.

### **Exemption from education and training requirements**

The act exempts the following delegates from the education and training requirements discussed above:

- A person who, before September 30, 2021, has been applying a light-based medical device for hair removal for at least two years through a lawful delegation by a physician;
- A person who was licensed as a cosmetic therapist on April 11, 2021, if the person was authorized to use a light-based medical device under that license;
- A person who is licensed in Ohio as a physician assistant, registered nurse, or a licensed practical nurse.

### **Physician supervision**

Delegation to a physician assistant under the act must meet continuing law requirements regarding physician assistant supervision.<sup>107</sup> For the other types of delegates, cosmetic therapists, and nurses, the act requires that the physician provide on-site supervision at all times that the delegate is applying the light-based medical device. A physician is prohibited from supervising more than two delegates who are not physician assistants at the same time.

However, the act allows a physician to provide off-site supervision to a cosmetic therapist delegate when the light-based medical device is applied for the purpose of hair removal to an established patient if the cosmetic therapist meets all of the following criteria:

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<sup>107</sup> R.C. 4730.21, not in the act.

- The cosmetic therapist has successfully completed a course in the use of light-based medical devices for the purpose of hair removal that has been approved by the delegating physician;
- The course consisted of at least 50 hours of training, at least 30 hours of which was clinical experience;
- The cosmetic therapist has worked under the on-site supervision of the delegating physician for a sufficient period of time that the physician is satisfied that the cosmetic therapist is capable of competently performing the service with off-site supervision.

The cosmetic therapist must maintain documentation of the successful completion of the required training.

The act requires a delegate to immediately report to the supervising physician any clinically significant side effect following the application of the light-based medical device or any failure of the treatment to progress as was expected at the time the delegation was made. The delegating physician must see and personally evaluate a patient who has experienced a clinically significant side effect or whose treatment is not progressing as expected as soon as practicable.

### **Failure to comply with requirements**

The act prohibits a physician from failing to comply with the delegation and supervision requirements discussed above. A violation constitutes a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established (a reason for discipline to be imposed on a physician by the Board under continuing law).

The act also prohibits a physician from delegating the application of light-based medical devices for the purpose of hair removal to a person who is not eligible under this act. A violation of this prohibition constitutes violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate the continuing law prohibition against the unlawful practice of medicine (a reason for discipline to be imposed on a physician by the Board under continuing law).

The act prohibits a cosmetic therapist to whom a delegation is made from failing to comply with the act's requirements for off-site physician supervision or side effect reporting. A violation of this prohibition constitutes the unauthorized practice of medicine under continuing law. Under continuing law, whoever violates the prohibition against the unauthorized practice of medicine is guilty of a fifth degree felony on a first offense and fourth degree felony on each subsequent offense.<sup>108</sup>

The act prohibits a physician assistant from failing to comply the side-effect reporting requirement discussed above. A violation of the prohibition constitutes a departure from, or

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<sup>108</sup> R.C. 4731.41 and 4731.99, not in the act.

failure to conform to, minimal standards of care of similar physician assistants under the same or similar circumstances, regardless of whether actual injury to a patient is established (a reason for discipline to be imposed on a physician assistant by the Board under continuing law).<sup>109</sup>

### **Background on cosmetic therapist licensure**

H.B. 442 of the 133<sup>rd</sup> General Assembly, which took effect on April 12, 2021, eliminated the Board's authority to license cosmetic therapists and the practice of cosmetic therapy. Before H.B. 442 took effect, a cosmetic therapist licensed by the Board was allowed to use light-based medical devices for the purpose of hair removal under the delegation of a physician under certain circumstances.

Under an administrative rule adopted by the Board before the elimination of cosmetic therapist licensure, the use of a light-based medical device, including for the purpose of hair removal, is considered to be the practice of medicine.<sup>110</sup> As discussed above, the unauthorized practice of medicine is prohibited under continuing law and whoever violates that prohibition is subject to criminal penalties.

After the enactment of H.B. 442, the Board adopted an emergency administrative rule, effective beginning April 9, 2021, and a permanent rule effective beginning July 31, 2021, to allow physician delegation of the use of a light-based medical device for hair removal to a person who was a licensed cosmetic therapist on April 11, 2021. However, the rule does not allow physician delegation to a person who has cosmetic therapy education and training, but did not hold a cosmetic therapist license on April 11, 2021.<sup>111</sup>

### **Massage Therapy Advisory Council**

(R.C. 4731.152)

The act 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 not more than 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 before December 30, 2021. Initial members serve one-, two-, or three-year terms as selected by the Board.

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<sup>109</sup> R.C. 4730.25, not in the act.

<sup>110</sup> Former O.A.C. 4731-18-02.

<sup>111</sup> [O.A.C. 4731-18-03](#).



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 there is a pattern of serious noncompliance or a 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 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, except that the OhioMHAS Director can continue to require annual licensure for an OTP if the Director has concerns about the OTP's compliance record.
- Requires OhioMHAS to inspect all community addiction services providers licensed to operate OTPs at least biennially, as opposed to annually.
- Permits a community addiction services provider to employ an individual who receives medication-assisted treatment from the provider.

## **Substance use disorder treatment in drug courts**

- Continues an OhioMHAS program to provide addiction treatment to persons with substance use disorders through drug courts with programs using medication-assisted treatment.
- 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 cost of drugs used in providing county jail inmates with medication-assisted treatment and withdrawal management or detoxification services related to drug or alcohol use.

## **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 (PARTIALLY VETOED)**

- Establishes options for the size of an alcohol, drug addiction, and mental health services (ADAMHS) board that results from the OhioMHAS Director granting approval in calendar year 2021 or 2022 for a county with a population between 70,000 and 80,000 to withdraw from a joint-county alcohol, drug addiction, and mental health service district.
- Provides that an ADAMHS board established from that withdrawal must consist of 18 members or 14 members.
- Would have permitted the ADAMHS board that is established to consist of seven to nine members (VETOED).
- Would have permitted an ADAMHS board that already was formed to continue as an 18-member or 14-member board, or, within six months, choose to reduce to between seven and nine members (VETOED).

- Would have specified the number of members to be appointed by the OhioMHAS Director and the board of county commissioners for the ADAMHS boards described above (VETOED).
- Provides that if a county with a population between 35,000 and 45,000 joins an existing alcohol, drug addiction, and mental health service district during the two-year period beginning June 30, 2021, the ADAMHS board serving that district may expand from 14 to 18 members.
- Permits the ADAMHS board to make such an election for one year from the date the county joins the joint-county district.

### **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.

### **Suspending admissions and taking action against a license**

(R.C. 5119.33, 5119.34, and 5119.36)

#### **Suspending admissions**

The Ohio Department of Mental Health and Addiction Services (OhioMHAS) has the authority to suspend admissions at the following: hospitals that receive mentally ill persons, residential facilities, and community addiction services providers that provide overnight accommodations. The act 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;
- A requested hearing must commence within 30 days and 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;
- A written copy of the report and recommendations must be sent by certified mail to the facility or the facility's attorney 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 act 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 act 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 continuing law, OhioMHAS certifies certifiable services and supports provided by community mental health services providers and community addiction services providers. The act specifies that the OhioMHAS Director may refuse to certify those services and supports, refuse to renew certification, or revoke certification if any of the following apply:

- The applicant or certification 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 act 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**

(Section 337.40)

The act 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 act 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 act 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 act 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 act replaces references to "rehabilitation in lieu of conviction" with "intervention in lieu of conviction."

## **Opioid treatment programs**

(R.C. 5119.37; Section 337.200)

### **License expiration**

The act generally extends the license period for opioid treatment programs (OTPs) to two years, from the previous period of one year. 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.

The act provides an exception to biennial licensure if the OhioMHAS Director has concerns about an OTP's compliance record. In that case, the Director may stipulate annual licensure.

## **Employees**

The act permits a community addiction services provider to employ an individual who receives medication-assisted treatment from the provider. Such employment was previously prohibited.

## **Substance use disorder treatment in drug courts**

(Section 337.60)

The act continues a requirement that OhioMHAS conduct a program to provide substance use disorder 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 act, 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 program's objectives. OhioMHAS also may collaborate with the local board of alcohol, drug addiction, and mental health services and local law enforcement agencies serving the county where a participating court is located.

OhioMHAS must conduct its program in collaboration with any counties in Ohio that are conducting MAT drug court programs. It also may conduct its program in collaboration with any other court with a MAT drug court program.

## **Selection of participants**

A MAT drug court program must select the participants for OhioMHAS's program. The participants are to be selected because of having a 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**

Under OhioMHAS's program, only a community addiction services provider is eligible to provide substance use disorder treatment, including any recovery supports. The provider must:

- Provide treatment based on an integrated service delivery model that consists of the coordination of care between a prescriber and the provider;
- Assess potential program participants to determine whether they would benefit from treatment and monitoring;
- Determine, based on the assessment, the treatment needs of the participants;
- Develop individualized goals and objectives for the participants;
- Provide access to the drug therapies that are included in the program's treatment;
- Provide other types of therapies, including psychosocial therapies, for both substance use 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.

Regarding the drug therapies included in the program's substance use disorder treatment, the following apply:

- A drug may be used only if it is (1) a drug that is federally approved for use in medication-assisted treatment, which involves treatment for alcoholism, drug addiction, or both, or (2) a drug that is federally approved for use in, or a drug in standard use for, mitigating alcohol or opioid withdrawal symptoms or assisting with detoxification;
- One or more drugs may be used, but each drug that is used must constitute either or both: (1) long-acting antagonist therapy or partial or full agonist therapy or (2) alpha-2 agonist therapy for withdrawal management or detoxification;
- If a partial or full agonist therapy is used, the program must provide safeguards, such as routine drug testing of participants, to minimize abuse and diversion.

## **Planning**

To ensure that funds appropriated to support OhioMHAS's program are used in the most efficient manner, with a goal of enrolling the maximum number of participants, the act requires the Medicaid Director to develop plans in collaboration with major Ohio health care plans. However, there can be no prior authorizations or step therapy for program participants to have access to any drug included in the program's 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, appropriate psychosocial services, drugs used in medication-assisted treatment, and drugs used in withdrawal management or detoxification; and
- The development of guidelines that require the provision of all treatment services, including medication, with minimal administrative barriers and within time frames that meet the requirements of individual patient care plans.

## **County jails reimbursed for substance use treatment drugs**

(R.C. 5119.191)

The act creates an OhioMHAS-administered program to reimburse counties for the cost of drugs administered or dispensed to county jail inmates for treatment related to drug and alcohol use or addiction. It applies to drugs used in medication-assisted treatment and drugs used in withdrawal management or detoxification. OhioMHAS must allocate funds to each county for reimbursement based on factors it considers appropriate.

Drugs used in medication-assisted treatment must be federally approved for that purpose, which applies to alcoholism, drug addiction, or both. Drugs used in withdrawal management or detoxification also must be federally approved, or in standard use for, mitigating opioid or alcohol withdrawal symptoms or assisting with detoxification. The act specifies that the drugs include oral, injectable, long-acting, or extended-release forms of full agonists, partial agonists, antagonists, and, in the case of drugs used in withdrawal management or detoxification, alpha-2 adrenergic agonists. 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 is permitted to adopt rules to implement the program. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119).

## **Pilot to dispense controlled substances in lockable containers**

(Sections 337.205 and 337.40)

The act requires OhioMHAS to operate a pilot program under which participating pharmacies 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 act 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>112</sup> and (2) can be unlocked

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<sup>112</sup> "Poison Prevention Packaging Act of 1970," 15 U.S.C. 1471.

physically using a key, or physically or electronically using a code or password. “Tamper evident container” is defined by the act 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 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 act 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 act grants immunity from liability to pharmacists, pharmacist delegates, and pharmacies for actions taken in good faith in accordance with the act. 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**

### **Board size after withdrawing from a joint-county district (PARTIALLY VETOED)**

(R.C. 340.022)

The act establishes provisions regarding the composition of, and appointment of members for, certain boards of alcohol, drug addiction, and mental health services (ADAMHS boards). The provisions apply if the OhioMHAS Director approves, between January 1, 2021, and December 31, 2022, a board of county commissioners of a county with a population between 70,000 and 80,000 (according to 2010 federal census data) to withdraw from a joint-county alcohol, drug addiction, and mental health service district. In this circumstance, the board of county commissioners is to determine the size of the ADAMHS board that results from the withdrawal.

- A board established on or after the date the Director grants approval to withdraw can consist of 18 members or 14 members, as determined by the board of county commissioners. The Governor vetoed provisions that would have permitted a board of county commissioners to establish a seven- to nine-member board.
- The Governor vetoed provisions that would have required a board existing immediately before the withdrawal was approved to continue as an 18- or 14-member board or be reduced to between seven and nine members.

Regarding a newly established ADAMHS board following the withdrawal, initial appointments must be staggered among the members as equally as possible with terms of two years, three years, and four years. Regarding a previously existing ADAMHS board, the Governor vetoed provisions that would have permitted the board of county commissioners, within six months after the Director approved the withdrawal, to make an election to reduce the board's size. Before exercising the option to reduce, the board of county commissioners would have been required to notify the ADAMHS board and provide an opportunity for the ADAMHS board to participate in a public hearing, in accordance with Ohio's open meetings law. The reduction would have occurred by attrition as vacancies occurred.

### **Composition and appointment of members (VETOED)**

The Governor vetoed provisions that would have required the OhioMHAS Director to appoint four members of an 18-member board, three members of a 14-member board, and two members of a seven- to nine-member board. In turn, the board of county commissioners would have been required to appoint 14 members of an 18-member board, 11 members of a 14-member board, and the remaining members of a seven- to nine-member board.

As part of these appointments, the OhioMHAS Director and the board of county commissioners would have been required to ensure that:

1. At least one member of the board is a person who has received or is receiving mental health services or is a parent or other relative of such a person; and
2. At least one member of the board is a person who has received or is receiving addiction services or is the parent or guardian of such a person.

### **Board size after joining a joint-county district**

The act also includes provisions permitting an ADAMHS board meeting certain criteria to expand its membership. If a county with a population between 35,000 and 45,000 (according to 2010 federal census data) joins an alcohol, drug addiction, and mental health service district between June 30, 2021, and June 30, 2023, the act permits a 14-member ADAMHS board serving that district to expand its membership to 18 members. The board's option to expand from 14 to 18 members is available for only one year, beginning on the date the county joins the joint-county service district. The act specifies that the additional ADAMHS board members are to be appointed in the same manner as provided by continuing law for other ADAMHS boards.

## **Mental health crisis stabilization centers**

(Sections 337.40 and 337.130)

The act continues a requirement, first established for the FY 2019-FY 2020 biennium, that OhioMHAS allocate among 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.

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.

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## DEPARTMENT OF NATURAL RESOURCES

### I. 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.
- 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.

### II. 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 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 (DNR) 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 was issued a temporary certificate to act as a foreperson or mine electrician in Ohio prior to September 30, 2021, to continue to work under that temporary certificate until it expires.

### **III. 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 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 a well drilled to total depth that cannot or will not be completed to be plugged 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 a well is nonrefundable and applies even if oil or gas has not been produced from it.
- Requires any person undertaking plugging, other than a well owner already required to maintain an insurance policy, 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 well owner, as in prior 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 well owner from operating a well in a way that causes the damage specified above or threatens the public health and safety or the environment.

- Retains law prohibiting a well owner from allowing a well to leak fluid or gases, but eliminates the requirement that the leak must be due to defective casing and either:
  - Cause the damages specified above; or
  - Threaten the public health and safety or the environment.
- Requires either a person that owns a well or that is responsible for the well to notify the Chief of well or casing defects within 24 hours of discovering the defect, rather than only requiring the well owner to do so, as in prior law.
- Requires either the person that owns a well or that is responsible for the well to immediately repair any defects or to plug it, rather than only requiring the well owner to do so, as in prior law.
- Requires the Chief to issue a plugging order to either the person that owns the well or the person that is responsible for the well when the Chief determines the well should be plugged.

#### **IV. 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 prior law.
- Revises the membership of the Commission.
- Requires the Commission to hire at least one person to provide clerical and other services.
- Requires money received by a state agency in exchange for the lease of a formation under state agency-owned land for oil and gas development to be deposited into State Land Royalty Fund.
- Authorizes a state agency to use distributions from that fund for any purpose the agency deems necessary, rather than for capital costs and land acquisition as in prior law.
- Eliminates the Forestry Minerals Royalty Fund and the Parks Minerals Royalty Fund used by the Division of Forestry and the Division of Parks and Watercraft, respectively, for capital expenditures and land acquisition (the divisions will continue to receive distributions from the State Land Royalty Fund).
- Eliminates signing fees, rentals, and royalty payments received by the Division of Wildlife for leases of its land as a source of revenue for the Wildlife Habitat Fund, and instead requires distributions to the Division to be made from the State Land Royalty Fund.

- Retains 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.
- Allows a state agency to lease state agency-owned land (until the Commission adopts rules specifying a standard lease agreement and any other necessary procedures or requirements) 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.
- Specifies that the lease must at least include the elements required to be included in the standard lease agreement.
- 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 formations to the Commission for lease and bidding on such leases.
- Revises requirements concerning the notification of nomination decisions and advertisement of bids.
- Specifies that certain information included in a nomination or a bid for a lease is confidential, may not be disclosed by the Commission, and is not a public record.
- Specifies that the Commission is not subject to certain administrative rulemaking requirements.

## **V. 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.
- 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 prior law.



## **VI. 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.

## **VII. 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 DNR Director 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 DNR and Department of Commerce 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, rather than solely DNR's Division of Forestry employees as in prior law.

## **VIII. Division of Geological Survey**

- Eliminates the Ohio Geology license plate.
- Correspondingly, eliminates the \$15 contribution for each license plate, which was deposited in the Geological Mapping Fund and had to 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.

## **IX. Other provisions**

### **Malabar Farm State Park**

- Designates 120 contiguous acres of Malabar Farm State Park’s most mature hardwood forest located between Bromfield Road and State Route 95 as the “Doris Duke Woods” at Malabar Farm State Park.
- Specifies that DNR may not remove or allow any person or governmental entity to remove timber from the Woods, except for normal maintenance.
- Requires the DNR Director to meet with the Malabar Farm Foundation by October 30, 2021, to discuss entering into agreements to mutually support and advance the shared objectives of protecting, conserving, and educating the public concerning Malabar Farm State Park and the legacy of Louis Bromfield.
- Requires DNR and the Foundation to meet every other month until June 30, 2022.
- After the June 30, 2022, meeting, requires DNR and the Foundation to jointly provide a report detailing the meetings and any resulting agreements to each member of the General Assembly who represents all or part of Richland County (the Park is located in Richland County).

### **Local payments for DNR land**

- Requires DNR to reimburse school districts and other taxing authorities for forgone property tax revenue resulting from the state’s acquisition of certain DNR land after 2017.

### **Geneva Lodge and Conference Center**

- Requires the DNR Director to assume ownership and operation of the Geneva Lodge and Conference Center from Ashtabula County by December 31, 2021.
- Appropriates \$13,950,000 for the purchase and operation of Geneva Lodge and Conference Center.

## **I. 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 act eliminates the Lake Erie Sport Fishing District permit. The Division of Wildlife issued this permit to non-Ohio residents to fish between January and April in Lake Erie, its embayments, and other specified areas connected to Lake Erie. Under prior law, each applicant had to pay a \$10 annual fee for the permit, which was deposited into the Wildlife Fund. As a

result of the elimination of the permit, a nonresident only needs to obtain a nonresident fishing license to fish in the District.

## Wildlife Boater Angler Fund

(R.C. 1531.35)

The act 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 continuing law, the fund generally consists of money derived from a portion of the motor fuel excise tax. Fund money is used primarily for the acquisition, development, and maintenance of boating access areas.

## Senior deer and wild turkey fees

(R.C. 1533.11)

The act reduces the fee for a senior deer permit and the fee for a senior wild turkey permit from \$11.50 to \$11.00. These permits are 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 act decreases the following hunting and fishing fees:

Hunting and fishing fee decreases		
License	Prior 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	Prior 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

## II. Division of Mineral Resources Management

### Performance security for coal mining operations

(R.C. 1513.08)

The act 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 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 requirement applies even if the status and name of the permittee otherwise remain the same.

Former law required a coal mining and reclamation permittee described above 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 relied partly on the fund, it had to pay an additional coal severance tax, which was credited to the fund. The option to utilize the Reclamation Forfeiture Fund continues to be available to any coal mining and reclamation permit applicant not described above.

### Deputy mine inspector eligibility requirements

(R.C. 1561.12)

The act requires an applicant for the position of deputy mine inspector of underground mines with the Division of Mineral Resources Management to have experience in any underground mine located anywhere as long as the total experience equals six years. Prior law required an applicant to have:

1. Two of the six years of experience in Ohio underground coal mines when applying to be an underground coal mine inspector; and

2. Two of the six years of experience in Ohio underground noncoal mines when applying to be an underground noncoal mine inspector.

Regarding the six years of work experience required for the position of deputy mine inspector of surface mines, the act 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 act 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 DNR 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 act also allows any of these out-of-state mining professionals (working under a reciprocal agreement) to continue to work under a temporary certificate that was issued prior to September 30, 2021. The person may continue to operate under the temporary certificate until it expires or the Chief suspends or revokes it.

For purposes of an out-of-state mine foreperson, foreperson, and mine electrician who holds a valid certificate or other authorization for the position and the person's state does not have a reciprocal agreement with Ohio, continuing law allows that person to work under a temporary certificate in an emergency.

## **III. Division of Oil and Gas Resources Management**

### **Oil and gas well plugging**

(R.C. 1509.13)

The act 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 one of the following applies:

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 act 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 act also clarifies that the Chief of the Division need not obtain a permit to plug and abandon in order to plug and abandon a well.

Under prior law, a well owner with a valid permit to drill a well could plug the well without a permit to plug and abandon if an inspector approved the plugging so that it could be completed without undue delay. Prior law did not impose the conditions or the timeframe for plugging specified by the act.

The act 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 prior law, an applicant generally was only required to pay this application fee if the well produced oil or gas.

Finally, the act 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 act 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 act 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 from *operating* a well in a way that causes those damages or threatens the public health and safety or the environment. Prior law prohibited only the well owner from constructing a well in this manner; and it did not prohibit the operation of the well in a manner that causes those damages or threatens public health and safety or the environment.

The act prohibits the well owner from allowing any leak of fluid or gases from a well. It eliminates a requirement in prior law that the leak had to be due to defective casing and:

1. Cause the damages specified above; or
2. Threaten the public health and safety or the environment.

Under the act, either the person that owns a well or the person responsible for 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. Prior law required the notification and corrective action to be completed solely by the well owner.

When the Chief finds that a well should be plugged, the act requires the Chief to order either the person that owns the well or the person responsible for it to plug it. The act prohibits

any person from failing to comply with that order. Under prior law, the Chief could only issue the order to the owner.

## **IV. Oil and Gas Leasing Commission**

(R.C. 131.50, 155.29, 155.30, 155.31, 155.32, 155.33, 155.34, 155.35, 155.36, 155.37, 1505.09, 1509.28, and 1531.33; repealed R.C. 1503.012, 1509.76, and 1546.24; Section 715.10)

The act renames the Oil and Gas Leasing Commission as the Oil and Gas Land Management Commission. The Commission is generally responsible for overseeing procedures for the nomination and lease of state agency-owned land for oil and gas development purposes. In addition to changing the name of the Commission, the act alters its composition and the requirements governing nominations and leases.

Though initial appointments to the Commission were required to occur in 2011, they were not made until 2018. Prior to the act, the Commission had not adopted rules specifying nomination and leasing procedures and no state agency-owned land had been leased for oil and gas development purposes under the authority of the Commission.

### **Statement of purpose**

The act 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. Prior law stated that the state's policy was to provide access and support for those activities.

### **Membership and staff**

The act revises the membership of the Commission by doing all of the following:

- Replacing the Chief of the Division of Geological Survey with the DNR Director or the Director's designee as the 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; and
- Specifying that the two members recommended by the oil and gas industry must have knowledge or experience in the oil and gas industry.

The act also requires the Commission to hire at least one person to provide clerical and other services. Under prior law, DNR was required to furnish clerical, legal, and technical services.

### **Funding**

The act modifies how money from oil and gas leases is distributed to state agencies. Under prior law, signing fees, rentals, and royalty payments received from a lease of state agency-owned land were required to be distributed as follows:

- State Land Royalty Fund: most money from state-agency oil and gas leases was required to be deposited in this fund. A state agency was entitled to receive from the fund the amount that the state agency contributed and a proportionate share of the investment

earnings of the fund. The agency was required to use the amount received to acquire land and pay capital costs, including equipment and renovations and repairs of facilities;

- Forestry Minerals Royalty Fund: if the lease pertained to land owned or controlled by the Division of Forestry, the funds were required to be deposited in this fund and used to acquire land for and pay capital costs of the Division;
- Parks Mineral Royalty Fund: if the lease pertained to land owned or controlled by the Division of Parks and Watercraft, the funds were required to be deposited in this fund and used to acquire land for and pay capital costs of the Division; and
- Wildlife Habitat Fund: if the lease pertained to land owned or controlled by the Division of Wildlife, the funds were required to be deposited in this fund and used by the Division to acquire and develop lands for the preservation, propagation, and protection of wild animals.

Money from nomination and bid fees were required to be deposited into an administrative fund called the Oil and Gas Leasing Commission Fund. The Commission and DNR were required to use the fund to pay for administrative expenses.

Instead, the act does all of the following:

- Authorizes state agencies to use money from the State Land Royalty Fund for **any** costs or expenses of the agency (rather than only for capital costs and land) as the agency determines necessary. When the state agency is DNR, each division within the Department is entitled to receive its proportionate share that is attributable to state land owned and controlled by that division;
- Retains a requirement that if oil and gas development occurs under a state park, 30% of the proceeds of an oil and gas lease are required to be deposited into the fund that supports that state park;
- Eliminates the Forestry Minerals Royalty Fund and the Parks Mineral Royalty Fund. (The act requires money received for leases of formations under the control of the Division of Forestry and the Division of Parks and Watercraft to be deposited in the State Land Royalty Fund, distributed to the respective divisions as indicated above, and used for any costs and expenses of those divisions);
- Eliminates deposits in the Wildlife Habitat Fund if the lease pertains to land owned or controlled by the Division of Wildlife. (The act requires money received for leases of formations under the control of the Division of Wildlife to be deposited in the State Land Royalty Fund, distributed to the Division as indicated above, and used for any costs and expenses of the Division); and
- Renames the Oil and Gas Leasing Commission Fund the Oil and Gas Land Management Commission Fund and eliminates DNR as a recipient of money from the fund for administrative purposes.



## Leasing procedures

Under continuing law, until the Commission adopts rules governing leasing procedures, a state agency may lease a formation within a parcel of land for oil and gas development. Under prior law, the state agency was required to establish bid fees, signing fees, rentals, and at least a  $\frac{1}{8}$  landowner royalty. The act, instead, provides that the lease must (1) be on terms that are just and reasonable, as determined by the custom and practice of the oil and gas industry, and (2) include at least the terms required in the standard lease agreement that the Commission must establish as described below. The act also eliminates a requirement that the agency consult with the Commission regarding the lease.

Under the act, a formation is any of the following:

- The distance from the surface of the land to the top of the Onondaga limestone;
- The distance from the top of the Onondaga limestone to the bottom of the Queenston formation; or
- The distance from the bottom of the Queenston formation to the basement rock.

Under prior law, a formation also included the distance from the bottom of the Queenston formation to the top of the Trenton limestone, the distance from the top of the Trenton limestone to the top of the Knox formation, and the distance from the top of the Knox formation to the basement rock. The act eliminates these references.

## Standard lease agreement

Under prior law, the Commission was required to adopt rules establishing the standard lease agreement and any other necessary leasing requirements and procedures. The rules were required to be adopted by June 26, 2012, but were never adopted. The act instead requires the rules to be adopted by January 28, 2022 (120 days after September 30, 2021). It also adds new elements to the required standard lease form as follows:

- A prohibition against the use of the surface of the parcel of land for oil and gas development unless the state agency, in its sole discretion, chooses to negotiate and execute a standard surface use agreement;
- A  $\frac{1}{8}$  **gross landowner royalty** (prior law specified at least a  $\frac{1}{8}$  landowner royalty);
- A primary term of three years; and
- An option for the lessee to extend the primary term of the lease for an additional three years by tendering to the state agency the same bonus paid when first entering the lease.

A gross landowner royalty is a royalty based on proceeds received from the production of oil or gas without deduction for post-production costs, but less a proportionate share of any and all taxes and government fees levied on or as a result of the production. Post-production costs are all costs and expenses incurred between the wellhead and point of sale, including, without limitation, the costs of any treating, separating, dehydrating, processing, storing, gathering, transporting, compressing, and marketing.

## Standard surface use agreement

The act requires the Commission to establish, by January 28, 2022 (120 days after September 30, 2021), 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.

## Administrative procedures

The act exempts the Commission from continuing law that requires a state agency to 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.

## Nomination

The act revises requirements and procedures for the submission of a nomination of a formation within a parcel of state agency-owned land. It includes the requirements and procedures in statutory law and eliminates the Commission's authority to adopt rules establishing the procedures and requirements. Specifically, the act does all of the following regarding nominations:

- Authorizes any person or state agency (rather than only an owner with the right to drill for oil and gas) to nominate state agency-owned formations to the Commission for lease;
- Eliminates certain classification requirements and procedures (classes 1 through 4) regarding the nomination and lease of state agency-owned land (under prior law, property was classified according to its amenability to oil and gas development);
- Requires the Commission to notify a state agency of a nomination and allows the state agency to submit comments regarding the nomination (in addition to objections, as in continuing law); and
- Requires a state agency to submit to the Commission any special terms or conditions (after nomination, but before nomination approval) it believes should apply to a lease of a formation under its land because of specific conditions that apply to land (prior law required these special terms and conditions to be submitted after a nomination was approved by the Commission).

When a person nominates a formation within a parcel of land to the Commission, the act requires the person to include in that nomination specified information, including all of the following:

- The name of the person making the nomination and the person's address, telephone number, and email address;
- An identification of the formation and parcel of land proposed to be leased that specifies all of the following:
  - The percentage of the interest owned or controlled by the state agency, and whether that interest is divided, undivided, or partial;

- The source deed by book and page numbers, including the description and acreage of the parcel and an identification of the county, section, township, and range in which the parcel is located; and
- A plat map depicting the area in which the parcel is located.
- If the person making the nomination is not a state agency, a nomination fee of \$150 (prior law instead required the nomination fee to be established in rules);
- The proposed lease bonus that applies to the nomination; and
- If the person making the nomination is not a state agency, proof that the person has met insurance and financial assurance requirements and obtained an identification number from the Division of Oil and Gas Resources Management.

The act specifies that only the information identifying the parcel of land may be disclosed to the public until the Commission selects a bid for the nomination. Until bid selection, all other information is confidential, may not be disclosed by the Commission, and is not a public record. When a nomination is submitted to the Commission by a person that is not a state agency, the nomination is the opening bid, but that bid may be supplemented or amended during the bidding process established by the act.

### **Notice of nomination decision**

Under continuing law, the Commission must approve or disapprove a nomination within two calendar quarters from the receipt of the nomination. The act requires the Commission to post notice of its nomination decision on the Commission's website and send notice by email and certified mail to the person that submitted the nomination and the state agency that owns the relevant formation. Under prior law, the Commission was required to use certified mail for notice only with regard to the person that submitted the nomination. Notice to the state agency was required, but only if the nomination was approved. Further, prior law did not specify the manner in which the Commission had to notify the state agency and did not require notice to be posted on the Commission's website.

### **Advertisement of bids**

The act requires the Commission to publish advertisements each calendar quarter for bids for oil and gas leases on the Commission's website, rather than requiring DNR to do so as in prior law. The act specifies that the advertisement must include an identification of each formation and parcel of land to be leased, the deadline for bid submission, and a statement that each bid must contain all of the elements required by the act's provisions governing bidding procedures (see below). The act also eliminates a requirement that the advertisement include a copy of the standard lease form. It retains a requirement that the advertisement include any special terms and conditions that apply to the lease and any other information that the Commission considers pertinent.

### **Bidding procedures and requirements**

Under the act, bidding procedures and requirements are established in statute, rather than in Commission rules as in prior law. A person interested in leasing a state agency-owned

formation may submit a bid to the Commission on a parcel-by-parcel basis that contains all of the following:

- A bid fee of \$25;
- The name of the person making the bid and the person's address, telephone number, and email address;
- An identification of the formation and parcel of land, including all of the identifying information that was included in the nomination;
- The proposed lease bonus that applies to the bid;
- Proof that the person has met insurance and financial assurance requirements and obtained an identification number from the Division of Oil and Gas Resources Management; and
- Any other information the person believes is relevant to the bid.

The act specifies that information contained in a bid is confidential, must not be disclosed by the Commission, and is not a public record until a bid is selected by the Commission.

## V. Division of Water Resources

### Dams and levees enforcement

(R.C. 1521.06, 1521.061, 1521.40, and 1521.99)

The Division of Water Resources regulates dams and levees, water well construction logs, and water diversions and withdrawals from state waters. The act 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 act to prior law requirements.

Prior law	H.B. 110
<b>Financial responsibility – initial</b>	
Required an applicant for a dam or levee construction permit to file a surety bond equal to 50% of the estimated construction project costs.	Instead, generally requires an applicant to submit a surety bond equal to: <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</li> </ol>

Prior law	H.B. 110
No provision.	<p>\$4.5 million; plus</p> <p>3. 10% of the estimated cost that exceeds \$5 million.</p> <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>	
No provision.	<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>	
No provision.	<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 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>
<b>Recovery of costs incurred by the Division – disbursement</b>	
<p>Required money recovered by the Attorney General for costs incurred by the Division in investigating, mitigating, or removing a violation of the laws governing dams and levees, water well construction logs, and water diversions and withdrawals to be credited to the Water Management Fund.</p>	<p>Instead, requires money recovered by the Attorney General for costs to be disbursed to the following funds:</p> <ol style="list-style-type: none"> <li>1. For a violation of the law governing dams and levees, the Dam Safety Fund; and</li> <li>2. For a violation of the law governing water</li> </ol>

Prior law	H.B. 110
	diversions and withdrawals, the Water Management Fund.
<b>Criminal fine – disbursement</b>	
Required 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 law governing dams and levees, the Dam Safety Fund; and</li> <li>2. For fines collected for violations of the laws governing water well construction logs and water diversions and withdrawals, the Water Management Fund.</li> </ol>

## VI. Division of Parks and Watercraft

### Fraudulent watercraft identification

(R.C. 1547.533; 1547.99, not in the act)

The act 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 act increases the damage threshold that triggers a required watercraft accident report from \$500 to \$1,000. Under continuing 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 prior to the act and in excess of \$1,000 under the act); or
4. Total loss of a vessel.

## **VII. Division of Forestry**

### **Forestry projects on federal land**

(R.C. 1503.05 and 1503.271)

The act 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 on federal lands.

The Chief may sell timber and other forest products from federal lands in accordance with the terms of an agreement. The Chief must deposit money received from timber sales from federal lands into the existing State Forest Fund to be used for forest management projects associated with those lands.

### **Wildfire reimbursement to firefighting agencies**

(R.C. 1503.141)

The act allows the DNR 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. The Director must provide the reimbursements from the \$200,000 amount that is allocated from the State Forest Fund to reimburse firefighting agencies for wildfire suppression under continuing law. 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.

### **State employees aid in out-of-state wildfires**

(R.C. 1503.33)

The act specifies that all DNR and Department of Commerce employees whom the Chief of the Division of Forestry 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 prior law, only Division employees were eligible for those benefits and immunity.

## **VIII. Division of Geological Survey**

### **Ohio Geology license plate**

(R.C. 4503.515, repealed and R.C. 1505.09)

The act eliminates the Ohio Geology license plate. Correspondingly, it eliminates the \$15 contribution for each license plate, which was deposited in the Geological Mapping Fund and had to be used for the following purposes:

1. Allowing the DNR 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 act 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 as in prior law) 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.

Under continuing law, mineral severance tax money and any fees collected by the Division for geological record archives and other geological purposes are 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 Land Management Commission (as renamed under the act).

## **IX. Other provisions**

### **Malabar Farm State Park**

(R.C. 1546.31; Section 715.30)

The act designates 120 contiguous acres of Malabar Farm State Park's most mature hardwood forest located between Bromfield Road and State Route 95 as the "Doris Duke Woods." It honors Doris Duke's pioneering contributions to conservation at Malabar Farm State Park and across the nation. DNR may not remove or allow any person or governmental entity to remove timber from the Woods, except for normal maintenance. Malabar Farm State Park is located in Richland County.

The act also requires the DNR Director to meet with the Malabar Farm Foundation<sup>113</sup> by October 30, 2021. At that meeting, DNR and the Foundation must discuss entering into agreements to mutually support and advance the shared objectives of protecting, conserving, and educating the public concerning Malabar Farm State Park and the legacy of Louis Bromfield.

After the first meeting, DNR and the Foundation must meet every other month until June 30, 2022. At that point, DNR and the Foundation jointly must provide a report detailing the meetings and any resulting agreements to each member of the General Assembly who represents all or part of Richland County.

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<sup>113</sup> <https://malabarfarm.org/>.



## Local payments for DNR land

(R.C. 1501.29, 1531.17, and 1546.21)

The act requires the DNR Director to annually reimburse school districts and other taxing authorities for a portion of property taxes forgone due to the state's acquisition of tax exempt land in excess of 5,000 acres in or after 2018. The annual reimbursement payments equal 2.5% of the land's unimproved taxable value for the tax year in which DNR acquired the land, and must be paid from the state park fund, the wildlife fund, or both, at the option of the Director. The act allocates 60% of the payments to affected school districts and divides the remaining 40% among the other taxing authorities in proportion to the unimproved value of such land included in each. Taxing authorities may use the revenue for any lawful purpose. Payments must be made before the end of June of each year, beginning in 2022.

Under continuing law, a school district with territory that includes state lands administered by DNR's Division of Wildlife annually receives payments from the Division equal 1% of the land's unimproved taxable value.<sup>114</sup> The act makes school districts that receive the 2.5% reimbursement payments ineligible to receive this 1% reimbursement on the basis of the same land.

## Geneva Lodge and Conference Center

(Sections 343.30 and 715.20)

The act requires the DNR Director to enter into an agreement, or modify any existing agreement or memorandum of understanding, with Ashtabula County to assume ownership and operation of the Geneva Lodge and Conference Center from the county by December 31, 2021. The agreement must require DNR to do both of the following:

1. Purchase the Lodge for an amount not exceeding the outstanding mortgage at the time of purchase; and
2. Assume maintenance, operating, and any other costs associated with the Lodge.

The act also appropriates \$13,950,000 over the biennium ending June 30, 2023, to the State Park Fund to purchase and pay operating costs for the Lodge.

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<sup>114</sup> R.C. 1531.27, not in the act.

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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 act 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.

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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 of having a license placed in escrow when an occupational therapist or occupational therapy assistant is not in active practice.

### **Physical therapy licensing procedures**

- Eliminates the requirement that an applicant applying for a physical therapist or physical therapist assistant license submit a physical description and photograph.
- Specifies that a license applicant must graduate from a professional 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 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 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.

## **Board vacancies**

(R.C. 4755.01)

Each member of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board serves for a three-year term. When a term expires, the member also serves until a successor is appointed or a time-limited transition period has elapsed. The act extends the length of the transition period to 90 days, from the former 60 days.

## **Occupational therapy 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 act eliminates provisions regarding the issuance of limited permits for occupational therapists and occupational therapy assistants. Previously, if a person had taken the required licensing examination, a limited permit could be issued by the Board's Occupational Therapy Section. The permit authorized the person to practice under the supervision of a licensed occupational therapist until the examination results were public.

### **Inactive licenses**

(R.C. 4755.12 (primary) and 4755.06)

The act eliminates the option of having an occupational therapist or occupational therapy assistant license placed in escrow. Under prior law, this option allowed a person who was not in active practice to register as such with the Board's Occupational Therapy Section for a biennial fee.

## **Physical therapy licensing procedures**

### **Applications with physical identification**

(R.C. 4755.42 and 4755.421)

The act eliminates the requirement that a person seeking a license as a physical therapist or physical therapist assistant submit a physical description and photograph.

### **Acceptable programs**

(R.C. 4755.42, 4755.421, and 4755.48)

The act requires an applicant for licensure as a physical therapist or physical therapist assistant to have graduated from a professional program for the license being sought. This replaces prior law provisions specifying that (1) a physical therapist must complete a master's or doctorate program of physical therapy education with minimum types of coursework and (2) a physical therapist assistant must complete a physical therapist assistant program of education.

The act retains the requirement that a licensure applicant's program be accredited by a physical therapy accreditation agency. However, the act establishes the Board's Physical

Therapy Section as the entity that must approve of the accreditation agency. This replaces the prior law provision specifying that the accreditation agency must be recognized by the U.S. Department of Education.

## **Orthotists, prosthetists, and pedorthists – enforcement**

### **Authorized disciplinary actions**

(R.C. 4779.28)

In regulating orthotists, prosthetists, and pedorthists who hold or are seeking licenses, the Board has a number of professional disciplinary options. In addition to the previously established actions that may be taken against a license holder, the act allows the Board to impose a fine or a requirement that a licensee take corrective action courses.

Regarding the grounds for discipline, the act allows the Board to take 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 does not apply, however, if the sanction occurred only for failing to renew a license.

### **Administrative hearing costs**

(R.C. 4779.281)

The act requires any orthotist, prosthetist, or pedorthist who is sanctioned 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 act makes the Board responsible for investigating violations by an orthotist, prosthetist, or pedorthist. Under former law, the Board's secretary had this duty.

### **Sharing of investigatory information**

(R.C. 4779.33)

The act specifies that any information and records received or generated by the 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 act, 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 sexual interactions with patients**

(R.C. 4755.11, 4755.47, 4755.64, and 4779.28)

With respect to the Board's disciplinary power concerning sexual contact between licensees and patients, the act modifies the Board's authority that applies to its Physical Therapy Section and extends the same authority to the Board, its Occupational Therapy Section, and its Athletic Trainers Section in regulating the other professionals under their jurisdiction. The other professionals include orthotists, prosthetists, pedorthists, occupational therapists, occupational therapy assistants, and athletic trainers.

For the Physical Therapy Section, the act permits disciplinary action to be taken against a physical therapist or physical therapist assistant for sexual conduct with a patient. "Sexual conduct" is defined as contact with an erogenous zone of another person with the intent to sexually arouse or gratify either person. This reason for taking action is in addition to the Section's continuing authority to 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.

In the same manner described above for the Physical Therapy Section, the act permits the Board and its remaining Sections to take disciplinary action against the other professionals they regulate. Specifically, this disciplinary authority applies if the professionals engage in sexual conduct or sexual contact with a patient or in verbal behavior that is sexually demeaning to a patient or could be reasonably interpreted by the patient as sexually demeaning. The authority applies even if the sexual interaction is consensual; however, it does not apply if the patient is the licensee's spouse.

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## DEPARTMENT OF PUBLIC SAFETY

### Towing law changes

#### Law enforcement tows

- Establishes procedures that allow a towing service or a storage facility to obtain title to another's motor vehicle (regardless of value) after it was towed by law enforcement, certain conditions are met, and it remains unclaimed 60 days after the service or facility sends the proper notice to the owner and any lienholder.
- Requires a clerk of court to issue a certificate of title for a motor vehicle to a service or facility that presents an affidavit affirming compliance with all necessary procedures.
- Requires the Registrar of Motor Vehicles to create the form of the affidavit (to be used by the service or facility) by December 29, 2021.

#### Motor vehicle dealership and repair facility tows

- Allows a motor vehicle dealership or repair facility to request a towing service to remove a motor vehicle from its property as long as certain conditions are met.
- Establishes procedures for the owner or any lienholder to reclaim the motor vehicle.
- Establishes procedures for the towing service or a storage facility to take title to the motor vehicle (regardless of value) if it remains unclaimed for an additional 60 days after the service or facility sends the proper notice to the owner and any lienholder.

#### Notice requirements for private tow-away zones

- Reduces the number of notices from three to two that must be sent to an owner and any lienholder of a motor vehicle after that motor vehicle has been towed from a private tow-away zone and before a towing service or storage facility may take title to the motor vehicle.

### Certificate of title fee allocation

- Reallocates 10¢ of the \$15 motor vehicle certificate of title fee that previously was deposited in the Motor Vehicle Sales Audit Fund to the Highway Operating Fund.

### Emergency Management Assistance Compact immunity

- 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.

### U.S. Power Squadron license plate distribution

- Regarding U.S. Power Squadron license plates, requires U.S. Power Squadron District 7 (rather than the Registrar) to equally distribute the contributions for the plates to all Ohio Power Squadron Districts in Ohio.

## Emergency medical services in additional settings

- Authorizes, until October 1, 2022, a first responder and each type of emergency medical technician to perform emergency medical services in any setting, including in any area of a hospital, subject to direction and supervision requirements.
- Provides immunity from damages in a civil action for injury, death, or loss to person or property resulting from performing the authorized emergency medical services, unless they are performed in a manner that constitutes willful or wanton misconduct.

## Vehicle registration waiver for amusement ride owners

- 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.

## Towing law changes

(R.C. 4505.104, 4513.601, 4513.602, 4513.603, and 4513.62)

Under Ohio towing laws that are retained by the act, a towing service or storage facility may obtain either:

1. A certificate of title to an unclaimed motor vehicle in its possession that was towed from a private tow-away zone and is valued at less than \$3,500; or
2. A salvage certificate of title to an unclaimed motor vehicle in its possession if the vehicle is valued at less than \$1,500 (after taking into account necessary repairs, towing fees, and up to 30 days of storage fees), inoperable, and cannot be restored for highway operation.<sup>115</sup>

The act authorizes a towing service or storage facility also to obtain title to an unclaimed motor vehicle (of any value) that was towed either at the order of law enforcement or at the request of a motor vehicle dealership or repair facility.

### Law enforcement tows

The act establishes the following procedures for a towing service or storage facility to obtain title to an unclaimed motor vehicle (of any value) that a law enforcement agency has ordered to be towed:

**Step 1:** A law enforcement agency orders the motor vehicle to be towed.<sup>116</sup>

**Step 2:** To identify the motor vehicle owner and any lienholder, the towing service or storage facility causes a search to be made of the records of the Bureau of Motor Vehicles.

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<sup>115</sup> R.C. 4505.103, not in the act.

<sup>116</sup> Law enforcement must have ordered the motor vehicle towed or stored at the towing service or storage facility pursuant to R.C. 4513.60, 4513.61, or 4513.66.



**Step 3:** The service or facility sends notice by certified or express mail, return receipt requested, or by a commercial carrier service utilizing any form of delivery requiring a signed receipt, to the motor vehicle owner and any lienholder's last known address. The notice must inform the motor vehicle owner and any lienholder that the service or facility will obtain title to the motor vehicle if it is not claimed within 60 days after the date the notice is received.

**Step 4:** The service or facility either receives a signed receipt from the mailed notice or is notified that the delivery of the mailed notice was not possible.

**Step 5:** The motor vehicle continues to remain unclaimed for 60 days after the date that the service or facility receives the required notice (as evidenced by a signed receipt) or after the date that the service or facility is notified that delivery was not possible.

**Step 6:** A sheriff, chief of police, or a state highway patrol trooper has determined that the motor vehicle or items in the vehicle are not necessary to a criminal investigation.

**Step 7:** An agent of the service or facility executes an affidavit (the form of which must be created by the Registrar of Motor Vehicles by December 29, 2021) affirming that all of the requirements to take title (**Steps 1-6**) have been met.

**Step 8:** The clerk of court must issue a certificate of title for the motor vehicle, free and clear of all liens and encumbrances, to the service or facility if the service or facility presents an affidavit that complies with **Step 7**.

After obtaining title and disposing of the motor vehicle, the towing service or storage facility may retain any money arising from the disposal. The towing service or storage facility also must inform the entity that ordered the motor vehicle into storage (i.e., the appropriate law enforcement agency) that the motor vehicle has been so disposed. This notice must be provided by the last business day of the month in which the service or facility obtained the title.

## **Motor vehicle dealerships and repair facility tows**

### **Towing an unclaimed vehicle**

The act authorizes a motor vehicle dealership and a repair facility to have a towing service remove a motor vehicle from their property after all of the following occur:

**Step 1:** The dealership or facility causes a search to be made of the BMV title records to identify the vehicle's owner and any lienholder.

**Step 2:** The dealership or facility sends notice to the owner and any lienholder by certified or express mail, return receipt requested, or by a commercial carrier service utilizing any form of delivery requiring a signed receipt. The notice must give the location of the motor vehicle, explain that the motor vehicle will be towed if the motor vehicle remains unclaimed 14 days after receipt of the notice (or notification that delivery was not possible), and that the towing service or storage facility (where the towed motor vehicle is stored) may take title to the motor vehicle if it remains unclaimed after the tow.

**Step 3:** The motor vehicle remains unclaimed for 14 days after the notice is received (as evidenced by a signed receipt) or after the dealership or facility is informed that delivery was not possible.

The dealership or facility may have the motor vehicle towed using this procedure regardless of who left the motor vehicle with the dealership or facility for repairs. Failure to claim the motor vehicle within the required 14 days is considered consent to the motor vehicle's removal, storage, payment of all accompanying charges, and the towing service or storage facility taking title to the motor vehicle if it is left unclaimed for an additional 60 days. The towing service may not charge more than the standard fees set by the Public Utilities Commission for the tow and storage of the motor vehicle.

### **Reclaiming the vehicle and liability**

The motor vehicle owner or lienholder may reclaim the motor vehicle from the towing service or storage facility if the owner or lienholder presents proof of ownership, pays all of the incurred charges, and the title has not already been issued to the towing service or storage facility. The act expressly exempts the motor vehicle dealership, repair facility, towing service, and storage facility from liability for any damage, claims of conversion, or any other claim arising from the removal, towing, or storage of the motor vehicle, provided the dealership, repair facility, towing service, and storage facility comply with the proper procedures. Additionally, the dealership or repair facility retains any cause of action it has against the owner or lienholder, unless possession of the motor vehicle is necessary for the claim.

### **Taking title to the vehicle**

When the tow from the dealership or repair facility is completed, the towing service or storage facility may take title to the motor vehicle, regardless of the motor vehicle's value, after all of the following occur:

**Step 1:** The towing service or storage facility causes a search to be made of the BMV title records to identify the motor vehicle's owner and any lienholder.

**Step 2:** The towing service or storage facility sends notice to the owner and any lienholder by certified or express mail, return receipt requested, or by a commercial carrier service utilizing any form of delivery requiring a signed receipt. The notice must explain that the towing service or storage facility will take title to the motor vehicle if it remains unclaimed 60 days after receipt of the notice (or notification that delivery was not possible).

**Step 3:** The motor vehicle remains unclaimed for 60 days after the notice is received (as evidenced by a signed receipt) or after the towing service or storage facility is informed that delivery was not possible.

**Step 4:** The towing service's or storage facility's agent executes an affidavit (the form of which must be created by the Registrar of Motor Vehicles by December 29, 2021) affirming that all of the requirements to take title (**Steps 1 to 3**) have been met.

If a towing service or storage facility presents the appropriate affidavit, the clerk of courts must issue a certificate of title, free and clear of all liens and encumbrances, for the motor vehicle to the towing service or storage facility. The towing service or storage facility may retain any money arising from the disposal of the motor vehicle after taking title to it.

## **Notice requirements for private tow-away zones**

The act reduces the number of notices (from three to two) that a towing service or storage facility must send prior to initiating a title transfer for an unclaimed motor vehicle (valued at less than \$3,500) towed from a private tow-away zone. Under continuing law, after a towing service tows a motor vehicle from a private tow-away zone, the towing service or storage facility must obtain title information from the BMV regarding the motor vehicle's owner and any lienholders. The service or facility must then notify those parties that the service or facility will take title to the motor vehicle if it is left unclaimed for 60 days after receipt of the first notice (or notification that delivery of the notice was not possible). The service or facility must send each notice by certified or express mail with return receipt requested or by a commercial carrier service using any form of delivery requiring a signed receipt. Under prior law, the notices were made as follows:

- Within five days after the Registrar provided the identity of the owner and any lienholder;
- 30 days after the first notice was sent (if the vehicle was not retrieved after the first notice);
- 45 days after the first notice was sent (if the vehicle was not retrieved after the second notice).

The act eliminates the third notice, but maintains the first and second notice and the 60-day time frame before the service or facility may take title to the unclaimed motor vehicle.

## **Certificate of title fee allocation**

(R.C. 4505.09)

The act reallocates 10¢ of the \$15 motor vehicle certificate of title fee that previously was deposited in the Motor Vehicle Sales Audit Fund to the Highway Operating Fund. The portion 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 portion 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.

## **Emergency Management Assistance Compact immunity**

(R.C. 5502.30)

The act 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>117</sup>

## **U.S. Power Squadron license plate distribution**

(R.C. 4501.21)

The act 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. Prior law required the Registrar to distribute the contributions (also in equal amounts). U.S. Power Squadrons is a nonprofit boating club and educational organization that provides classes on maritime safety and seamanship.

## **Emergency medical services in additional settings**

(Section 747.20)

### **Expansion of services to any setting**

The act temporarily reauthorizes – from September 30, 2021, through October 1, 2022 – the settings in which first responders and each of the three types of emergency medical technicians (basic, intermediate, and paramedic) are authorized to provide emergency medical services. Under the act, those services may be provided in any setting, including any area of a hospital, under the direction and supervision of a physician, physician assistant designated by a physician, or advanced practice registered nurse designated by a physician. Without the act, Ohio law (1) does not authorize a first responder to provide services in a hospital and (2) limits an emergency medical technician's actions in a hospital to the emergency department or while moving a patient from the emergency department. The expanded authority was previously authorized by H.B. 151 of the 133<sup>rd</sup> General Assembly, but only until July 1, 2021.

### **Qualified immunity**

The act provides that a first responder or emergency medical technician is not liable in damages in a civil action for injury, death, or loss to person or property resulting from the individual's performance of emergency medical services authorized by the act, unless the services are performed in a manner that constitutes willful or wanton misconduct.

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<sup>117</sup> See <https://www.emacweb.org/>.

## Vehicle registration waiver for amusement ride owners

(Section 745.10)

The act 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 from September 30, 2021 until September 29, 2022. 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);
- and
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>118</sup>

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<sup>118</sup> R.C. 993.01, 4503.038, 4503.04, 4503.042, 4503.10, 4503.103, and 4503.19, and Chapter 4504, not in the act.

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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 continuing 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 act removes the requirement that the office of the Public Utilities Commission (PUCO) be open from 8:30 a.m. to 5:30 p.m., Monday through Friday, with the result that it must be open simply "throughout the year, Saturdays, Sundays, and legal holidays excepted."

### PSB contract for expert or analyst

(R.C. 4906.02)

The act 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 PUCO) for the purposes of carrying out PSB's powers and duties under continuing 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 continuing law.<sup>119</sup>

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<sup>119</sup> R.C. 4906.06, not in the act.

## **Internet telephone directories**

(R.C. 4927.01; Section 749.10)

The act 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 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 act 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 fourth and fifth degree felony prison terms**

- Expands the voluntary Targeting Community Alternatives to Prison (T-CAP) Program to include fourth degree felonies instead of only fifth degree felonies.

### **Post-release control sanctions**

- Modifies the 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 PRC period, the offender serves as a sanction for violating PRC conditions 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 PRC periods; and
  - Specifying that a PRC period must not be imposed consecutively to any other PRC period.

### **Sacramental wine in 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.”

## **Prison term penalty for certain conduct by a felony offender serving a community control sanction**

- Modifies provisions regarding a court’s imposition of a prison term as a penalty for a convicted felon who is sentenced to a community control sanction and who violates the conditions of the sanction, violates a law, or leaves the state without the permission of the court or probation officer.

## **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.

## **Certificate of qualification for employment (CQE)**

### **Sealing of CQE records**

- Specifies that when a criminal record is sealed, records related to a certificate of qualification for employment (CQE) are also sealed.

### **Consideration of sealed CQE records**

- Provides that a petition for a CQE must include the individual’s criminal history, except for information contained in any record that has been sealed.
- Provides that, upon receiving a petition for a CQE, a court must review the individual’s criminal history, except for information contained in any record that has been sealed.
- Provides that a court may order any report, investigation, or disclosure by the individual, except that the court must not require an individual to disclose information about any record that has been sealed.

- Specifies that in any application for a CQE, a person may be questioned only with respect to convictions and bail forfeitures not sealed.

### **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 the conviction or convictions 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 in state owned and private prison facilities.

### **Outdated law – Ohio River Valley Facility**

- Removes outdated provisions that allowed Lawrence County to place inmates in the Ohio River Valley Facility.

### **Local confinement for fourth and fifth degree felony prison terms**

The act expands the voluntary Targeting Community Alternatives to Prison (T-CAP) Program to include fourth degree felonies instead of only fifth degree felonies.

#### **Voluntary local confinement**

(R.C. 2929.34)

Continuing law provides that in any voluntary county, the board of county commissioners and the administrative judge of the general division of the common pleas court may agree to have the county participate in the procedures regarding state and local confinement described below.

The act provides, subject to exceptions for certain offenses and categories of offenders (see “**Exceptions**,” below), that in any voluntary county, either (1) or (1) and (2) must apply:

1. Under preexisting law, on or after July 1, 2018, a person sentenced to a prison term for a fifth degree felony may not serve the term in a DRC institution;
2. Under the act, on or after September 1, 2022, a person sentenced to a prison term for a fourth degree felony may not serve the 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.

As used in the act, “voluntary county” means any county in which the board of county commissioners and the administrative judge of the general division of the common pleas court enter into an agreement described above.

## **Exceptions**

(R.C. 2929.34)

The provisions do not apply to any person to whom any of the following apply: (1) fourth or 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.

## **Voluntary memorandum of understanding**

(R.C. 5149.38)

Continuing law requires that, not later than October 29, 2017, each voluntary county must submit a memorandum of understanding to DRC for its approval. Also, not later than October 29, 2017, two or more affiliating voluntary counties may jointly submit a memorandum of understanding to DRC for its approval. The bill changes the deadline from October 29, 2017, to September 1, 2022.

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 do all of the following: (1) set forth the plans by which the county will use grant money provided to it in FY 2018 and succeeding fiscal years under the T-CAP program, 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 act's provisions described above. The bill modifies these requirements in two ways. First, the bill changes the FY from 2018 to 2023. Second, the bill adds a requirement that the memorandum of understanding must specify whether it will apply to prison terms for fifth degree felonies or prison terms for fourth and fifth degree felonies.

## **Post-release control sanctions**

(R.C. 2967.28)

### **Background**

The act 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 the Felony Sentencing Law that is imposed on a prisoner upon the prisoner's release from a prison term other than a term of life imprisonment.<sup>120</sup>

Law unchanged by the act specifies that when an offender convicted of a felony is released from prison, in some circumstances PRC is mandatory, and in other circumstances, PRC is discretionary. When an offender is placed under PRC, specified procedures apply regarding the offender, the PRC period, the imposition by the Parole Board (or court in certain circumstances) of PRC sanctions and conditions that apply during the PRC period, and supervision of the offender. The act changes some of these procedures, as described below.

### **Mandatory PRC**

Law unchanged by the act specifies that 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, the Parole Board (or court), prior to the offender's release from imprisonment, must impose a PRC period on the offender that runs after the offender's release. The law sets the duration of mandatory PRC based on the offense, and the act changes the duration for most offenses. The act retains the preexisting duration for a felony sex offense, which is five years, but changes the preexisting duration of mandatory PRC in all other cases as follows:

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 law also specifies that if an offender is sentenced to a term of shock incarceration or to a term in an intensive program prison, the Board (or court) must impose a PRC period on the offender that runs during a specified portion of the term.

### **Discretionary PRC**

Law unchanged by the act specifies that 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 (or court), prior to the offender's release from imprisonment, may impose a PRC period on the offender that runs after the offender's release, if it determines that PRC is necessary for the offender. The law sets the duration of authorized discretionary PRC, and the act changes the set duration 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. If an offender is sentenced to a prison term for such an offense and is released early under a risk

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<sup>120</sup> R.C. 2967.01, not in the act.

reduction sentence, the Parole Board (or court) must impose a PRC period on the offender, apparently under the same rule as to duration as for discretionary PRC.

### **Consideration of delinquent child adjudications**

The act changes the information that the Parole Board (or court) must review, prior to the release of an offender for whom it will impose PRC sanctions, in determining which PRC sanctions are reasonable under the circumstances. The act removes juvenile court delinquent child adjudications as items that the Parole Board (or court) must consider in determining PRC sanctions. The act 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**

Under the act, 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 may supervise the offender with an active GPS device for the first 14 days after the offender's release from imprisonment. Prior to the act, the use of active GPS monitoring for supervising the offender in the specified circumstances was mandatory.

### **Shortening or terminating PRC**

The act modifies the actions that the APA (or court) may take after it conducts a review of the behavior under PRC sanctions of a prisoner released from imprisonment. Preexisting law, unchanged by the act, authorizes such a review any time after a prisoner is released from imprisonment and during the PRC period. Under the act, 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 specified 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 act's changes described in the preceding paragraph, the act expands a provision that 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, under the preexisting provision) the PRC duration when authorized as described in that paragraph, in imposing a more restrictive sanction than monitored time on certain offenders, or in imposing a less restrictive sanction on a releasee based on results from the single validated risk assessment tool (and, as specified under the preexisting provision, 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 provisions in effect prior to the act regarding the actions the APA (or court) could take, repealed by the act, specified that: (1) if it determined that a more restrictive or a less

restrictive sanction was appropriate it could impose a different sanction, (2) the APA could recommend that the Parole Board (or court) increase or reduce the PRC duration, (3) if the APA recommended that the PRC duration be increased, the Parole Board (or court) had to review the releasee's behavior and could increase the PRC duration up to eight years, (4) if the APA recommended that the PRC duration be reduced, the Parole Board (or court) had to review the releasee's behavior and generally could reduce the PRC duration or, in certain cases, reduce the PRC duration or terminate the PRC, and (5) in no case could the Parole 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**

Law unchanged by the act specifies that if the Parole Board (or court) at a hearing finds that a releasee under a PRC sanction violated the sanction or condition: (1) it may increase the PRC duration up to the maximum authorized duration or impose a more restrictive PRC sanction, (2) when appropriate, it may impose as a PRC sanction a residential sanction that includes a prison term, (3) 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 it may not exceed one-half of the prison term that was originally imposed on the offender, and (4) 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 act 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 act replaces several provisions that pertain to calculating service of a PRC period. Under the act: (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>121</sup> until the PRC period otherwise would have ended, and (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.

The act retains a provision specifying that a PRC period may not be imposed consecutively to any other PRC period (although the act does not retain the express statement that PRC periods are to be served concurrently). It also retains provisions that govern the duration of a PRC period imposed on a releasee who commits a felony while under PRC for an

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<sup>121</sup> R.C. 2967.16, not in the act.

earlier felony, and the maximum cumulative prison term for all PRC violations that may be imposed on a releasee.

The replaced provisions specified that: (1) a PRC period commenced upon an offender's actual release from prison, (2) if a PRC period was imposed and the offender also was subject to a period of parole, and if the PRC period ended prior to the period of parole, the offender was to be supervised on parole and received credit for PRC supervision during the period of parole and was not eligible for final release until the PRC period otherwise would have ended, (3) if an offender was under a PRC period and also was subject to a period of parole, and if the period of parole ended prior to the PRC period, the offender was to be supervised on PRC and the requirements of parole supervision were to be satisfied during the PRC period, and (4) if an offender was subject to more than one PRC period, the PRC period for all of the sentences was the PRC period that expired last, as determined by the Parole Board (or court).

### **Sacramental wine in governmental facility**

(R.C. 2921.36)

The act 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 liquor-related prohibitions under the offense, unchanged by the act except for its exemption, apply to 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, the Department of Developmental Disabilities, the Department of Youth Services, or the Department of Rehabilitation and Correction.

### **Notification of possible prison term for community control violation**

(R.C. 2929.19 and 2929.15)

Law unchanged by the act requires a court that sentences an offender to a community control sanction for a felony to 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 specified types of sanctions.

The act changes the reference to one of the types of sanctions, which is a possible prison term. Under the act, instead of indicating "the specific prison term" that may be imposed for the violation, out of the range of terms available for the offense, the notice must indicate the "range from which" the prison term may be imposed, which must be the range of terms available for the offense. The act does not change the references 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 act also conforms a cross-reference to that notification in the provision described in the next part of this analysis governing the imposition of a prison term for such a violation or leaving of the state.

## **Prison term penalty for certain conduct by a felony offender serving a community control sanction**

(R.C. 2929.15)

The act modifies one of the three types of penalties that a court that sentences an offender to a community control sanction for a felony may impose on an offender who violates the conditions of the sanction, violates a law, or leaves the state without the permission of the court or the offender's probation officer. Two of the types of authorized penalties, unchanged by the act, are a longer time under the same sanction if the total time under the sanctions does not exceed five years, or a more restrictive sanction, including a new term in a community-based correctional facility, halfway house, or jail. The third type, which the act modifies, is a prison term that is subject to a specified maximum (see "**Notification of possible prison term for community control violation**," above) and to specified conditions. The act modifies the authorized prison term penalty as follows:

1. It generally retains the provisions that govern prison terms that may be imposed, but if the prison term is imposed for a technical violation of the sanction conditions, it clarifies the manner of crediting the time served under the term against the offender's sentence and replaces the references to "suspended" sentences with references to "reserved" sentences. Under the act, the provisions specify that:

a. If the prison term is imposed for a technical violation of sanction conditions imposed for a fifth degree felony, the term may not exceed 90 days, provided that if the remaining period of community control at the time of the violation or the remaining period of the "reserved" (previously, "suspended") prison sentence at that time is less than 90 days, the prison term may not exceed the length of the remaining period of community control or the remaining period of the "reserved" (previously, "suspended") prison sentence.

b. If the prison term is imposed for a technical violation of sanction conditions imposed for a fourth degree felony that is neither an offense of violence nor a sexually oriented offense, the term may not exceed 180 days, provided that if the remaining period of community control at the time of the violation or the remaining period of the "reserved" (previously, "suspended") prison sentence at that time is less than 180 days, the prison term may not exceed the length of the remaining period of community control or the remaining period of the "reserved" (previously, "suspended") prison sentence.

c. If a prison term is imposed on an offender under either provision described above for a technical violation, one of the following applies with respect to the time that the offender spends in prison under the term:

i. Subject to the provisions described below in (ii), the time must be credited against the offender's community control sanction that was being served at the time of



the violation, the remaining time under that community control sanction must be reduced by the time that the offender spends in prison under the term, and the court is to determine whether the offender upon release from the prison term must continue serving the remaining time under the community control sanction, as reduced by the credit, or must have the sanction terminated (the same as under the law prior to the act, except that under that prior law, no reference to community control sanction “termination” was included).

ii. If, at the time a prison term is imposed for a technical violation, the offender was serving a “residential” community control sanction imposed under the Felony Sentencing Law, the time spent serving the residential community control sanction must be credited against the offender’s “reserved” prison sentence, the remaining time under that “residential” community control sanction and under the “reserved” prison sentence must be reduced by the time that the offender spends in prison under the prison term, and the court is to determine whether the offender upon release from the prison term must continue serving the remaining time under the community control sanction, as reduced by the credit, or must have the sanction terminated (prior to the act, the application of the provision was not limited to “residential” community control sanctions, the references to “reserved” prison sentences were to be “suspended” sentences, and no reference to community control sanction “termination” was included).

2. It relocates, but does not otherwise change, a provision that authorizes a judge to use a prison term as a penalty multiple times, to clarify that the authorization is an option along with the other previously authorized prison term penalty. The relocated provision specifies that: (a) a court is not limited in the number of times it may sentence an offender to a prison term for violating the sanction conditions, violating a law, or leaving the state without permission, and (b) if an offender violates the sanction conditions, violates a law, or leaves the state without permission, is sentenced to a prison term for the violation or conduct, is released from the term after serving it, and subsequently violates the conditions of the sanction, violates a law, or leaves the state without permission, the court may impose a new prison term penalty on the offender for the subsequent violation or conduct. As under the law prior to and retained by the act, the prison term penalties are subject to the specified maximum (see “**Notification of possible prison term for community control violation,**” above) and to the limitations described above in (1).

## **Community-based substance use disorder treatment**

(R.C. 5120.035)

The act 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 act 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 act expands a 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, and 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>122</sup>

The conditions regarding an administrative release prior to the act, unchanged by the act, 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 under this provision 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 could grant an administrative release prior to the act, which the act does not change, 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) a parole violator at large or release violator at large whose case has been inactive for at least ten years following the

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<sup>122</sup> R.C. 2967.01, not in the act.

declaration of the violation, and (3) parolees taken into custody by the U.S. Immigration and Naturalization Service and deported from the U.S.

## **Certificate of qualification for employment (CQE)**

### **Sealing CQE records**

(R.C. 2953.31 and 2953.32, not in the act)

An eligible offender may apply to the sentencing court for an order to seal the records of the offender's case and conviction. Generally, if the court determines that the applicant is an eligible offender or the subject of a bail forfeiture, that no criminal proceeding is pending against the applicant, that the interests of the applicant in having those records sealed are not outweighed by any legitimate government needs to maintain those records, and that the rehabilitation of the applicant has been attained to the satisfaction of the court, the court must order all "official records" pertaining to the case sealed and all index references to the case deleted.

The act expands the definition of "official records" to include all records that are possessed by any public office or agency that relate to an application for or the issuance or denial of, a certificate of qualification for employment (CQE). The continuing law definition of "official records" means all records that are possessed by any public office or agency that relate to a criminal case.

### **Consideration of sealed CQE records**

(R.C. 2953.25 and 2953.33)

An individual who has been convicted of or pleaded guilty to an offense, who for a specified period of time has been released from incarceration and all supervision imposed after release or has received final release from all other sanctions imposed, and who is subject to a collateral sanction may obtain from the court of common pleas of the county in which the individual resides a CQE that will provide relief from certain bars on employment or occupational licensing.

Under continuing law, a petition for a CQE must include, among other items, a summary of the individual's criminal history with respect to each offense that is a disqualification from employment or licensing in an occupation or profession, including the years of each conviction or plea of guilty for each of those offenses. The act still requires that the petition include a summary of the individual's criminal history, except that the petition must not include information contained in any record that has been sealed.

Under continuing law, upon receiving a petition for a CQE the court must review, among other items, the individual's criminal history. The act still requires that the court review the individual's criminal history, except that the court must not review information contained in any record that has been sealed.

Under continuing law, the court may order any report, investigation, or disclosure by the individual that the court believes is necessary for the court to reach a decision on whether to approve the individual's petition for a CQE. The act still allows the court to order such

disclosures, except that the court must not require an individual to disclose information about any record sealed.

The act specifies that in any application for a CQE, a person may be questioned only with respect to convictions and bail forfeitures not sealed.

Generally, if the court finds that granting the petition will materially assist the individual in obtaining employment or occupational licensing, that the individual has a substantial need for relief requested in order to live a law-abiding life, and that granting the petition would not pose an unreasonable risk of safety to the public or any individual, the court may issue a CQE.

## **Sealing of records related to unconditional pardon**

(R.C. 2967.04)

The act allows the Governor to include as a condition of an unconditional pardon that the records related to the conviction or convictions 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.

## **Internet access for prisoners**

(R.C. 9.08, 5120.62, and 5145.31)

The act provides greater flexibility for prisons to provide internet access to prisoners in state-owned and private prison facilities by replacing prior 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.

## **Outdated law – Ohio River Valley Facility**

(R.C. 307.93 and 341.12; repealed R.C. 341.121)

The act removes outdated portions of the Revised Code that allowed Lawrence County to use the Ohio River Valley Facility, located in Franklin Furnace (Scioto County), to house inmates pursuant to an agreement. These sections are no longer necessary.

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## SECRETARY OF STATE

### Private funding for elections

- Prohibits a public official responsible for administering or conducting an election from collaborating with, or accepting or expending any money from, a nongovernmental person or entity for any costs or activities related to elections.
- Changes the purposes for which the Secretary of State may use the Boards of Elections Reimbursement and Education Fund and prohibits the fund from receiving revenues from fees, gifts, grants, or donations.
- Abolishes the Citizen Education Fund, which was to receive gifts, grants, fees, and donations from private individuals and entities for voter education purposes, and specifies the process to dispose of the remaining money in the fund.

### Federal grants

- 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

- Eliminates a requirement that a foreign nonprofit corporation provide to the Secretary of State the location of its principal office in Ohio in order to obtain a certificate of authority to exercise its corporate privileges in Ohio.

### Service of process fees

- Specifies that the \$5 fee the Secretary of State charges for service of process is per address served.

### Copies of laws

- Eliminates from law a requirement that the Secretary of State forward a copy of each new law to the clerk of each court of common pleas within 60 days after it was filed with the Secretary.

### Private funding for elections

#### Generally

(R.C. 3501.054)

The act prohibits a public official responsible for administering or conducting an election from collaborating with, or accepting or expending any money from, a nongovernmental person or entity for any costs or activities related to voter registration, voter education, voter identification, get-out-the-vote, absent voting, election official recruitment or training, or any other election-related purpose, other than the following:

- The collection of any fee that is authorized by law;
- The use of any building to conduct an election, including as a polling place;
- The donation of food for precinct election officials at a polling place on Election Day.

That prohibition does not apply to any money to be deposited in the Address Confidentiality Program Fund (Fund 5SN0) or the Women’s Suffrage Centennial Commission Fund (Fund 5VX0). The act defines “public official,” for purposes of this provision, as any elected or appointed officer, employee, or agent of the state or any political subdivision, board, commission, bureau, or other public body established by law.

Essentially, this provision of the act includes two prohibitions: (1) a prohibition against election officials “collaborating” with a private person or entity for election-related activities, and (2) a prohibition against election officials accepting money from a private person or entity to pay for election-related costs.

For example, it appears that this law prohibits the Secretary of State or a board of elections from working with a citizen group to hold a voter registration drive, conduct a voting education program, or recruit poll workers. Private groups still may engage in those activities, which are protected under the First Amendment,<sup>123</sup> but they will not have the benefit of logistical help, publicity, or other assistance from election officials. Meanwhile, if the Secretary or boards of elections hold such programs, they might not be allowed to use volunteers or donations to do so. And, election officials may not accept private grants or donations to pay for election-related expenses, although they still may seek federal or other government grants.

### **Board of Elections Reimbursement and Education Fund**

(R.C. 111.27)

The act changes the purposes for which the Secretary of State may use the Board of Elections Reimbursement and Education Fund (Fund 5FG0) and, consistent with the prohibitions described above, prohibits the fund from receiving money from “fees, grants, donations, and other similar receipts.”

Prior law required the Secretary to use the fund to reimburse boards of elections for “various purposes,” including reimbursements made under certain sections of the Revised Code and to provide training and educational programs for members and employees of boards of elections. The act removes the language regarding “various purposes,” and instead requires the Secretary to use the fund to reimburse the boards pursuant to R.C. 3513.301, 3513.312, and 3521.03 (congressional special elections) and R.C. 3515.071 (state-ordered recounts), as well as for those training and educational programs.

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<sup>123</sup> See, for example, *Project Vote v. Blackwell*, 455 F.Supp.2d 694, 700 (N.D. Ohio 2006), holding that private groups have a First Amendment right to hold voter registration drives.

## **Citizen Education Fund**

(Section 516.20 and repeal of R.C. 111.29)

Given the prohibitions described above, the act also abolishes the Citizen Education Fund (Fund 4140), which was to receive gifts, grants, fees, and donations from private individuals and entities for voter education purposes. The Secretary of State was required to use the fund to prepare, print, and distribute voter registration and educational materials and to conduct related workshops and conferences for public education.

The act requires the Secretary, on July 1, 2021, or as soon as possible thereafter, to certify to the OBM Director the cash balance of, and current existing encumbrances against, the fund. The Secretary must specify the sources of revenue that make up the remaining cash balance in the fund.

The Director must cancel any existing encumbrances against the fund and return any remaining cash balance in the fund to the original revenue source as certified by the Secretary. The fund is abolished once the encumbrances are canceled and the remaining cash balance is returned.

## **Federal grants**

(R.C. 111.28)

The act 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.

Formerly, any federal grants from the EAC were placed in the HAVA Fund, even if they were 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.

## **Foreign nonprofit corporation certificate of authority**

(R.C. 1703.27)

The act modifies the information that a foreign nonprofit corporation must provide to the Secretary of State when it applies under continuing law for a certificate authorizing it to exercise its corporate privileges in Ohio. Prior law required a foreign nonprofit corporation to provide the location of its principal office in Ohio and to appoint a designated agent. The act removes the requirement to list an Ohio office and clarifies that the appointment of the agent must comply with the continuing law designated agent provisions that apply to foreign nonprofit corporations.<sup>124</sup>

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<sup>124</sup> See R.C. 1703.041, not in the act.

## **Service of process fees**

(R.C. 111.16)

The act specifies that the \$5 fee the Secretary of State charges for service of process must be charged per address served. Continuing law requires all Ohio businesses to have an agent for receiving official and legal documents, and that agent's contact information must be registered with the Secretary. 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, who serves the notice to various last-known addresses of the business (such as the address in the business's most recent tax filings). The act clarifies that the fee for this service is \$5 for each of these addresses.

## **Copies of laws**

(R.C. 149.08, repealed; R.C. 149.11, conforming)

The act eliminates from law a requirement that the Secretary of State forward a copy of each new law to the clerk of each court of common pleas within 60 days after it was filed with the Secretary.



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## DEPARTMENT OF TAXATION

### Income tax

- Reduces nonbusiness income tax rates by 3%.
- Eliminates the highest income tax bracket – reducing the number of brackets from five to four – and further lowers the rate of the new highest bracket to 3.99%.
- Increases the income level at which the first tax bracket begins, from \$22,150 to \$25,000.
- Suspends the annual inflation indexing adjustment of income tax brackets for taxable years beginning in 2021 and of personal exemption amounts for both 2021 and 2022.
- 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, unemployment compensation, 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.
- Authorizes a nonrefundable tax credit of up to \$750 for taxpayers who donate to a nonprofit organization that awards scholarships to primary and secondary school students and that prioritizes low-income students.
- Authorizes a nonrefundable income tax credit of up to \$250 for certain home school education expenses incurred by a taxpayer for one or more of their dependents.

- Authorizes a means-tested, nonrefundable income tax credit for tuition paid to a nonchartered, nonpublic school.
- Delays by one year, from 2022 to 2023, the date by which the Department of Job and Family Services (JFS) must begin to accept state income tax withholding requests from unemployment compensation recipients.
- Requires JFS to report and remit state income tax withholding on unemployment compensation benefits on a monthly basis.
- Eliminates the requirement that, if claiming the business income deduction, each business or professional activity generating income for a taxpayer be reported on their annual income tax return.
- Increases, from \$1 million to \$2 million, the limit on the amount of Ohio opportunity zone investment income tax credits that may be awarded to an individual during a fiscal biennium.

### **Municipal income tax**

- Reinstates, until December 31, 2021, and modifies a temporary municipal income taxation rule for employees who are working from home due to COVID-19.
- States that, beginning on January 1, 2021, the temporary rule applies only for the purposes of municipal income tax withholding and the siting of an employer's net profits, and not for the purpose of determining an employee's actual tax liability.
- Temporarily shields employers from certain penalties associated with withholding municipal income tax as long as the employer withholds such tax for an employee's principal place of work.
- Makes several changes to the general procedure for creating a joint economic development district (JEDD).

### **Sales and use taxes**

- Exempts employment services and employment placement services from sales and use tax.
- 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 a previously authorized lodging tax from 3% to 4%.
- Authorizes a county with a population between 300,000 and 350,000, and that already levies a 3% lodging tax (Lorain County) to levy an additional lodging tax of up to 3% for purposes of constructing, maintaining, operating, and promoting a convention facility.

## 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.
- Makes permanent a temporary CAT exemption for Bureau of Workers' Compensation dividends paid to employers.
- Would have reduced 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. (VETOED)

## 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.
- 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.
- Temporarily extends the charitable use property tax exemption to any parking garage owned and operated by a qualifying tax-exempt nonprofit arts institution.
- Temporarily exempts property owned by certain nonprofit arts institutions from special assessments levied by a municipality, special improvement district, or conservancy district.

- Expands an existing property tax exemption for fraternal organizations to include the property of such organizations with national governing bodies.
- 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.
- Requires the owner of tax-exempt property to notify the county auditor if the property ceases to qualify for an exemption.
- Imposes a charge on property whose owner fails to give such notice equal to the tax savings for up to the five preceding years that the property did not qualify for the exemption.
- Establishes a temporary procedure by which a 501(c)(3) organization may apply for tax exemption and abatement of more than three years of unpaid property taxes, penalties, and interest due on certain property.
- Allows political subdivisions to use tax increment financing (TIF) district or downtown redevelopment district (DRD) service payments for off-street parking facilities.
- Allows municipalities that create certain types of TIFs the discretion to designate the beginning date of the TIF exemption, rather than the exemption automatically beginning on the effective date of the designating ordinance.
- Creates the Federally Subsidized Housing Study Committee and requires it to submit a report to the General Assembly, making recommendations about the property tax valuation and valuation process of federally subsidized residential rental property.

### **TPP supplement payments**

- Between FY 2022 and FY 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.
- Eliminates the Tax Expenditure Review Committee.
- Repeals a provision recommending that any bill proposing to enact or modify a tax expenditure include a statement of the bill's intent.
- Reduces, from \$1 million to \$250,000, the amount a nonprofit corporation must spend granting wishes of minors with life-threatening illnesses to qualify for funds from the Wishes for Sick Children Income Tax Contribution Fund.

## **Income tax**

### **Rate reduction**

(R.C. 5747.02; Section 803.97(A))

The act makes several changes to income tax rates and brackets applicable to nonbusiness income, beginning with the 2021 taxable year. First, the act reduces tax rates for all brackets by 3%. Second, the act eliminates the highest tax bracket – reducing the number of brackets from five to four – and further lowers the tax rate of the new highest bracket to 3.99%. (If previous rates were only reduced by 3%, the rate applicable to that bracket (income greater than \$110,650 in 2021) would have been 4.281%). Third, the act increases the income level at which the first tax bracket begins, from \$22,150 to \$25,000. The tax table for taxable years ending in 2020 compares to the 2021 tax table, as modified by the act, as follows:

TY 2020		TY 2021, as modified by the act	
Ohio taxable income	Marginal tax rate	Ohio taxable income	Marginal tax rate
\$0 - \$22,150	0%	\$0 - \$25,000	0%
\$22,151 - \$44,250	2.85%	\$25,001 - \$44,250	2.765%
\$44,251 - \$88,450	3.326%	\$44,251 - \$88,450	3.226%
\$88,451 - \$110,650	3.802%	\$88,451 - \$110,650	3.688%
\$110,651 - \$221,300	4.413%	\$110,651 and up	3.990%
\$221,301 and up	4.797%		

## Inflation indexing adjustment

(Section 803.97(B))

Continuing law requires the Tax Commissioner to adjust the income tax brackets and personal exemption amounts for inflation on an annual basis.<sup>125</sup> The act suspends the adjustments to income tax brackets for taxable years beginning in 2021, and the adjustments to personal exemption amounts for both 2021 and 2022. Consequently, the 2020 income tax brackets will also apply in 2021 (although the tax rates corresponding with those brackets will be reduced as described above). Indexing of income tax brackets resumes in 2022, and indexing of personal exemption amounts resumes in 2023.

## Deduction for venture capital gains

(R.C. 122.851, 5703.21(C)(16), and 5747.01(A)(35))

The act 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 act, the deduction is only available for the gains from investments by an eligible Ohio-based VCOC (referred to in the act as an “Ohio VCOC”), which must be certified as such by the Director of Development. The act employs the definition of a VCOC used in federal

<sup>125</sup> R.C. 5747.02(A)(5); R.C. 5747.025, not in the act.

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>126</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.
- 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

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<sup>126</sup> 28 C.F.R. 2510.3-101.

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 continuing law's business income deduction before applying any excess towards the act's Ohio VCOC 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 act 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 act's deduction for capital gains from the sale of a business 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 act 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>127</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

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<sup>127</sup> 45 U.S.C. 231m.

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>128</sup>

The act 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 act clarifies that any income tax withheld, including from a taxpayer's wages, retirement income, unemployment compensation, 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 Department of Job and Family Services, 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 act states that the provision is intended to clarify existing law and applies to taxable years beginning on and after January 1, 2016.

### **Resident credit amended return period**

(R.C. 5747.05(B))

The act 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 act 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.

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<sup>128</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>.

## **Tax on fraudulent unemployment compensation**

(Sections 757.10 and 812.23)

The act 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 act 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>129</sup>

The act 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.

## **Education tax credits**

### **Credit for donations to scholarship organizations**

(R.C. 5747.73 and 5747.98; Section 803.97)

The act authorizes a nonrefundable tax credit of up to \$750 for taxpayers who donate to a nonprofit organization that awards scholarships to primary and secondary school students and that prioritizes low-income students.

To qualify for the credit, a taxpayer must make a cash donation to a certified “scholarship granting organization” and provide a receipt acknowledging the donation to the Tax Commissioner. The credit cannot exceed \$750 per year. If the donation is made by a pass-through entity, the total credit claimed by all owners with an interest in the entity may not exceed that amount.

A nonprofit corporation may apply to the Attorney General to be certified as a scholarship granting organization. The Attorney General must certify the organization if all of the following apply:

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<sup>129</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>.

1. It is a 501(c)(3) tax-exempt organization;
2. It primarily awards academic scholarships to primary and secondary school students;
3. It prioritizes awarding scholarships to low-income students.

The Attorney General must approve or deny a certification application within 30 days of receipt, maintain a list of all scholarship granting organizations, and provide the list to the Tax Commissioner each time it is updated. The Commissioner must post the list to the Department of Taxation's website. The Attorney General may adopt rules as necessary to determine eligibility for and administer the credit.

### **Home school expense credit**

(R.C. 5747.72, 5747.08, and 5747.98; Section 803.97)

The act authorizes a nonrefundable personal income tax credit for certain education expenses incurred by a taxpayer for the benefit of one or more home schooled dependents. The credit equals the full amount of these expenses, up to a maximum of \$250 per taxable year. Amounts paid for books, supplementary materials, supplies, computer software, applications, or subscriptions qualify for the credit so long as the item is used directly for instruction of the home schooled dependent. Expenses for computers, electronic devices, or accessories to computers or electronic devices are not credit-eligible. The credit is first available for taxable years beginning in 2021.

### **Nonchartered, nonpublic school tuition credit**

(R.C. 5747.75, 5747.08, and 5747.98; Section 803.180)

The act authorizes a nonrefundable personal income tax credit for a taxpayer with one or more dependents who attend a nonchartered, nonpublic school. The credit equals the amount of tuition paid during the year by the taxpayer and, if filing a joint return, the taxpayer's spouse for those dependents to attend such a school – up to \$500 for taxpayers whose household federal adjusted gross income (FAGI) is less than \$50,000, and up to \$1,000 for taxpayers whose household FAGI is between \$50,000 and \$100,000. Taxpayers whose household FAGI is \$100,000 or more do not qualify for the credit. The credit is available for nonchartered, nonpublic school tuition paid on or after January 1, 2021.

A nonchartered, nonpublic school is a private primary or secondary school that, because of truly held religious beliefs, chooses not to be chartered by the State Board of Education.

### **Unemployment compensation income tax withholding**

(R.C. 5747.065; Sections 610.02 and 610.03, amending Section 8 of S.B. 18 of the 134<sup>th</sup> General Assembly)

The act makes two changes to the law governing state income tax withheld from a taxpayer's unemployment compensation benefits. First, the act delays by one year the date by which the Department of Job and Family Services (JFS) must begin to accept state income tax withholding requests from unemployment compensation recipients. Under continuing law, individuals may request, at the time they apply for benefits, that JFS withhold federal income tax on their benefits. S.B. 18 of the 134<sup>th</sup> General Assembly modified the law to also allow

individuals to elect to have state income tax withheld from their unemployment benefits paid on or after January 1, 2022. The act delays the application of this provision by one year, allowing unemployment compensation recipients to elect to have state income tax withheld from their unemployment benefits paid on or after January 1, 2023.

Second, the act requires JFS to report and remit state income tax withholding on unemployment compensation benefits on a monthly basis. The Director of JFS must electronically file a return each month with the Tax Commissioner identifying the total amount of unemployment compensation paid and state income tax withheld during the preceding month for each taxpayer that elected to have state income tax withheld, and remit all such amounts electronically. Prior law required JFS to report and remit these amounts using the frequencies prescribed for employer withholding, which could be daily, every three days, monthly, or quarterly depending upon the overall amount of accumulated withholdings.

### **Business reporting requirement**

(R.C. 5747.08(L); Section 803.130)

The act removes a requirement that a taxpayer claiming the business income deduction indicate on their annual income tax return each business or professional activity from which that income is derived. Under prior law, these indications must be reported according to each activity's corresponding North American Industry Classification System (NAICS) code. This reporting requirement is no longer required for taxable years beginning on or after January 1, 2021.

### **Ohio opportunity zone investment tax credit limit**

(R.C. 122.84)

The act increases, from \$1 million to \$2 million, the limit on the amount of Ohio opportunity zone investment income tax credits that may be awarded to an individual during a fiscal biennium.

### **Opportunity zone credit background**

Federal law allows states to designate economically distressed areas that meet certain criteria as "opportunity zones."<sup>130</sup> Certain investments made to benefit the zone are eligible for preferential federal tax treatment. Specifically, when a taxpayer reinvests capital gains (i.e., income from the sale of stock or other asset) in an "opportunity zone fund" – an investment fund that holds at least 90% of its assets in property, stock, or ownership interests that benefit opportunity zones – the tax on those capital gains is deferred until the investment is sold or exchanged from the fund. Additional federal benefits are available if the investment is held in the fund for at least five years.<sup>131</sup>

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<sup>130</sup> 26 U.S.C. 1400Z-1. A map of opportunity zones designated in Ohio is available at [https://development.ohio.gov/bs/bs\\_censustracts.htm](https://development.ohio.gov/bs/bs_censustracts.htm).

<sup>131</sup> 26 U.S.C. 1400Z-2.

Continuing law authorizes an Ohio income tax credit for investments that entirely benefit Ohio-designated zones. To qualify for the credit, a taxpayer must invest in an opportunity zone fund that in turn holds 100% of its invested assets in opportunity zones in Ohio and apply to the Director of Development for a tax credit certificate.

### **Individual credit limit**

Under prior law, the total amount of such credits allowed to a particular recipient in any fiscal biennium was limited to \$1 million. The act increases this amount to \$2 million and specifies that the revised limit is on the amount that the Director of Development may allocate in a biennium rather than on the amount that might be claimed by the credit recipient in the biennium. The total amount of credits available for all taxpayers remains limited to \$50 million per biennium.

## **Municipal income tax**

### **Municipal income taxation during the COVID-19 pandemic**

(Sections 610.115 and 610.116, amending Section 29 of H.B. 197 of the 133<sup>rd</sup> General Assembly; Section 757.40)

The act reinstates, until December 31, 2021, and modifies a temporary rule that had governed the municipal income taxation of employees who were working at a temporary worksite – including their home – due to the COVID-19 pandemic.<sup>132</sup> The temporary rule expired on July 18, 2021.

Under the reinstated temporary rule, if an individual has to work at a temporary worksite because of the pandemic, that employee is still considered to be working at his or her regular place of employment, or principal place of work. This treatment affects which municipality the employer must withhold income taxes for, which municipality may tax the employee's pay, and whether and how much of the employer's own income is subject to a municipality's income tax.

### **Temporary rule extension**

The original terms of the temporary rule provided that it would expire 30 days after the end of the Governor's COVID-19 emergency declaration, which was rescinded on June 18, 2021.<sup>133</sup> Thus, the rule expired on July 18, 2021, but the act reinstates and extends the rule through December 31, 2021. However, the reinstated rule does not take effect until September 30, 2021 – the act's 90-day effective date. Consequently, it appears that between July 18, 2021 and September 29, 2021, the law will revert back to the law preexisting the temporary rule. Then, on September 30, 2021, the temporary rule will take effect again.

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<sup>132</sup> The temporary rule was enacted in Section 29 of Am. Sub. H.B. 197 of the 133<sup>rd</sup> General Assembly.

<sup>133</sup> Executive Order 2021-08D, Rescinding Executive Order 2020-01D and Ending the Declared State of Emergency, available at <https://coronavirus.ohio.gov/static/publicorders/executive-order-2021-08d.pdf>.

Since the emergency declaration has ended, the act removes the rule's previous requirement that the employer required the offsite work arrangement as a result of that declaration. The reinstated rule would apply to employees who are working at another location "in response to the COVID-19 pandemic," and without regard to whether or not the employer requires the employee to do so.

### **Effect of temporary rule on tax withholding and tax liability**

Under the temporary rule, considering an employee's income to be earned at their principal place of work potentially allows the employer to avoid withholding taxes for that employee in the municipality where the employee's temporary worksite is located and prevents the employer from becoming subject to that municipality's income tax. It also potentially prevents the employee from being taxed on that income by that municipality, unless the employee is a resident of that municipality. (Resident municipalities may tax individual taxpayers on their entire income, regardless of where the income is earned.<sup>134</sup>) The full effect of the expired provision is not clear, however, because courts have generally found that a municipality cannot tax a nonresident's income that is not earned in that municipality and that taxpayers are entitled to a refund of tax withheld on that income.<sup>135</sup> This prohibition arises from due process protections – the Ohio Supreme Court has held that a municipal corporation taxing nonresident income may violate constitutional due process if there is no "fiscal relation" between the tax and the protections, opportunities, and benefits provided by the taxing municipality to the nonresident (e.g., police and fire protection).<sup>136</sup>

The act states that, beginning on January 1, 2021, the temporary rule will apply only for the purposes of municipal income tax withholding and the situsing of an employer's net profits, and not for the purpose of determining the employee's actual tax liability. In effect, the act requires municipalities to approve a nonresident employee's request for a refund of taxes withheld on and after January 1, 2021, under the temporary rule, provided the income was earned while the employee was not actually working in that municipality for which taxes were withheld.

The act does not provide similar guidance for the treatment of taxes withheld in 2020. The issue of whether municipalities are required to approve requests for refunds of taxes withheld in 2020 under the temporary rule on the due process basis described above is already the subject of litigation.<sup>137</sup>

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<sup>134</sup> R.C. 718.01(A)(1)(b), not in the act.

<sup>135</sup> See, e.g., *Miley v. City of Cambridge*, No. 96 CA 44, 1997 Ohio App. LEXIS 3243 (5<sup>th</sup> Dist. June 25, 1997) (granting refund where city ordinance was held unconstitutional because it taxed nonresidents for work outside the city if the employer's principal place of work was in the city).

<sup>136</sup> *McConnell v. Columbus*, 172 Ohio St. 95, 99-100 (1961).

<sup>137</sup> See, e.g., *Buckeye Institute v. Kilgore*, Franklin County Court of Common Pleas Case No. 20-CV-4301 (2020).



If an employee requests a refund of any taxes withheld under either the expired or reinstated temporary rule, the act also prohibits a municipal tax administrator from requiring the employer to provide any documentation to support the refund claim, other than a statement verifying the number of days the employee worked at the employee's principal place of work and that the employer did not refund any withheld taxes directly to the employee.

If an employee does not request a refund of taxes withheld after January 1, 2021, the act specifies that the municipality in which the employee resides must treat the taxes withheld to the principal place of work municipality as validly paid. Consequently, the employee will owe tax to the municipality of residence only if that municipality does not offer a 100% credit for taxes paid to another municipality or has a higher tax rate than the principal place of work municipality.

### **Employer liability**

The act also provides that, if an employer withheld municipal income tax to an employee's principal place of work between March 9, 2020 (when the temporary rule took effect), and December 31, 2021, a tax administrator may not assess taxes, penalties, or interest against that employer for the failure to withhold those taxes to the municipality in which the employee actually worked or for the failure to situs the employee's wages to that municipality for purposes of the employer's net profit tax liability. This "safe harbor" applies regardless of whether the employee worked in the other municipality because of the COVID-19 pandemic or by order of their employer and whether the temporary withholding rule was in effect or not.

Under continuing law, a tax administrator may assess taxes, penalties, and interest against an employer that improperly withholds tax from an employee's income or that improperly pays its municipal net profits tax.<sup>138</sup>

### **Preexisting law governing transitory employees**

Under continuing law, a nonresident employee may work in a municipality for up to 20 days per year without the employer becoming subject to that municipality's tax withholding requirements and the employee becoming subject to that municipality's income tax. And, if an employee does not exceed the 20-day threshold, that employee's pay is not counted toward the business's payroll factor, one of three factors – along with property and sales – that determines whether, and the extent to which, an employer's own income is subject to the municipality's tax on net profits.<sup>139</sup>

### **JEDD notice and procedures**

(R.C. 715.72)

The act makes several changes to one of the three statutory procedures for creating a joint economic development district (JEDD). The changes apply to only JEDDs created under the

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<sup>138</sup> R.C. 718.27, not in the act.

<sup>139</sup> R.C. 718.01(C)(16) and (17), 718.011, 718.02, and 718.82, not in the act.



general procedure available to subdivisions throughout the state. The act does not affect the two restricted procedures available to subdivisions located in charter counties, subdivisions that are part of or contiguous to certain transportation improvement districts, and subdivisions that create (or that have previously created) a JEDD composed solely of municipal territory that includes an airport.<sup>140</sup>

JEDDs are territorial districts created by a contract between municipal corporations, townships, and, under certain circumstances, counties. A JEDD is governed by board of directors which may impose an income tax within the district to promote economic development or redevelopment, create or preserve jobs, and improve the economic welfare of the district. Revenue from the tax may be used to enhance infrastructure in the area surrounding the district, provide new and additional services and facilities to the district, and supplement the revenue of each subdivision.

The act makes three changes to the general procedure for creating a JEDD. First, it allows the owner of property that is part of the territory of a proposed JEDD to opt out of the district if all or part the property (a) is located within  $\frac{1}{2}$  mile of a municipal corporation that is not part of the JEDD (referred to by the act as a “noncontracting municipal corporation”), or (b) receives water or sewer service under certain agreements from a noncontracting municipal corporation.

Second, the act requires that notice of a proposed JEDD be sent to noncontracting municipal corporations that are (a) located within  $\frac{1}{2}$  mile of the proposed JEDD, or (b) obligated to provide water or sewer services to all or part of the proposed JEDD under certain agreements.

Finally, if the territory of the proposed JEDD includes property to which any non-JEDD party would provide water or sewer services, the act requires that the JEDD contract include certain information relating to the district’s public utility infrastructure, including a professional estimate of the cost of providing utility services to the JEDD, an analysis of funding sources, and evidence or estimates indicating that at least part of the necessary utility infrastructure will be constructed within five years of creating the JEDD.

## **Sales and use taxes**

### **Exempt employment services and employment placement services**

(R.C. 5739.01(B)(3)(k) and (l), (JJ), and (KK), 5739.02(B)(11) and (41), and 5739.03; Section 803.93)

The act exempts employment services and employment placement services from state and local sales and use tax beginning October 1, 2021. Under continuing law, the sale or use of

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<sup>140</sup> See R.C. 715.70 and 715.71, not in the act.

services is generally not taxable unless expressly made subject to the tax. Employment services and employment placement services have been expressly subject to the tax since 1993.<sup>141</sup>

Under prior law, taxable “employment services” were transactions in which a service-provider furnished personnel to perform work under the supervision or control of the purchaser. The personnel could have been assigned to a purchaser for a short period of time or on a long-term basis. The personnel were paid by the service-provider or a third party that supplies the personnel to the service-provider. Transactions between members of an affiliated group, medical and health care services, contracting and subcontracting services, and the permanent assignment of an employee over a contract of at least one year were not taxable “employment services.” Furthermore, if employment services were supplied by a third party to a service-provider, and then by the service-provider to a purchaser, only the transaction between the service-provider and the purchaser was taxable. The hallmark of employment services were personnel that work under the direction or control of a purchaser but were employed and paid by the service-provider (or a third party that provided the personnel to the service-provider).

Prior law defined taxable “employment placement services” as a transaction in which a service-provider located employment for a job-seeker or located an employee to fill an available position.

### **Investment bullion and coin exemption**

(R.C. 5739.02(B)(57); Section 803.93)

The act reinstates the sales and use tax exemption for the sale of investment metal bullion and coins. The exemption was repealed in 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.<sup>142</sup>) An investment coin is any coin composed primarily of gold, silver, platinum, or palladium.

The reinstated exemption applies to the sale or use of investment bullion and coins beginning on or after October 1, 2021.

### **County sales and use taxes for jail operations**

(R.C. 5739.021)

The act 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.

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<sup>141</sup> Ohio Department of Taxation, “[ST 1993-08 – Employment Service](#),” revised February 2007.

<sup>142</sup> 26 U.S.C. 408(m)(3).

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 act 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.

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, 5741.03, and 5741.17; R.C. 5741.032, repealed; Section 610.30, repealing Section 757.50 of H.B. 59 of the 130<sup>th</sup> General Assembly)

The act 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 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>143</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 act were never operable.

### **Lodging taxes**

#### **Levy by a convention facilities authority (CFA)**

(R.C. 351.021)

Continuing law, changed in part by the act, 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

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<sup>143</sup> See, *South Dakota v. Wayfair, Inc.*, 585 U.S. \_\_\_, 138 S. Ct. 2080 (2018).

or before November 1, 2009. The Clark County CFA adopted the full 3% lodging tax within that period.

The act 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.

### **Levy by a board of county commissioners**

(R.C. 5739.09)

The act authorizes the board of county commissioners of a county with a population, according to the most recent decennial census, greater than 300,000 and less than 350,000, and that levies a 3% lodging tax (Lorain County) to levy an additional lodging tax at a rate not exceeding 3%, provided the tax is approved by county voters. Revenue derived from the tax not used to pay the costs of administering the tax generally must be pledged to a CFA established by the board of county commissioners and used to pay the cost of constructing, maintaining, operating, or promoting a convention facility.

## **Commercial activity tax**

### **Minimum commercial activity tax computation**

(R.C. 5751.03; Section 812.20)

The act 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 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 prior law, in the year for which the tax is being calculated, as follows:

<b>CAT minimum tax</b>	
<b>If taxpayer's total taxable gross receipts are . . .</b>	<b>The CAT minimum tax is . . .</b>
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

## **Exemption for workers' compensation dividends**

(R.C. 5751.01(F)(2)(mm); Section 803.170)

The act permanently extends a CAT exemption for dividends paid to employers by the Bureau of Workers' Compensation (BWC). Dividends paid to employers in 2020 and 2021 are exempt from the CAT under continuing law, so the act exempts all dividend payments received by employers on and after January 1, 2022.<sup>144</sup>

Continuing law requires BWC to return excess workers' compensation premiums to employers if the board of directors determines that the surplus of earned premiums over losses is larger than needed to maintain solvency. Such payments are generally referred to as "dividends" and are, in the absence of an exemption, considered to be taxable gross receipts for purposes of the CAT.

## **Administrative expense earmark (VETOED)**

(R.C. 5751.02)

The Governor vetoed a provision that would have reduced the percentage of commercial activity tax (CAT) revenue to be credited to the Revenue Enhancement Fund from 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."

## **Kilowatt-hour tax**

### **Exemptions**

(R.C. 5727.80 and 5727.81; Section 803.100)

The act 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.

Prior law exempted end users that generate their own electricity and use it on the same site where the electricity was generated. The act 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;

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<sup>144</sup> Section 6 of S.B. 18 of the 134<sup>th</sup> General Assembly.

- 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 act 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 act 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 act 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 act modifies fees paid to county auditors and treasurers for the administration of the estate tax. Under prior law, such fees were tiered based on countywide collections. The act instead provides for a flat fee equal to 2% of the net tax collected.

The act also fixes additional compensation paid to county auditors to enforce real property, manufactured home, and estate tax law.<sup>145</sup> Under prior law, auditors were compensated based on a sliding per capita scale that varied according to the county's population based on the most recent census, up to \$3,000 annually. The act prohibits the fee from varying with future censuses by fixing the compensation according to the county's 2010 census population.

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<sup>145</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](#).

## **Property tax**

### **Emergency and police services combined levy**

(R.C. 5705.19; Section 803.90)

The act 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 services. Under prior law, such a combined levy was limited to a five-year term, but a levy for either fire and EMS or police services, but not both, could 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 act extends this authority to terminate or decrease a levy to include an emergency and police services combined levy.

The act’s modifications to combined emergency and police services levies apply to property tax questions considered at any election held on or after January 8, 2022 – the 100<sup>th</sup> day after the act’s 90-day effective date.

### **Developmental disability housing exemption**

(R.C. 5709.121(E); Section 803.220)

The act 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 prior law, the organization was also required to receive at least part of its funding from a county board of developmental disabilities (county BDD).

The act expands the county BDD funding requirement to provide that property may qualify for exemption if either (a) the organization itself receives such funding or (b) the organization contracts with an entity that receives such funding to provide services to the individuals who use the property as housing. If this latter requirement is met, however, the exemption will only apply to property that is leased to individuals who are eligible for Medicaid-funded “home and community-based care” services administered by the Department of Developmental Disabilities and to common areas used by all residents. Home and community-based care 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.

The modification applies to tax year 2021 and thereafter.



## **Renewable energy facility exemption extension**

(R.C. 5727.75)

The act extends, by two years, the deadline to apply for continuing 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. Under prior law, the owner or lessee of the facility had to apply for the exemption and begin construction on the facility by January 1, 2023. The act extends this deadline to January 1, 2025.

## **Exemption for nonprofit arts institution property**

### **Parking garage property tax exemption**

(R.C. 5709.121(G))

The act temporarily extends the charitable use property tax exemption to any parking garage owned and operated by a tax-exempt nonprofit institution whose primary purpose is to host or present performances in music, dramatics, or the arts (“nonprofit arts institution”), or a limited liability company whose sole member is such an institution, but only if that owner does not currently owe any delinquent property tax or related interest or penalties.

Under continuing law, real property used exclusively for charitable purposes is exempt from taxation, regardless of whether the property is owned by a charitable or noncharitable institution.<sup>146</sup> In limited circumstances, the property’s ownership by a charitable institution does qualify it for the charitable use exemption, provided the property is used for a particular delineated purpose, including to present performances in music, dramatics, the arts, and related fields to promote public interest or education in those fields or used without a view to profit.<sup>147</sup> In any case, charitable use of revenue generated from the property is not relevant in determining whether the property qualifies for the exemption.<sup>148</sup>

The act’s temporary extension of the charitable use exemption applies to tax years 2020 to 2024, payable in 2021 to 2025.

### **Special assessments exemption**

(R.C. 727.031, 1710.06, 6101.48, and 6101.53)

The act temporarily exempts any real property owned and operated by a nonprofit arts institution, or a limited liability company whose sole member is such an institution, from special

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<sup>146</sup> R.C. 5709.12(B), not in the act. See *True Christianity Evangelism v. Zaino*, 91 Ohio St.3d 117, 118 (2001).

<sup>147</sup> R.C. 5709.121(A).

<sup>148</sup> *Hubbard Press v. Tracy*, 67 Ohio St.3d 564, 566 (1993).



assessments levied by a municipality, special improvement district, or conservancy district. The exemption only applies to property located in a county with a population between 500,000 and 540,000 (i.e., Montgomery County), and if the owner does not currently owe any delinquent special assessments or related interest or penalties. The special assessment exemption applies regardless of whether the property qualifies for a property tax exemption.

The special assessments exemption applies to tax years 2020 to 2024, payable in 2021 to 2025.

Special assessments are charges levied by a local government against a property for services provided by that government to that property, such as street lighting or flood control. In general, they may be imposed against most types of property, including many types of property that are otherwise exempt from property tax.

### **Tax year 2020 refunds**

(Section 803.30)

The act allows the owner and operator of a parking garage that qualifies for the act's extended charitable use exemption to file a special exemption application for tax year 2020 to allow the parking garage to qualify for the tax exemption for that tax year and to receive a refund of any taxes paid. The owner and operator must file an exemption application with the Tax Commissioner no later than October 30, 2021 – 30 days after the act's 90-day effective date.

Similarly, the county auditor is required to refund special assessments paid for tax year 2020 by an owner and operator of any property that qualifies for the act's special assessments exemption, except that the owner is not required to submit an application to receive that refund.

### **Fraternal organization property tax exemption**

(R.C. 5709.17; Section 803.150)

The act expands an existing property tax exemption for fraternal organizations to include the property of such organizations with national governing bodies.

Continuing law authorizes a property tax exemption for fraternal organizations that have operated in Ohio for at least 85 years, that are exempt from federal income taxation, and that operate under the lodge, council, or grange system. To qualify for exemption, the property must be used primarily for meetings, administration, or providing not-for-profit educational or health services. The property cannot generate more than \$36,000 in rental income per year.

Under prior law, the exemption was available only to organizations with a state governing body. The act expands the exemption to include organizations with a national governing body.

The expansion of the exemption applies to tax year 2021 and every tax year thereafter.

## **Improper homestead exemption recovery**

(R.C. 323.153 and 4503.066)

The act 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 act 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.

## **Notice requirement for tax-exempt property**

(R.C. 5713.083; Section 803.190)

The act requires an owner of tax-exempt property to notify the county auditor if the property ceases to qualify for the tax exemption, so that property tax is correctly assessed and charged against that property. An owner required to make such notice must do so on or before December 31 of the tax year the property ceases to qualify for the tax exemption and on a form prescribed by the Tax Commissioner. Upon receipt of the notice, the auditor must return the property to the tax list without first verifying whether the property ceases to qualify for the tax exemption as stipulated by the owner.

Under continuing law, a property owner may apply to the Tax Commissioner or, in a few instances, to the county auditor for a property tax exemption. The application must be filed on or before the last day of the tax year for which the exemption is sought. The Commissioner notifies the county auditor of any approved exemption applications so that the county auditor may remove the exempted property from the tax list. A county auditor may return an exempted property to the tax list if the auditor finds that the property no longer qualifies for an exemption.<sup>149</sup>

### **Recoupment charge**

If the county auditor discovers that a property owner required to make such a notice failed to do so, the act requires the auditor to impose a charge on that property. The charge equals the sum of the tax savings realized due to the improperly received tax exemption for each year during the prior five years the auditor determines that the property did not qualify for the exemption and was owned by that same owner.

The auditor must notify the owner, by ordinary mail, of the charge, the owner's right to appeal the charge, and how the owner may do so. The owner may appeal the charge by filing an exemption application with the Tax Commissioner. If the Commissioner determines that the owner's property was entitled to an exemption for a tax year in which the auditor assessed the charge, the Commissioner may order the charge to be removed and may refund any taxes, penalties, and interest paid by the owner for that tax year. The charge is assessed as delinquent property tax, which, if collected, is distributed proportionally to each local government that assesses tax on that property.

The notice requirement and recoupment charge apply to tax year 2022 and every tax year thereafter.

### **Abatement for charitable use property**

(Section 757.50)

The act establishes a temporary procedure by which a 501(c)(3) tax-exempt charitable organization that acquired property from a school district may apply for a tax exemption and the abatement of more than three years of unpaid property taxes, penalties, and interest due on the property, provided the property qualifies for continuing law's charitable use exemption, which exempts property used exclusively for charitable purposes or, in some cases, owned by a nonprofit institution.

The application for exemption and abatement may be filed with the Tax Commissioner within 12 months of September 30, 2021 – the act's 90-day effective date, and list the name of the county in which the property is located; the property's parcel number or legal description; its assessed value; the amount in dollars of the unpaid taxes, penalties, and interest; and any other information required by the Commissioner.

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<sup>149</sup> R.C. 5713.08 and 5715.27, not in the act.

Under continuing law, property may not obtain a tax exemption if more than three years' worth of taxes remain unpaid on the property, even if it qualifies for the exemption.<sup>150</sup>

## **Tax increment financing and downtown redevelopment districts**

(R.C. 5709.40 and 5709.41; Section 803.100)

### **TIF background**

Continuing law allows municipalities, townships, and counties to create a tax increment financing (TIF) arrangement to finance public infrastructure improvements. Through a TIF, the subdivision grants a real property tax exemption with respect to the incremental increase in the assessed value of designated parcels that are part of a development project. The owners of the parcels make payments in lieu of taxes to the subdivision equal to the amount of taxes that would otherwise have been paid with respect to the exempted improvements ("service payments"). TIFs thereby create a flow of revenue back to the subdivision that created the TIF, which generally uses those service payments to pay the public infrastructure costs necessitated by the development project.

### **DRD background**

Continuing law also allows municipal corporations to designate Downtown Redevelopment Districts (DRDs) for the purposes of rehabilitating historic buildings, creating jobs, and encouraging economic development in commercial and mixed-use commercial and residential areas. The rules and procedures associated with DRDs are similar to those that apply, under continuing law, to TIF districts. A municipal corporation that establishes a DRD is authorized to exempt a percentage of the increased value of parcels located within the DRD from property taxation. The owners of the parcels make service payments, which are used for economic development purposes.<sup>151</sup>

### **The act's modifications**

The act makes two modifications to the law governing TIFs and DRDs – one related to the use of service payment revenues and one related to the commencement of certain TIF exemptions.

First, the act allows subdivisions to use TIF or DRD service payments for the construction or renovation of off-street parking facilities, even if all or a portion of the parking spaces are reserved for specific economic development uses. Continuing law allows TIF and DRD service payments to be used to finance various public infrastructure improvements, including roads and water and sewer lines.

Under continuing law, municipal corporations may establish a special type of TIF district in which the municipal corporation, engaging in urban redevelopment, acquires land, leases or conveys it to another person, and exempts from taxation the improvements on the land. The

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<sup>150</sup> See R.C. 5713.081, not in the act.

<sup>151</sup> R.C. 5709.45, not in the act.

act allows municipal corporations that establish these TIFs to designate the beginning tax year of the TIF exemption, rather than the exemption automatically beginning on the effective date of the designating ordinance, as follows:

- In the tax year specified in the designating ordinance, as long as that year begins after the effective date of the ordinance;
- If no tax year is specified in the ordinance or the tax year specified begins before that effective date, in the tax year that begins after that effective date in which an exempted improvement first appears on the tax list;
- In the tax year in which the value of an improvement exceeds a specified amount or in which the construction of one or more improvements is completed, as long as that tax year begins after that effective date;
- In different tax years on a parcel-by-parcel basis, with a separate exemption term specified for each parcel.

This discretion is already allowed under continuing law to subdivisions creating DRDs and other types of TIFs.

The act's modifications governing TIFs and DRDs apply to any proceedings pending on the act's 90-day effective date (September 30, 2021) and to proceedings commenced or ordinances adopted after that date.

### **Federally Subsidized Housing Study Committee**

(Section 757.70)

The act creates the Federally Subsidized Housing Study Committee, which must author a report making recommendations about the property tax valuation and valuation process of federally subsidized residential rental property. The Committee is required to submit the report to the President of the Senate, the Speaker of the House, and the Minority Leaders of the Senate and the House not later than July 1, 2022, at which time the Committee will dissolve.

The Committee is to be comprised of the following members, who will serve at the pleasure of the appointing authority and without compensation:

- Three members of the Senate, two members of the majority party and one member of the minority party, appointed by the President;
- Three members of the House, two members of the majority party and one member of the minority party, appointed by the Speaker;
- One member from each of the following, appointed by the Governor:
  - The Ohio Bankers League;
  - The Ohio Housing Council;
  - The Ohio Homebuilders Association;
  - Ohio REALTORS;

- The Ohio Insurance Institute;
- The County Auditors Association of Ohio;
- The Ohio School Boards Association;
- The County Commissioners Association of Ohio;
- The International Association of Assessing Officers, who must be an Ohio resident; and
- The Ohio Society of CPAs.

### **Valuation of subsidized residential rental property**

The Ohio Constitution requires, with a few exceptions, real property to be “taxed by uniform rule according to value.”<sup>152</sup> To comply with this constitutional requirement, county auditors are generally required to appraise real property according to the value at which the unencumbered property would be sold between a willing buyer and a willing seller, often referred to as “fair market value.”<sup>153</sup>

Special considerations are required in valuing subsidized residential rental property, generally related to how federal subsidies and rental and usage restrictions should be figured into the properties’ taxable value. These considerations have been developed in a series of court cases in which tax appraisals of such property were challenged.<sup>154</sup> The Committee would presumably study these considerations.

### **TPP supplement payments**

#### **Payments for subdivisions with a nuclear power plant**

(R.C. 5709.92 and 5709.93)

The act requires that, for FY 2022 through FY 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.

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<sup>152</sup> Ohio Constitution, Article XII, Section 2.

<sup>153</sup> R.C. 5713.03 and 5715.01, not in the act.

<sup>154</sup> See *Columbus City Schs. Bd. of Educ. v. Franklin Co. Bd. of Revision*, 151 Ohio St.3d 12, 15-16 (2017) for examples of such cases.

For joint fire districts, any payment required by the act 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>155</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 act 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;
- 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 act 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>156</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

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<sup>155</sup> R.C. 5747.50(E).

<sup>156</sup> R.C. 5705.14 and 5705.15, not in the act.



Commissioner finds that the transfer is justified or necessary and that no injury would result from the transfer.

### **Disclosing taxpayer information to the State Racing Commission**

(R.C. 5703.21(C)(21))

The act 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.

### **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 act 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 verify 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 remedied. Beginning February 1, 2022, the act 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 act 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 act, 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 act requires that the shortfall amount be distributed in the following month.

Previously, 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 was insufficient to make the required monthly disbursements, each county's share was proportionately reduced for the month. Shortfalls in monthly county disbursements due to insufficient funds from the previous month were 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>157</sup>

### **Tax Expenditure Review Committee**

(R.C. 5703.95, repealed, and 107.03(D)(7))

The act sunsets the Tax Expenditure Review Committee. The Committee, consisting of six legislators and a representative of the Tax Commissioner, was created in 2017 to review tax expenditures – tax incentives that exempt all or part of something from a tax levied by the

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<sup>157</sup> R.C. 128.021, 128.03, 128.42, and 128.54, not in the act.

state, such as a deduction, exemption, or credit. It was required to make recommendations about whether each should be maintained, repealed, or modified. It was required to study every tax expenditure once every eight years and publish biennial reports of its studies for inclusion with the Governor's budget.

The act also repeals law, enacted at the same time as the Committee, recommending that any bill proposing to enact or modify a tax expenditure include a statement of the bill's intent.

### **Wishes for sick children eligibility change**

(R.C. 3701.602)

The act reduces, from \$1 million to \$250,000, the amount a nonprofit corporation must spend granting wishes of minors with life-threatening illnesses to be eligible to receive funds from the Wishes for Sick Children Income Tax Contribution Fund.

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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.

### Intersection traffic study

- Requires the Director to conduct a traffic study for the intersection of U.S. Route 36 and State Route 721.

### Traffic safety study

(Section 755.20)

The act 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.

### Intersection traffic study

(Section 755.30)

The act requires the Director, in consultation with the Miami County and Darke County county engineers, to conduct a traffic study for the intersection of U.S. Route 36 and State Route 721. The study must examine how the intersection can be improved to increase the safety and convenience of the traveling public through that intersection. In particular, the study must determine whether installing a traffic control signal (e.g., a traffic light) would result in increased safety and convenience. The study must be completed by August 1, 2022.

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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, 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.

### **Treasurer's investment in negotiable certificates of deposit**

- Authorizes the Treasurer of State to invest or execute transactions for interim funds in negotiable certificates of deposit.
- Limits investment in negotiable certificates of deposit to not more than 25% of the state's total average portfolio.
- Expands the limit on investment in debt interests of a single issuer, such that when the amount of such an investment, when added to the amount invested in commercial paper (continuing law) and negotiable certificates of deposit (added by the act), it may not exceed in the aggregate 5% of the state's portfolio.

### **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

The act 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 OBM's website. Additionally, each state entity must display a prominent internet link to the Database on its website. The act codifies the 2020 merger of the Ohiocheckbook.com, which was launched by the Treasurer in 2014, and Ohio's Interactive Budget, which was launched by OBM in 2016, into the Ohio Checkbook.<sup>158</sup> The Ohio Checkbook can be accessed at <https://checkbook.ohio.gov/>.

The act 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 act's requirements regarding the database. State entities must do this by using existing resources.

### Participation

The act 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 act and required to participate in the database because they are excluded from the definition of "school districts."

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<sup>158</sup> Cleveland.com, *Ohio Merges Dueling State Websites That Detail Government Spending* (July 1, 2020), available [here](#).

Under the act, 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 act'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, beginning with FY 2023. It 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 act does not prohibit the Treasurer from including any information in the database not required by the act 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 act’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 act’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 act 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.

### **Treasurer’s investment in negotiable certificates of deposit**

(R.C. 135.143 and conforming changes in R.C. 135.45 and 3770.06)

The Ohio Uniform Depository Act, R.C. Chapter 135, governs the investment of public funds, as well as the deposit of those funds. Under the law, the Treasurer of State is authorized to invest the interim funds of the state in specified classifications of obligations. The act expands this list, authorizing the Treasurer of State to invest or execute transactions for interim funds of the state in negotiable certificates of deposit (NCDs). Interim funds of the state are public funds in the state treasury after the award of inactive deposits, that are not needed for immediate use, but found by the Treasurer of State to be needed before the end of the designation period. An NCD is a certificate of deposit with a minimum face value of \$100,000 (although typically \$1 million or more). NCDs are guaranteed by a depository institution and can usually be sold in a highly liquid secondary market, but they cannot be cashed in before maturity.<sup>159</sup>

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<sup>159</sup> Investopedia, Negotiable Certificate of Deposit (NCD), available [here](#).

The act limits investment in NCDs to those (1) denominated in U.S. dollars, (2) issued by a nationally or state-chartered bank, a savings association or a federal association, a state or federal credit union, or a federally licensed or state-licensed branch of a foreign bank, and that are (3) rated in the two highest categories by two nationally recognized standard rating services. The act specifies that the Treasurer cannot invest more than 25% of the state's total average portfolio in NCDs. In terms of investments in a single issuer, the act expands an existing limit, such that when added to the amount invested in commercial paper (continuing law) and NCDs (added by the act), the investment may not exceed in the aggregate 5% of the state's portfolio. The act specifies that the Treasurer can invest interim funds in NCDs that meet the qualifications described above, and are not limited to institutions applying for interim money as an Ohio public depository. Also, under the act the NCD investments are not subject to certain pledging (security) requirements under the Uniform Depository Act.

### **State Board of Deposit secretary**

(R.C. 135.02)

The act 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 prior law, the Cashier of the State Treasury served 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>160</sup>

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<sup>160</sup> Ohio Treasurer of State, *Board of Deposit*, available [here](#).



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## LOCAL GOVERNMENT

### City health districts

- Generally 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.
- Exempts a city with a population less than 50,000 whose city health district is accredited or in the process of applying for accreditation.
- Requires the Director of Health 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.

### Auxiliary containers

- Makes permanent all of the following provisions enacted in H.B. 242 of the 133<sup>rd</sup> General Assembly, which otherwise would have expired on January 15, 2022:
  - Prohibits local governments from imposing a tax, fee, assessment, or other charge on auxiliary containers (for example, a plastic or paper bag), the sale, use, or consumption of auxiliary containers, or on the basis of receipts received from the sale of auxiliary containers;
  - Authorizes a person to use an auxiliary container for commerce purposes or otherwise;
  - Clarifies that continuing law prohibiting the improper deposit of litter applies to auxiliary containers under the state anti-littering law.

### Tourism development districts (TDDs)

- Clarifies that a municipality or township may enlarge the territory of an existing tourism development district (TDD) after December 31, 2020 – the deadline under continuing law for creating a new TDD.

### Local workforce development board meetings

- Allows local workforce development boards to hold meetings by interactive video conference or teleconference (states a preference for interactive video conference).
- Requires a board that wishes to hold meetings by video conference or teleconference to adopt rules that require the meetings to be conducted in a certain manner and establish

a minimum number of members who must be physically present at the primary meeting location.

### **Municipal fiscal officer continuing education**

- Requires an *appointed* municipal fiscal officer to complete 18 hours of continuing education during the first term of office and 12 hours in each subsequent term of office.

### **Unpaid municipal trash charges**

- Allows a municipal corporation to place as a lien on property unpaid garbage/trash collection charges when the unpaid amount is equal to or greater than the annual charge for the services.

### **Township fiscal officer assistant compensation**

- Allows township fiscal officers to set the compensation of their hired assistants without prior approval from the board of township trustees.

### **New community authorities**

- Specifies that a person controlling land pursuant to certain 99-year renewable leases qualifies as a developer eligible to form a new community authority.

### **Medical marijuana businesses**

- Prohibits local governments from imposing a tax or fee on medical marijuana businesses that is based on the business's gross receipts or is the same as or similar to a state tax or fee.

### **Agreements with animal shelters**

- Expands the facilities with which a board of county commissioners may enter into an agreement to operate as a dog pound on behalf of the county to include *any* animal shelter for dogs.

### **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.
- Specifies that an existing qualified nonprofit corporation may create a special improvement district to implement a shoreline improvement project even if the corporation (1) does not have an established police department and (2) is not organized for purposes that include the acquisition of real property.

### **Discriminatory restrictive covenants – void**

- Declares void discriminatory restrictive covenants in deeds limiting the transfer or lease of real property to individuals against whom discrimination is prohibited under the Ohio Civil Rights Law.

- Allows attorneys preparing new deeds to omit discriminatory restrictive covenants that are contained in prior deeds.
- Provides that omission of a discriminatory restrictive covenant from a new deed does not affect that validity of the deed and prohibits county recorders from refusing to record a deed due to such omission.

### **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 upon request.

### **Park district eminent domain for recreational trails**

- Until July 1, 2026, prohibits park districts in counties with 220,000 to 240,000 residents from using eminent domain to appropriate property for recreational trails.

### **Soil and water conservation districts: acceptance of credit cards**

- Establishes procedures by which a soil and water conservation district may accept credit cards for payment of certain goods and services.

### **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 in the acquisition, establishment, or operation, to cover costs of those benefits.
- Specifies if a business entity described above operates or provides services that is engaging in the business of insurance or is subject to Ohio insurance laws, it must comply with and is not exempt from laws that apply to self-insurance programs for health care benefits provided by political subdivisions and county boards.

### **Transportation improvement district board**

- Reauthorizes the President of the Senate and the Speaker of the House to appoint a nonvoting member to serve on a transportation improvement district board of trustees.

### **City health districts**

(R.C. 3709.012, 3709.052, 3709.06, and 3709.07)

The act 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 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 act 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 act, 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 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.

### **Exception for accredited health districts**

The act exempts from the study and merger requirements a city with a population less than 50,000 whose city health district meets either of the following conditions:

1. The district is accredited by an accreditation body approved by the Director of Health and maintains its accreditation;
2. The district is in the process of applying for accreditation on September 30, 2021 (the act's 90-day effective date), receives accreditation not later than December 31, 2025, and maintains its accreditation.

### **Auxiliary containers**

(R.C. 301.30, 504.04, 715.013, 3736.01, and 3736.021)

The act modifies the law governing "auxiliary containers," which are single-use or reusable packaging such as bags, cans, bottles, or other containers. These containers may be made of materials such as plastic, glass, metal, or cardboard and are designed for transporting food, beverages, or other merchandise from or at a restaurant, grocery store, or other retail establishment. In particular, the act permanently does all of the following, which are provisions enacted in [H.B. 242 of the 133<sup>rd</sup> General Assembly](#) that otherwise would have expired on January 15, 2022:

1. Prohibits local governments with some home rule taxing or fee imposing authority – municipal corporations, charter counties, i.e., Cuyahoga and Summit counties, and limited home rule townships – from imposing a tax, fee, assessment, or other charge on auxiliary containers, the sale, use, or consumption of the containers, or on the basis of receipts received from the sale of the containers, except for a general county sales and use tax. Municipal corporations and charter counties are endowed with home rule authority pursuant to the Ohio

Constitution, while a limited home rule township has statutorily granted home rule authority that nevertheless prohibits the township from levying taxes not authorized under state law.<sup>161</sup> (A township with a township administrator, a population of at least 2,500 in its unincorporated territory, and a budget of at least \$3.5 million may elect to form a limited home rule township.)

2. Authorizes a person to use an auxiliary container for any purpose. (It is unclear how this authorization impacts a ban on auxiliary containers that has been or will be enacted by a municipal corporation or charter county under its home rule authority).<sup>162</sup> The act specifies that, despite this authorization, nothing in the act may be construed to prohibit or limit the authority of a county, municipal corporation, or solid waste management district to implement a voluntary recycling program; and

3. Clarifies that the state anti-littering law prohibiting the improper deposit of litter applies to auxiliary containers. Thus, the act prohibits a person from improperly depositing an auxiliary container on public property, private property not owned by the person, or in or on waters of the state. A violation is a third degree misdemeanor and a sentencing court may require the violator to remove litter from property or the waters of the state.<sup>163</sup>

## **Tourism development districts (TDDs)**

(R.C. 503.56 and 715.014; Section 803.120)

Under continuing law, a township or municipal corporation located in a county with a population between 375,000 and 400,000 that levied a county sales tax rate of 0.50% or less in September 2015 (i.e., Stark County) may designate a special district within which the municipal corporation or township may raise revenue to fund tourism promotion and development by levying sales taxes, business taxes, lodging taxes, admissions taxes, and certain fees on activities occurring in the district. Such a district is referred to as a “tourism development district” or a TDD.

Continuing law prohibits the creation of a new TDD after December 31, 2020, but was ambiguous as to whether a municipality or township may enlarge the territory of an existing TDD after that date. The act clarifies that enlarging the territory of an existing TDD after that date is permissible, and specifies that the change is intended to clarify the law as it existed before the act’s clarification.

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<sup>161</sup> Ohio Constitution, Article XIII, Section 6 and Article XVIII, Section 13; R.C. Chapter 504.

<sup>162</sup> Ohio Constitution, Article X, Section 3 and Article XVIII, Section 3, and see *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963.

<sup>163</sup> See [LSC’s Final Analysis of H.B. 242 of the 133<sup>rd</sup> General Assembly](#) for a detailed discussion of the home rule implications of the prohibition and authorization extended by the act.

## Local workforce development board meetings

(R.C. 6301.06)

The act creates an exception to the Open Meetings Law by allowing a local workforce development board to hold a meeting by interactive video conference or teleconference. A board member who attends a meeting by interactive video conference or teleconference is considered present in person at the meeting, may vote, and is counted for purposes of determining whether a quorum is present if the board holds a meeting in the following manner:

1. The board establishes a primary meeting location that is open and accessible to the public;
2. Meeting-related materials that are available before the meeting are sent via email, facsimile, hand-delivery, or U.S. postal service to each board member;
3. In the case of an interactive video conference, the board causes a clear video and audio connection to be established that enables all meeting participants at the primary meeting location to see and hear each board member;
4. In the case of a teleconference, the board causes a clear audio connection to be established that enables all meeting participants at the primary meeting location to hear each board member;
5. All board members have the capability to receive meeting-related materials that are distributed during the board meeting;
6. A roll call voice vote is recorded for each vote taken; and
7. The board meeting minutes identify which board members remotely attended the meeting by interactive video conference or teleconference.

If the board holds a meeting by interactive video conference or teleconference, use of an interactive video conference is preferred, but nothing prohibits the board from conducting its meetings by teleconference or by a combination of interactive video conference and teleconference at the same meeting.

A board must adopt rules that are necessary to implement the board's authority to hold a meeting by interactive video conference or teleconference, including rules that do all of the following:

1. Authorize board members to remotely attend a board meeting by interactive video conference or teleconference, or by a combination of them, in lieu of attending the meeting in person;
2. Establish a minimum number of board members that must be physically present in person at the primary meeting location if the board conducts a meeting by interactive video conference or teleconference;
3. Require that not more than one board member remotely attending a board meeting by teleconference is permitted to be physically present at the same remote location;

4. Establish geographic restrictions for participation in meetings by interactive video conference and by teleconference;
5. Establish a policy for distributing and circulating meeting-related materials to board members, the public, and the media in advance of or during a meeting at which board members are permitted to attend by interactive video conference or teleconference; and
6. Establish a method for verifying the identity of a board member who remotely attends a meeting by teleconference.

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>164</sup>

## **Municipal fiscal officer continuing education**

(R.C. 733.81)

The act requires an *appointed* municipal fiscal officer to complete 18 hours of continuing education during the first term of office and 12 hours in each subsequent term of office. This is the continuing requirement for *elected* municipal fiscal officers. Also under ongoing law unchanged by the act, both newly appointed and newly elected municipal fiscal officers must take six hours of initial education programs before serving, or during their first year.

## **Unpaid municipal trash charges**

(R.C. 701.10)

Under continuing law, when a municipal corporation collects charges for garage/trash collection services, but an individual has not paid, the municipal corporation can certify the unpaid amount as a lien against the property. Prior law allowed a lien only once the unpaid amount reached \$250. The act retains this, and also allows a municipal corporation to certify a lien on property when the unpaid amount is equal to or greater than the annual charge for the services. For instance, if the annual rate is \$200 and an individual is behind by \$215, the municipal corporation could not have certified the \$215 as a lien under prior law, but can under the act.

The act specifies that these limitations do not apply to a municipal corporation that has collected, since on or before October 17, 2019,<sup>165</sup> all garbage/trash charges in the same manner

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<sup>164</sup> R.C. 121.22.

<sup>165</sup> This date is when previous amendments to this law, made by H.B. 166 of the 133<sup>rd</sup> General Assembly, took effect. Those amendments: (1) expanded the provision to apply to all municipal corporations, not only municipal corporations located in a charter county, and (2) implemented the \$250 limitation.

as other taxes (not only unpaid amounts). The limitations only relate to unpaid amounts that are owed to the municipal corporation, that the municipal corporation certifies as a lien to collect.

## **Township fiscal officer assistant compensation**

(R.C. 507.021)

The act allows township fiscal officers to set the compensation of their hired assistants without prior approval from the board of township trustees, which was required under prior law.

## **New community authorities**

(R.C. 349.01)

Continuing law allows for the creation and implementation of “new community development programs,” which aim to develop new properties in relation to existing communities while incorporating planning concepts that promote utility, open space, and supportive facilities for industrial, commercial, residential, cultural, educational, and recreational activities. The resulting “new community districts,” each of which is governed by a body referred to as a new community authority (NCA), are intended to be characterized by well-balanced and diversified land-use patterns.

Under continuing law, a developer that controls or owns the land to be included in the proposed new community district may petition the appropriate county or, in some cases, municipality to create an NCA. Once created, the NCA, which is governed by a board of trustees, may develop land in the district, provide services in the district, and raise revenue by levying community development charges in the district in conjunction with the developer.

While continuing law allows a developer that controls property pursuant to a lease of at least a 75-year term to create an NCA, the act specifies that a developer controlling property pursuant to a renewable, 99-year lease is eligible to form an NCA, provided each of the following requirements are met:

- The developer’s proposed NCA consists of at least five such leases;
- The leases are subject to forfeiture for the tenant’s failure to pay property taxes or certain fees or to manage the upkeep of the leased premises;
- The NCA is established before the end of 2021.

## **Medical marijuana businesses**

(R.C. 3796.31)

The act prohibits local governments from levying any tax or fee on medical marijuana cultivators, processors, or dispensaries that is either: (1) based on gross receipts, or (2) the same as, or similar to a state tax or fee. Continuing law includes no express statutory



authorization for a local government to impose a tax or fee on medical marijuana businesses. However, a municipal corporation or charter county may levy a tax or fee without express state authorization under its home rule authority.<sup>166</sup> Similarly, a limited home rule township, which has been granted limited home rule powers pursuant to state law, may levy fees (but not taxes) without state authorization.<sup>167</sup> Noncharter counties and townships that have not formed a limited home rule government possess only those powers expressly delegated to them by state law (or necessarily implied from those powers) and, therefore, cannot levy such a tax or fee.<sup>168</sup>

### **Local tax prohibition**

The Ohio Constitution allows the General Assembly to enact laws limiting the power of municipal corporations to levy taxes and assessments.<sup>169</sup> Indeed, state law prohibits municipalities from levying several types of taxes, including gross receipts taxes.<sup>170</sup> The two counties in Ohio that have adopted charters – Cuyahoga and Summit – both specifically disclaim the power to levy any tax other than the taxes permitted under state law for noncharter counties.<sup>171</sup> Therefore, the act’s local tax prohibition is almost certainly permissible, but it probably does not have an operative effect under continuing constitutional and statutory law. It does not appear that any local government was able to levy a tax on medical marijuana businesses before the act’s effective date, other than local sales taxes, which are preserved by the act.

### **Local fee prohibition**

Municipal corporations, charter counties, and limited home rule townships, pursuant to their constitutional or statutory home rule authority, may all impose fees on medical marijuana businesses – so the act’s prohibition seems to invalidate any such local fee. However, it is unclear whether the Ohio Constitution authorizes the General Assembly to limit the fees a municipal corporation or charter county might impose for regulatory or other public welfare

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<sup>166</sup> Ohio Constitution, Article XVIII, Section 3 and Article X, Section 3; *Gesler v. City of Worthington Income Tax Bd. of Appeals*, 138 Ohio St.3d 76; 2013-Ohio-4986; 3 N.E.3d 1177.

<sup>167</sup> R.C. 504.04(A)(1), not in the act.

<sup>168</sup> See *Geauga County Bd. of Commrs. v. Munn Rd. Sand & Gravel*, 67 Ohio St.3d 579, 621 N.E.2d 696 (1993); *State ex rel. Kuntz v. Zangerle*, 130 Ohio St. 84 (1935), syllabus, paragraph 1; *State ex rel. Schramm v. Ayres*, 158 Ohio St. 30, 106 N.E.2d 630 (1952); and *Drees Co. v. Hamilton Twp.*, 132 Ohio St.3d 186, 2012-Ohio-2370, 970 N.E.2d 916.

<sup>169</sup> Ohio Constitution, Article XIII, Section 6 and Article XVIII, Section 13.

<sup>170</sup> R.C. 715.013, not in the act.

<sup>171</sup> Article I, Section 1.02, Charter of Cuyahoga County, available at: <http://council.cuyahogacounty.us/en-US/Charter-CuyahogaCounty.aspx>, and Article I, Section 1.02, Charter of Summit County, available at: <http://council.summitoh.net/files/18486/file/summitcountycharter.pdf>.

purposes since those subdivisions have constitutional home rule authority.<sup>172</sup> Conversely, since the home rule powers of a limited home rule township are authorized by statute as opposed to the Ohio Constitution, the General Assembly is authorized to limit the fees such a township may impose.

## **Agreements with animal shelters**

(R.C. 955.15)

The act expands the facilities with which a board of county commissioners may enter into a written agreement to operate as a dog pound on behalf of the county. Under prior law, the county could deliver seized dogs to a county humane society, without written agreement, provided that the society had devices for humanely destroying dogs. Under the act, the county may deliver seized dogs to *any* animal shelter for dogs (which includes county humane societies and also other facilities that keep, house, and maintain dogs, including nonprofits devoted to humane treatment of dogs). It specifies that to qualify to enter into an agreement, an animal shelter for dogs must be:

1. Suitable to operate as a dog pound; and
2. Able to adopt out, transfer out, or humanely destroy dogs in accordance with Ohio law. (The act eliminates the requirement that a humane society have devices for humanely destroying dogs and instead replaces it with this requirement.)

It also requires a county dog pound or animal shelter for dogs, to which a dog has been delivered, to deal with the dog in accordance with Ohio law, including the maintenance of any public records pertaining to the intake and disposition of the dog.

Under prior law, a county had to make compensation payments *solely* from the county's dog and kennel fund to facilities that take a dog on behalf of the county. The act expands the funding sources from which the county may pay these compensation payments by allowing the county to make compensation payments from the county's general revenue fund.

## **Shoreline improvement districts**

(R.C. 1710.01)

The act 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 continuing law, a special improvement district may fund shoreline improvement projects to abate erosion along the Lake Erie shoreline only.

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<sup>172</sup> See *Drees Co. v. Hamilton Twp.*, 132 Ohio St.3d 186, 2012-Ohio-2370, 970 N.E.2d 916, for a discussion of the legal distinction between taxes and fees.

Additionally, the act specifies that an existing qualified nonprofit corporation may create a special improvement district to implement a shoreline improvement project even if the corporation (1) does not have an established police department, and (2) is not organized for purposes that include the acquisition of real property. Under continuing law, these two elements (along with other specified elements) are required for a nonprofit corporation to create a special improvement district.

### **Discriminatory restrictive covenants – void**

(R.C. 5301.05)

The act provides that restrictive covenants in deeds limiting sale or lease of real property to individuals protected against housing discrimination by Ohio's Civil Rights Law are void. The act also allows attorneys preparing new deeds to omit void discriminatory covenants contained in prior deeds with immunity from civil liability. Finally, the act establishes that omission of a discriminatory restrictive covenant under its new provisions does not affect the validity of deeds and prohibits county recorders from refusing to record deeds because void covenants are omitted.

### **Free library photocopies of identification**

(R.C. 3375.011)

The act 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 upon request.

### **Park district eminent domain for recreational trails**

(Section 715.05)

Until July 1, 2026, the act 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. Based on [2010 Census statistics](#), this prohibition applies to Lake and Mahoning counties. The Ohio Department of Development [estimates](#) that 2020 Census figures likewise could place Warren County under the prohibition.

### **Soil and water conservation districts: acceptance of credit cards**

(R.C. 940.111)

The act 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.

Continuing law allows the state and other political subdivisions to accept payments by financial transaction device. Those political subdivisions include township and county governments.

## **Regional councils of governments**

(R.C. 167.03)

The act 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 in 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.

Additionally, the act specifies that if a business entity that is acquired, established, managed, or operated by a regional council of governments, with an educational service center as its fiscal agent, operates or provides services that is engaging in the business of insurance or is subject to Ohio insurance laws, it must comply with the insurance law and laws that apply to corporations and other business entities, as well as any other sections of the Revised Code and the Administrative Code, and is not exempt from laws that apply to self-insurance programs for health care benefits provided by political subdivisions and county boards.

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.

## **Transportation improvement district board**

(R.C. 5540.02)

Before June 30, 2021, a transportation improvement district (TID) board of trustees was structured in one of two ways. In the first structure, the members of the General Assembly whose districts were a part of the TID were automatically included on the board as nonvoting, ex officio members. In the second structure, the President of the Senate and the Speaker of the House each appointed a member from their chamber to serve as a nonvoting member on the TID board. H.B. 74 of the 134<sup>th</sup> General Assembly (the transportation budget – effective June 30, 2021) eliminated the authority of the President and the Speaker to appoint members to a TID board of trustees.

The act reauthorizes the President of the Senate and the Speaker of the House to each appoint a person to serve as a nonvoting member on the TID board of trustees. However, unlike under prior law, the appointed member does not need to be a member of the General Assembly. Additionally, the authorization is entirely permissive and at the discretion of the President and the Speaker.

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## MISCELLANEOUS

### **Juneteenth as a paid legal holiday**

- Establishes June 19, known as Juneteenth, as a legal holiday for which certain government employees receive paid leave and for which school districts may dismiss school.
- Excludes Juneteenth Day from the definition of “business day,” similar to other legal holidays, for purposes of the law governing how long a buyer has to cancel a home solicitation sale contract and the minimum time that must pass before a home solicitation seller may transfer any note in connection with a home solicitation sale to a finance company.

### **COVID violations: expunge, refund fines, reinstate permits (VETOED)**

- Would have vacated violations or sanctions imposed against businesses under certain COVID-related orders or rules (VETOED).
- Would have required state agencies and boards of health to expunge any record of a violation, and to treat any finding of a violation as a nullity (VETOED).
- Would have returned to businesses money collected by a state agency or board of health in civil or administrative penalties for violations (VETOED).
- Would have required state agencies and boards of health to cease any disciplinary action against a business for violations occurring before the act’s effective date (VETOED).
- Would have required state agencies and boards of health to restore rights and privileges of a business lost as a result of a violation (VETOED).
- Would have required the Liquor Control Commission to reinstate a revoked liquor permit if certain conditions apply, including (VETOED):
  - The permit was 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 that would have been reinstated, would have required the Commission to notify certain entities, including the liquor permit holder and the Division of Liquor Control (VETOED).

### **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 violations (VETOED)**

- Would have created a procedure within the Court of Claims to hear complaints alleging a violation of the Open Meetings Law (VETOED).
- Would have provided for the assignment of a special master to refer the case to mediation or to proceed with the case and submit a report and recommendation to the Court of Claims (VETOED).
- Would have required that any appeal from an order of the Court of Claims be taken to the court of appeals of the appellate district where the principal place of business of the public body that is alleged to have violated the Open Meetings Law is located (VETOED).
- Would have allowed a court of appeals to award reasonable attorney's fees to an aggrieved person if the court determines that the public body violated the Open Meetings Law and obviously filed the appeal with the intent to delay compliance with the Court of Claims' order or to unduly harass the aggrieved person (VETOED).
- Would have provided that all filing fees collected by a clerk of the common pleas court are to be paid to the county treasurer for deposit into the county general revenue fund (VETOED).
- Would have provided that all filing fees collected by the clerk of the Court of Claims are to be kept by the Court of Claims to assist in paying for its costs to implement the above provisions (VETOED).

## **Vax-A-Million database not a public record**

- Specifies the information in the Vax-A-Million database is confidential and not public record.

## **Use of medical marijuana in violation of employer's policy**

- Provides that an employer does not violate the Ohio Civil Rights Law if the employer takes an adverse employment action against a person who uses medical marijuana in violation of the employer's policy regulating medical marijuana use.

## **Post-Traumatic Stress Fund actuarial study and report**

- Permits the Ohio Police and Fire Pension Fund Board of Trustees to use its own actuary or, as under continuing law, a disinterested third-party actuary to perform an actuarial valuation and prepare a report required by continuing law related to the funding requirements of the State Post-Traumatic Stress Fund.
- Extends the due date for the actuarial study and report from October 1, 2021, to December 15, 2021.

## **Court settlements that conflict with the Revised Code**

- Prohibits a public official, in the course of a lawsuit, from entering into an agreement not to enforce a provision of the Revised Code or to act contrary to the Revised Code.

- States that this provision must not be construed to limit or otherwise restrict a court's authority under the Ohio Constitution.

### **Land conveyances**

- Authorizes the conveyance of two tracts of state-owned land, currently under DRC, in Madison and Warren counties.

### **Perpetual easement at Rhodes Tower complex**

- Authorizes the Director of Administrative Services to grant the owner of 60 E. Broad St. in Columbus a perpetual easement over state-owned property at the Rhodes Tower complex, currently subject to a 40-year easement granted in 1974.

### **EEG Combined Transcranial Magnetic Stimulation pilot**

- Renames the Transcranial Magnetic Stimulation Pilot Program to the Electroencephalogram (EEG) Combined Transcranial Magnetic Stimulation Pilot Program.
- Expands the program to be available to first responders and law enforcement officers.
- Expands the list of disorders and conditions that establish eligibility for treatment under the program.
- Authorizes the program to have up to ten branch sites, and specifies that a branch site may be a mobile unit or an EEG combined neuromodulation portable unit.
- Eliminates the specification that the pilot program be operated for three years.
- Requires the supplier to create and conduct a clinical trial and to establish and operate a clinical practice, and establishes criteria that must be adhered to by the supplier.

### **JobsOhio annual report**

- Changes the date by which the Chief Investment Officer of JobsOhio must deliver an annual report of JobsOhio's activities from March 1 to July 1.

### **State Teachers Retirement Board meetings**

- Authorizes the State Teachers Retirement Board to adopt a policy that allows Board members to attend Board meetings by means of teleconference or video conference.
- Requires, if the Board adopts the policy, that the Board require in the policy that at least  $\frac{1}{3}$  of the Board members must 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 at which 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.



## **Postpartum Cardiomyopathy Awareness Week**

- Designates the fourth week of June as “Postpartum Cardiomyopathy Awareness Week.”

## **Maternal Mortality Awareness Month**

- Designates the month of May as “Maternal Mortality Awareness Month.”

## **Juneteenth as a paid legal holiday**

(R.C. 1.14, 5.2247, 124.19, 325.19, 511.10, 1345.21, 3313.63, and 3319.087)

### **Government employees**

The act establishes June 19, known as Juneteenth, as a legal holiday for which certain government employees receive paid leave. June 19, is designated as Juneteenth to acknowledge the freedom, history, and culture that June 19, 1865, the day on which the last slaves in the United States were set free in Texas, has come to symbolize.

A government employee receives the employee’s regular rate of pay for, but is not required to work on, legal holidays for which the employee is entitled to receive paid leave. The act applies to the following government employees:

- State employees who are paid directly by warrant of the Director of Budget and Management.
- Any full-time county employee whose regular hours are 40 hours per week or who renders any other standard of service accepted as full-time by an office, department, or agency of county service. The act does not apply to county boards of developmental disabilities superintendents or management employees.
- Any township employee working on a salary or hourly basis.
- All regular nonteaching school employees that are employed on a nine- or ten-month basis and either salaried or compensated on an hourly per diem basis.<sup>173</sup>

### **School dismissal**

The act allows boards of education to dismiss schools under their control on Juneteenth Day.

### **Home solicitation sales**

As with other legal holidays, the act excludes Juneteenth Day from the definition of “business day” for purposes of the law governing home solicitation sales. In general, a home solicitation sale is a sale of consumer goods or services in which the seller solicits the buyer at

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<sup>173</sup> The act omits an explicit permission for schools to pay 11- and 12-month employees for Juneteenth. This appears to be a drafting error.



the buyer's home. Under continuing law, a buyer may cancel any such transaction prior to midnight of the third business day after the transaction is complete. In addition, a seller may not negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed.<sup>174</sup>

## **COVID violations: expunge, refund fines, reinstate permits (VETOED)**

(Sections 701.60 and 743.20)

The act generally would have required the expungement and refunding of fines in the case of a business that violated any COVID-19-related order, rule, or directive issued by an elected state officer, a state agency, or a board of health. It also would have required 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. A provision specifically would have required the Liquor Control Commission to reinstate liquor permits of certain businesses. A detailed description of the vetoed provisions is available on pages 451 to 453 of LSC's analysis of H.B. 110, As Passed by the Senate. The analysis is available online at <https://www.legislature.ohio.gov/download?key=17057&format=pdf>.

## **Buy Ohio preference for personal protective equipment**

(R.C. 125.035 and 125.05)

The act 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 equal to or greater than \$50,000 are generally already subject to that process.

Under continuing 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 act 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 state agency must apply the same preferences required of DAS purchases, with respect to U.S. and Ohio

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<sup>174</sup> R.C. 1345.22 and 1345.23, not in the act.

products, when making the purchase. These criteria and procedures generally apply, under continuing law, to any purchases equal to or greater than \$50,000.

Under the act, “personal protective equipment” means equipment worn to minimize exposure to hazards that cause workplace injuries and illnesses.

## **Open Meetings Law violations (VETOED)**

(R.C. 121.22, 2323.52, 2743.03, 2743.76, and 2746.04)

The Governor vetoed a provision that would have created a procedure within the Court of Claims to hear complaints alleging a violation of the Open Meetings Law.

A detailed description of the vetoed provision is available on pages 454 to 459 of LSC’s analysis of H.B. 110, As Passed by the Senate. The analysis is available online at <https://www.legislature.ohio.gov/download?key=17057&format=pdf>.

## **Vax-A-Million database not a public record**

(Section 701.05)

The act specifies in uncodified language that the Vax-A-Million database is confidential and not subject to disclosure as a public record under Ohio’s Public Records Law. Because this provision is uncodified, it probably has no effect after June 30, 2023, under Section 809.10 of the act.

The confidential information includes the name, email, phone number, address, and vaccine location information of individuals who register for the Vax-A-Million campaign, and includes the name, email, and phone number of a parent or guardian who registers a child. Under continuing law, unless exempt, records that serve to document the organization, functions, policies, decisions, procedures, operations, or other activities of a public office are subject to disclosure under the Ohio Public Records Law.<sup>175</sup>

## **Use of medical marijuana in violation of employer’s policy**

(R.C. 3796.28)

Under the act, an employer does not violate the Ohio Civil Rights Law<sup>176</sup> if the employer discharges, refuses to hire, or otherwise discriminates against a person because of that person’s use of medical marijuana if the person’s use of medical marijuana is in violation of the employer’s drug-free workplace policy, zero-tolerance policy, or other formal program or policy regulating medical marijuana use.

Continuing law regulating the medical marijuana program does not do any of following:

1. Require an employer to permit or accommodate an employee’s use, possession, or distribution of medical marijuana;

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<sup>175</sup> R.C. 149.011, not in the act, and R.C. 149.43.

<sup>176</sup> R.C. 4112.02, not in the act.

2. Prohibit an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's use, possession, or distribution of medical marijuana;

3. Prohibit an employer from establishing and enforcing a drug testing policy, drug-free workplace policy, or zero-tolerance drug policy;

4. Permit a person to sue an employer for refusing to hire, discharging, disciplining, discriminating, retaliating, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment related to medical marijuana.

## **Post-Traumatic Stress Fund actuarial study and report**

(Sections 610.117 and 610.118, amending Section 2 of H.B. 308 of the 133<sup>rd</sup> General Assembly)

H.B. 308 of the 133<sup>rd</sup> General Assembly, which took effect April 12, 2021, created the State Post-Traumatic Stress Fund. It also required the Ohio Police and Fire Pension Fund Board of Trustees, in consultation with specified entities, to have an actuary prepare an actuarial valuation of the funding requirements of the State Post-Traumatic Stress Fund and prepare a report. This act permits the Board to use its own actuary as an alternative to using a disinterested third-party actuary. It also extends the due date for the valuation and report by about ten weeks, to December 15, 2021, from October 1, 2021.

The fund is to be used to pay compensation for lost wages and medical benefits for a public safety officer who is disabled by or diagnosed with post-traumatic stress disorder received in the course of, and arising out of, employment as a public safety officer but without an accompanying physical injury. The fund is not funded, no payments are being made from it, and no one is eligible for any claims.<sup>177</sup>

## **Court settlements that conflict with the Revised Code**

(R.C. 9.58)

The act specifies that in any civil action in a state or federal court, no public official has any authority to compromise or settle the action, consent to any condition, or agree to any order in connection with the case if the compromise, settlement, condition, or order nullifies, suspends, enjoins, alters, or conflicts with the Revised Code. Any such compromise, settlement, condition, or order is void and has no legal effect.

In other words, the act prohibits a public official or the official's attorney, in the course of a lawsuit, from entering into an agreement not to enforce a provision of the Revised Code or to act contrary to the Revised Code. For example, if a law is challenged as unconstitutional, and a public official agrees that the court is likely to rule the law unconstitutional, the official might enter into a court-approved agreement with the challengers not to enforce the law. Under the

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<sup>177</sup> R.C. 126.65, not in the act.

act, the official would be prohibited from doing so. But, the court still could rule the law unconstitutional and order the official not to enforce it.

For this purpose, the act defines a “public official” as any elected or appointed officer, employee, or agent of the state or any political subdivision, board, commission, bureau, or other public body established by law.

The act states that this provision must not be construed to limit or otherwise restrict a court’s authority under the Ohio Constitution.

## **Land conveyances**

(Sections 753.10 and 753.20)

The act authorizes the conveyance of two tracts of state-owned land, currently under DRC’s jurisdiction. One tract is located in Madison County and consists of approximately 1,247 acres, the other is in Warren County and is approximately 296 acres. The authority to convey the Madison County tract expires September 30, 2024. Authority to convey the Warren County tract expires June 30, 2022.

### **Purchaser and real estate agreement**

The Madison County tract may be offered for sale by the DAS and DRC Directors through one of two means. Specifically, the property may be offered to a purchaser or purchasers, who are to be determined, through a negotiated real estate purchase agreement, with the price and terms and conditions to be acceptable to the Directors, and payment made at closing. Alternatively, the Directors may conduct a sealed bid or public auction, with the property sold to the highest bidder, if the price is acceptable to the Directors (the DAS Director may reject any or all bids). If an auction is used, the DAS Director must advertise the auction by publication in a newspaper of general circulation in Madison County, once a week, for three weeks in a row, and DRC is to pay advertising costs. If an auction is held and a bid is selected, the act makes a provision for deposit to be paid no more than five business days after notice of an accepted bid is received, with the balance due no more than 60 business days after that notice. A provision is also made for contingent sales processes should a successful bidder not complete the purchase.

The Warren County tract is to be offered to a grantee, who is to be determined, through a real estate purchase agreement, for a price and at terms and conditions acceptable to the DAS and DRC Directors.

### **Conditions**

Both tracts are to be conveyed subject to certain conditions. Those are:

- The conveyances include improvements and chattels (personal property) on the conveyed property, and are subject to all easements, covenants, conditions, and restrictions of record; all legal highways and public rights-of-way; zoning, building, and other laws, ordinances, restrictions, and regulations; and real estate taxes and assessments not yet due and payable, and the property is to be conveyed in an “as-is, where-is, with all faults” condition;

- The deeds conveying the property may contain restrictions, exceptions, reservations, reversionary interests, and other terms and conditions the DAS Director (and for the Madison County property, the DRC Director) determines to be in the best interest of the state;
- After the conveyances, any deed restrictions may be waived by the state without further legislation;
- The deed or deeds must contain restrictions prohibiting the property's use or sale if the use or sale will interfere with the quiet enjoyment of neighboring state-owned land;
- The property may only be conveyed if the DAS and DRC Directors first determine the property is surplus property, no longer needed by the state, and that the conveyance is in the state's best interest.

### **Warren County easement**

The Warren County tract is to be conveyed subject to an easement, providing for ingress and egress to the DRC sewer treatment plant. The easement encompasses the existing drive to that plant.

### **Conveyance of whole or part**

The Madison County tract may be conveyed as an entire tract or as multiple parcels, and to a single purchaser or multiple purchasers, as determined by the DAS and DRC Directors.

The Warren County tract must be sold as an entire tract.

### **Manner of conveyance**

For each tract, on payment of the purchase price, and receipt of written notice from the DAS Director, the act requires the Auditor of State, with the assistance of the Attorney General, to prepare a Governor's Deed. The deed must state the consideration to be paid, be executed by the Governor in the name of the state, countersigned by the Secretary of State, and sealed with the Great Seal of the State. After execution, the deed must be presented in the Auditor's office for recording, and delivered to the grantee. The grantee then must present the deed for recording with the appropriate county recorder.

### **Conveyance costs**

The Madison County grantee is to pay all costs associated with purchase, closing, and conveyance, except as specifically provided otherwise in the act. In this case, the only exception is for advertising costs.

The grantee of the Warren County tract is to pay all costs associated with purchase, closing, and conveyance.

## **Proceeds**

Proceeds from the sale of both the Madison County tract and Warren County tract are to be deposited in the state treasury, to the credit of the Adult and Juvenile Correctional Facilities Bond Retirement Fund.

## **Perpetual easement at Rhodes Tower complex**

(Section 753.30)

The act authorizes the DAS Director to grant a perpetual easement over real property located at the Rhodes Tower complex to the owner of a neighboring building at 60 E. Broad Street in exchange for \$1. The property the act authorizes an easement over is subject to a 40-year easement granted in 1974. Without the authorization, the Director could grant an easement over the property but it would be limited to a 15-year term.<sup>178</sup>

The real property covered by the act is the same as in the 1974 easement, but the DAS Director is authorized to update the legal descriptions from the original easement as necessary to facilitate the new easement's recording or to account for changes in circumstances in the intervening years. Once the easement document is prepared, it is to be executed by the Director, presented to the Auditor of State for recording, and delivered to the owner of 60 E. Broad Street. The owner must then record the easement with the Franklin County Recorder and pay all costs and fees for recording.

The authorization to grant the easement expires September 30, 2024.

## **EEG Combined Transcranial Magnetic Stimulation pilot**

(R.C. 5902.09)

### **Background**

H.B. 166 of the 133<sup>rd</sup> General Assembly, effective October 17, 2019, required the Directors of Veterans Services and Mental Health and Addiction Services to establish a three-year pilot program to make transcranial magnetic stimulation available for veterans with substance use disorders or mental illness. The program must operate in conjunction with a supplier for services selected by the Directors.

### **Under the act**

#### **Treatment and eligibility**

The act alters the description of the treatment to be provided under the program and expands the individuals who may be eligible for treatment. Under the act, the pilot program is to make electroencephalogram (EEG) combined transcranial magnetic stimulation available for

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<sup>178</sup> R.C. 123.01(A)(5).

veterans, first responders,<sup>179</sup> and law enforcement officers.<sup>180</sup> For purposes of the act, EEG combined transcranial magnetic stimulation means treatment in which transcranial magnetic stimulation (TMS) frequency pulses are tuned to the patient's physiology and biometric data, at the time of each treatment, using a pre- and post-TMS EEG.

The act also expands the list of disorders and conditions that establish eligibility for treatment under the program. Under continuing law, treatment may be provided to persons with substance use disorders or mental illness. The act specifies that treatment also may be provided to individuals with sleep disorders, traumatic brain injuries, sexual trauma, post-traumatic stress disorder and accompanying comorbidities, concussions or other brain trauma, or other issues identified by the individual's qualified medical practitioner as issues that would warrant treatment under the program.

### **Program duration**

The act eliminates the specification that the pilot program be operated for a period of three years, and instead does not specify a duration of the program. Therefore, under the act, the program may be operated as long as funding is made available.

### **Program locations**

The act requires the Directors of Veterans Services and Mental Health and Addiction Services, by mutual agreement, to choose a location for the pilot program and for up to ten branch sites. Furthermore, the act specifies that a branch site may be a mobile unit or an EEG combined neuromodulation portable unit if the Directors determine that mobile units or EEG combined neuromodulation portable units are necessary to expand access to care. Prior law required the supplier to choose a location for the pilot program.

### **Clinical trial and clinical practice**

The act requires that the supplier chosen by the Directors create and conduct a clinical trial, establish and operate a clinical practice, and evaluate outcomes of the clinical trial and the clinical practice. Prior law required the supplier to create, implement, operate, and evaluate outcomes of the pilot program.

The act requires that the supplier, in conducting the clinical trial and in operating the clinical practice, adhere to all of the following:

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<sup>179</sup> "First responder" means an emergency medical service provider, a firefighter, or any other emergency response personnel, or anyone who has previously served as a first responder. (R.C. 2903.01, not in the act.)

<sup>180</sup> "Law enforcement officer" means a law enforcement officer, a peace officer, or a person authorized to carry firearm who is employed, commissioned, disposed, appointed, or elected in a capacity for this state, a political subdivision of this state, or an agency, department, or instrumentality of this state or a political subdivision of this state. (R.C. 9.69, 109.801, 2901.01, and 2935.01, not in the act.)



1. The U.S. Food and Drug Administration (FDA) regulations governing the conduct of clinical practice and clinical trials;
2. A peer-to-peer support network must be made available by the supplier to any individual receiving treatment under the program;
3. The program protocol will be to use adapted stimulation frequency and intensity modulation based on EEG and motor threshold testing as well as clinical symptoms and signs, and biometrics;
4. Each individual who receives treatment under the program also must receive pre- and post-neurophysiological monitoring, with EEG and autonomic nervous systems assessments, daily checklists of symptoms of alcohol, opioid, or other substance use, and weekly medical counseling and wellness programming, and also must participate in the peer-to-peer support network established by the supplier; and
5. Each individual who receives treatment at the clinical practice must be eligible for a minimum of two EEGs during the course of the individual's treatment.

Prior law required that a rule be adopted to require the supplier collect and provide a quarterly report on the clinical protocols and outcomes. The act requires such a report, but clarifies that the report must address the protocols and outcomes of the clinical trial, and of any treatment provided by the clinical practice. And the act specifies that the report must be provided to the Directors of Veterans Services and Mental Health and Addition Services. The act requires that the report also be provided to the FDA.

### **Fund**

The act renames the Transcranial Magnetic Stimulation Fund, in the state treasury, as the Electroencephalogram (EEG) Combined Transcranial Magnetic Stimulation Fund.

### **JobsOhio Chief Investment Officer's annual report**

(R.C. 187.03)

The act changes, from March 1 to July 1, the deadline for the Chief Investment Officer of JobsOhio to deliver an annual report of JobsOhio's activities to the Governor, Speaker and Minority Leader of the House, and President and Minority Leader of the Senate.

### **State Teachers Retirement Board meetings**

(R.C. 3307.091)

The act creates an 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 ½ 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>181</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.

At any meeting in which a member attends by teleconference or video conference, the Board must ensure 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 act 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 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>182</sup>

## **Postpartum Cardiomyopathy Awareness Week**

(R.C. 5.2527)

The act designates the fourth week of June as “Postpartum Cardiomyopathy Awareness Week” to increase public awareness of postpartum cardiomyopathy, which is a form of heart failure that can happen during the last month of pregnancy or up to five months after giving birth.

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<sup>181</sup> R.C. 3307.05, not in the act.

<sup>182</sup> R.C. 121.22.

## Maternal Mortality Awareness Month

(R.C. 5.247<sup>183</sup>)

The act designates May as “Maternal Mortality Awareness Month” to increase awareness about the causes of pregnancy-associated deaths and to encourage implementation of interventions intended to reduce those deaths.

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<sup>183</sup> The LSC Director renumbered R.C. 5.246 as R.C. 5.247 under authority of R.C. 101.131.

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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 act includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section is subject to the referendum and takes effect on the 91<sup>st</sup> day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The Governor signed the act on June 30, 2021, and the Governor’s office filed it with the Secretary of State on July 1, 2021. The 91<sup>st</sup> day after July 1 is September 30, 2021. The act also includes exceptions to the default provision, designating some provisions that are not subject to the referendum and therefore go into immediate effect.

### Expiration

(Section 809.10)

The act includes an expiration clause stating that an item that composes the whole or part of an uncodified section contained in the act (other than an amending, enacting, or repealing clause) has no effect after June 30, 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 (70-27)	04-21-21
Reported, S. Finance	06-09-21
Passed Senate (25-8)	06-09-21
House refused to concur in Senate amendments (8-86)	06-10-21
Senate requested conference committee	06-15-21
House acceded to request for conference committee	06-15-21
House agreed to conference committee report (84-13)	06-28-21
Senate agreed to conference committee report (32-1)	06-28-21