Large Filing Separator Sheet

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REQUEST - CONTINUED

- Increases the percentage of wholesale cigarette license fees paid into the Cigarette Tax Enforcement Fund from 47.5% to 100% of the amount collected.

- Redistributes amounts collected from retail cigarette licenses as follows: 30% (decreased from 62.5%) to the municipal corporation or township where the business is located, 10% (decreased from 22.5%) to the county general fund, and 60% (increased from 15%) to the Cigarette Tax Enforcement Fund.

- Transfers from county auditors to the Tax Commissioner the responsibility for issuing wholesale cigarette licenses.

- Requires late cigarette license fees collected by county auditors to be sent to the Treasurer of State by the last day of the month following the month in which the money was collected, rather than by December 31.

- Specifies that the cigarette and tobacco product licensing provisions take effect January 1, 2010.

- Authorizes a convention facilities authority in a certain county to levy a lodging tax of up to 3% to finance the construction, operation, and maintenance of a convention, entertainment, or sports facility, subject to approval by the board of county commissioners and referendum petition.

- Extends to natural gas distributors with 70,000 or fewer customers the authority currently held by natural gas distributors with 50,000 or fewer customers to aggregate all of the natural gas distributed by the company in the state when determining the tax rate.

- Permits local authorities to modify the definition of which hotels are subject to local lodging taxes.

- Requires 100% of severance tax revenue from salt extraction to be used for the Geological Mapping Fund.

III. Tax Credits

- Authorizes up to a total of $10 million of tax credits annually for insurance companies and financial institutions for purchasing and holding securities issued by low-income community development organizations to finance investments in qualified active low-income community businesses in Ohio, in accordance with the federal New Markets Tax Credit law.

- Increases the total amount of credits that may be issued for investments in small Ohio businesses engaged in research and development or technology development from $30 million to $45 million.

- Changes the basis of job retention tax credits from tax withholdings from employees filling full-time employment positions to withholdings from all employees.

- Expands job retention credit eligibility to foreign and domestic insurance companies.

- Reduces the minimum qualifying employment threshold to the equivalent of 500 full-time employees.

- Reduces the minimum qualifying investment threshold to $50 million over three years if the business activity at the project site is primarily manufacturing, or $20 million if the business activity consists significantly of corporate administrative functions.

- Relaxes the intrastate job relocation prohibition by permitting a business to relocate jobs to the project from another Ohio facility if the business notifies the local jurisdiction from which the positions will be removed.

- Limits the total credit that may be granted annually to $13 million for 2010; for each year thereafter until year 2024, increases the annual limit by $13 million per year; for 2024 and thereafter, the annual limit is $195 million.

- Changes the basis of job creation tax credits from tax withholdings from new full-time employees to annual aggregate tax withholdings from full- and part-time employees that exceed withholdings for a base year adjusted for an assumed rate of payroll growth attributable to pay increases.

- Requires a business to maintain operations at the project location for the greater of seven years, or the term of the credit plus three years, instead of twice the term of the tax credit.

- Relaxes the intrastate job relocation prohibition by permitting a business to relocate Ohio jobs to the project from another Ohio facility if the business notifies the local jurisdiction from which the positions will be removed.

- Authorizes the Director to request a complete or partial refund of job creation credits if the business does not maintain operations at the project site for the term of the credit or a period equal to the greater of seven years or the term of the credit plus three years.

- Authorizes a refundable, nontransferable credit against the corporation franchise tax or the income tax for motion pictures produced at least partly in Ohio, subject to approval by the Director of Development.

- Credit equals 25% of expenditures for goods and services purchased and consumed in Ohio directly for the production.

- Requires Ohio production expenditures to exceed $300,000 before a credit is authorized.

- Limits total motion picture credits allowed to $20 million per fiscal biennium ($30 million in FY 2010-2011), not more than $10 million of which may be allowed in the first year of a biennium, and $5 million per production.

- Creates the Motion Picture Tax Credit Program Operating Fund and authorizes fund money to be used for Ohio Film Office expenses and to pay the costs of administering the credit.

- Permits a pass-through entity claiming a historic preservation tax credit to allocate the credit among its owners in any proportions elected by the entity.

IV. Commercial Activity Tax

- Requires the Tax Commissioner to notify a taxpayer by certified mail the first time the taxpayer bills or invoices another person for the taxpayer's commercial activity tax liability and requires the Commissioner to impose a $500 fine for each subsequent violation.

- Permits billing or invoicing of the tax when a lesser bills or invoices a lessee for the tax under a written lease agreement.

- Creates the Tax Reform System Implementation Fund to defray the costs of administering the Commercial Activity Tax and to implement tax reform measures.

- Permits a levy "substituted" for a school district emergency levy to be treated as a continuation of the emergency levy for purposes of state reimbursement for business personal property taxes from CAT revenue.

- Adds a new base exclusion for payroll deductions by an employer to reimburse the employer for advances made on an employee's behalf to a third party.

- Excludes from the CAT gross receipts base the proceeds from any insurance policy, not just life insurance, unless the insurance reimburses for business revenue losses.

- Narrows the CAT base exclusion for membership dues so that such dues are excluded only if they are for membership in a trade, professional, homeowners', or condominium association.

- Reorganizes certain CAT base exclusions regarding bad debts, discounts, returns, and accounts receivable.

- Recharacterizes charitable and public entities as "excluded persons" (i.e., nontaxpayers) instead of nonpersons.

- Eliminates the initial CAT registration fee exemption for new companies starting business after November 30 or generating more than $150,000 for the year but not before December 1.

- Permits companies that registered for or paid the CAT for 2005 or 2006 in error to have their registrations cancelled and their tax payment refunded.

- Permits groups of affiliated companies that have elected to be treated as a consolidated group to change the ownership test on which the initial election was made.

- Specifies that the $150,000 exemption from the CAT applies to members of a group of companies affiliated through majority ownership that do not elect to be treated as a consolidated group.

- Postpones the commercial activity tax annual return filing date from February 9 to May 10.

- Changes the quarterly return filing due date from the fortieth day after the quarter's end to the tenth day of the second month after the quarter's end.

V. Income Taxes

- Changes the conditions under which taxpayers must pay a personal income tax assessment when they file a petition for reassessment, requiring payment only if the petition is not based on numerical computations or an assertion of lack of nexus with the state.

- Authorizes a school district to combine two or more expiring income tax levies into a single renewal levy.

- Authorizes only the City of Columbus and the municipal corporation of residence to levy an income tax on the income of the Chief Justice and the justices of the Ohio Supreme Court received as a result of services rendered as a justice.

- Authorizes only the municipal corporation of residence to levy a tax on the income of a judge sitting by assignment of the Chief Justice, or a judge of a district court of appeals sitting in multiple locations within the district, received as a result of services rendered as a judge.

VI. Miscellaneous Tax Provisions

- Incorporates into Ohio's tax law changes made to federal tax law since December 30, 2008, and permits a taxpayer whose taxable year ends after that date, but before the effective date of the incorporated changes, to elect to apply federal law as it existed before that date.

- Revises procedural requirements governing how the Department of Taxation is to send notices to taxpayers, including procedures for when mail is returned undeliverable, and creates a presumption of constructive service.

- Permanently authorizes any county to use money in its Delinquent Tax and Assessment Collection (DTAC) Fund to fund residential mortgage foreclosure prevention efforts and to address foreclosure-related problems.

- Authorizes the Department of Taxation to disclose information to the Department of Job and Family Services, Industrial Commission, and Bureau of Workers' Compensation that is necessary to verify employer compliance with Ohio law administered by those agencies.

- Technical change to include the Department of Taxation as an entity authorized to determine how money in the Department of Taxation Enforcement Fund is to be used for the Department's law enforcement purposes.

I. Property Tax

School district conversion levies

(R.C. 5705.214, 5705.219, 5705.2110, 5705.29, 5751.20, and 5751.21)

The act authorizes the board of education of a city, local, or exempted village school district to convert existing current expense property tax millage in excess of 20 mills per dollar into a new "conversion" levy that raises a fixed amount of revenue. The conversion option applies to any school district in which the aggregate fixed-rate current expense effective tax rate for residential/agricultural real property ("Class I") is greater than 20 mills per dollar. The board of education may adopt the resolution

proposing the conversion on or after January 1, 2010, but before January 1, 2015. The conversion requires voter approval at a primary or general election.

The conversion is effected by repealing current expense effective millage in excess of 20 mills and re-levying some or all of that millage as a fixed-sum levy. This new conversion levy is for a fixed amount of money each year equal to the money that would be raised from the repealed millage re-levied if that millage were levied on all taxable property, including Class I real property, all other real property ("Class II"), and public utility tangible personal property.

A conversion levy could be levied permanently, or for a specified number of years up to ten years. A conversion levy originally imposed permanently may be reduced or repealed by voter initiative.

H.B. 920 limitation and 20-mill floor

The effect of adopting a conversion levy is to reduce the current expense millage to the 20-mill threshold or "floor" at which the H.B. 920 tax limitation no longer operates. Under continuing law, when a school district's current expense millage is effectively raising no more than the equivalent of 2% of the taxable property value (i.e., 20 mills per dollar), the H.B. 920 tax reduction factors no longer prevent inflationary increases in property values from causing proportionate increases in tax revenue: the revenue raised equals 2% of whatever the taxable property value happens to be each year, including inflationary appreciation. (R.C. 319.301(E)(2); Article XII, Section 2a(D), Ohio Constitution.)

Some levies are not considered in determining whether a district's current expense millage equals or exceeds the 20-mill threshold even though the revenue may be used for current expenses: so-called "emergency" levies, "substitute" levies, "incremental" levies, and "charge-off" levies (R.C. 5705.194, 5705.199, 5705.213, and 5705.211, respectively). When one of more of these levies is in effect, total current expense millage can exceed 20 mills but the school district is considered to be levying only the minimum 20 mills for the purposes of the H.B. 920 limitation, and therefore revenue from the 20 mills is permitted to increase in response to property value appreciation.

Conversion levies also are not considered in determining whether a school district's current expense millage equals or exceeds 20 mills. Therefore, the conversion of existing levies, which are counted toward the 20-mill floor, into a single levy that is not counted, permits revenue from the unconverted 20 mills to begin increasing in pace with property value appreciation.

Levy adoption procedure

(R.C. 5705.219)

If a school board adopts a conversion levy resolution, it must certify it to the Tax Commissioner. The Commissioner is required to certify to the board the amount of money the levy will raise (assuming the board will re-levy all of the repealed millage), the estimated tax rate (which will equal the Class I effective millage in excess of 20 mills), and the levies or portion of a levy that would be repealed. The act requires levies to be repealed in reverse chronological order. The Commissioner also must certify a base-year revenue loss for the school district representing the loss from repealing millage on Class II real property and public utility personal property to the extent the effective tax rate on that property exceeds the effective tax rate on Class I real property (addressed below under "**Revenue loss and reimbursement**"). If the school board wants the conversion levy to raise less than the amount certified by the Commissioner, the board may request the Commissioner to re-determine the estimated tax rate for the amount the board specifies. This request may be made only once by each school board. The Commissioner must certify the new estimated tax rate within ten days after receiving the request.

The act specifies the language that must be in the resolution and in the notice of election, the process for certifying the resolution to the board of elections, and the form of the ballot. Among other items, the ballot must specify the amount of revenue to be raised. Submission of a conversion levy question to the electors is limited to not more than three elections during a calendar year, as are most other school levies. Conversion levies may be renewed.

Revenue loss and reimbursement

(R.C. 5705.219(B)(4) and 5705.2110)

In most school districts eligible to levy a conversion levy, the conversion is likely to cause some degree of initial revenue loss from repealing existing millage, even if all of the repealed millage is re-levied. The loss is caused by the difference between the effective rates on Class I, Class II, and public utility personal property. Under the conversion, the number of mills that must be repealed is determined solely by the difference between 20 mills and the effective rate on Class I real property. The Class I effective rate typically differs from the effective rate on Class II property (in most districts the Class I effective rate is less than the Class II effective rate because the H.B. 920 reductions for Class I tend to accumulate more rapidly than for Class II). The Class I effective rate will be less than the rate on public utility personal property, which is the full voted rate because the H.B. 920 reduction does not apply to personal property.

Therefore, in many districts the repeal of existing levies forces a reduction in the effective rate on Class II property and in the rate on public utility personal property, whereas the effective rate on Class I property remains relatively unchanged initially.[387]

To the extent the effective rate on Class II property and on public utility personal property is reduced in the conversion, a school district will lose some amount of local revenue, with the magnitude of the loss depending on the value of such property in the district and the discrepancy between the Class I effective rate and the rates on Class II and public utility personal property.

The act provides for temporary state reimbursement to be paid for some of this loss. Revenue loss and reimbursement is determined as if school districts were required to re-levy all the millage that is repealed. In the first year of reimbursement, the school district's total reimbursement equals the loss as certified by the Tax Commissioner. In subsequent years, the reimbursement is phased out. The reimbursement for each succeeding year equals the prior year's reimbursement less approximately one-half of the additional Class I tax revenue generated from inflationary appreciation in that property as a result the suspension of the H.B. 920 reduction.

Reimbursements will be paid for 13 years, unless the reimbursement amount for a year equals zero or the levy is repealed. If a school district re-levied all repealed millage and later reduces the amount of the levy, the reimbursement payments are reduced proportionally. Reimbursement payments are required to be made on or before the last day of April and October. Each payment equals one-half of the total reimbursement for the year. The Tax Commissioner must certify a school district's total reimbursement amount for each year to the Department of Education on or before February 28.

Business personal property tax loss reimbursement

(R.C. 5751.20(F) and (I) and 5751.21(E))

Under continuing law, school districts are compensated for tax losses resulting from a phase-out of business personal property taxes. Losses from fixed-sum levies are reimbursed through 2010, and thereafter reimbursed until the levy expires or, if they are renewed, until the renewal levy expires, but not after fiscal year 2018.

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[387] The repeal of existing levies must be applied uniformly across Class I and Class II real property to conform with the constitutional uniformity requirement whereby all real property must be taxed "by uniform rule." Article XII, Section 2, Ohio Constitution. The differing effective rates for Class I and Class II property that exist at any time result from the exception to the uniform rule permitted solely for the purpose of computing separate H.B. 920 tax reduction factors. Article XII, Section 2a, Ohio Constitution.

Losses from fixed-rate levies are reimbursed in full through fiscal year 2011, and then in declining amounts through the end of fiscal year 2018. Fixed-rate levies expiring after fiscal year 2010, however, are not reimbursed for any year after their expiration. The rate of decline in the reimbursement for fiscal years 2011 and 2012 is 3/17 per year of the computed fixed-rate loss; the rate of decline for fiscal years 2013 through 2018 is 2/17 per year. In fiscal year 2018, the last 1/17 is paid, and no reimbursement is paid thereafter.

Under the act, a school district adopting a conversion levy will no longer receive fixed-rate levy reimbursement for the millage that was repealed and converted. Instead, the district will receive fixed-sum reimbursement for the conversion levy in the same manner provided by law for the reimbursement of fixed-sum levy losses--i.e., the reimbursement will continue in the full amount of the business personal property tax loss until the levy or its renewal expires.

Permanent reimbursement for tangible personal property tax phase-out

(R.C. 5751.20 to 5751.22)

Continuing law earmarks revenue from the commercial activity tax to reimburse school districts and other local taxing units for the phase-out of taxes from business tangible personal property. Initially, revenue from the tax is to be credited to the Commercial Activities Tax Receipts Fund, and thence divided between the GRF and the newly created School District Tangible Property Tax Replacement Fund (SDRF) and Local Government Tangible Property Tax Replacement Fund (LGRF) in specified proportions until the end of fiscal year 2018, as follows:

Division of CAT revenue			
Fiscal Year	GRF	SDRF	LGRF
2006	67.7%	22.6%	9.7%
2007	0%	70.0%	30.0%
2008	0%	70.0%	30.0%
2009	0%	70.0%	30.0%
2010	0%	70.0%	30.0%
2011	0%	70.0%	30.0%
2012	5.3%	70.0%	24.7%
2013	10.6%	70.0%	19.4%
2014	14.1%	70.0%	15.9%
2015	17.6%	70.0%	12.4%
2016	21.1%	70.0%	8.9%

Division of CAT revenue			
Fiscal Year	GRF	SDRF	LGRF
2017	24.6%	70.0%	5.4%
2018	28.1%	70.0%	1.9%
2019 and thereafter	30%	70%	0%

School district reimbursement changes (VETOED)

(R.C. 5751.20 and 5751.21)

Under continuing law, the 70% of CAT revenue earmarked for school district reimbursement is used initially to reimburse school districts solely on the basis of their individual tax losses from their "qualifying" levies (i.e., levies in effect in 2004 or 2005, so long as the levy was approved before September 1, 2005). As the reimbursement is phased down between FY 2012 and 2018, the portion of that 70% needed to pay reimbursement declines accordingly. During that phase-down period, the portion of the 70% not needed to reimburse districts on the basis of their individual tax losses is scheduled to be appropriated for as-yet unspecified "school purposes." After the phase-down ends, all of the 70% is scheduled to be used for such school purposes.

The Governor vetoed amendments that would have retained the 70% earmarking of CAT revenue for school district reimbursement, but eliminated the reimbursement phase-down scheduled to begin in FY 2012. Reimbursement would have continued for each of a district's qualifying levies until the levy expired at 100% of the district's computed tax loss. Payments would have continued to be made thrice annually, in August, October, and May. Until the end of FY 2011, the Director of Budget and Management would have been authorized to transfer any money not needed for reimbursement to the GRF (as under continuing law). After FY 2011, no such transfer would have been authorized.

Local taxing unit reimbursement changes (VETOED)

(R.C. 5751.20 and 5751.22)

Under continuing law, the portion of CAT revenue earmarked for reimbursing local (nonschool) taxing units begins to decline in FY 2012 as their reimbursement amounts are phased down. The portion of CAT revenue earmarked for the General Revenue Fund increases accordingly. Beginning in FY 2019, no reimbursement is to be paid to local taxing units and the 30% not appropriated for school purposes is to be paid into the GRF.

The Governor vetoed amendments that would have permanently earmarked 30% of the CAT to permanently reimburse local taxing units for their individual computed tax losses. Payments would have continued for each qualifying levy for as long as the levy remained in effect. Payments would have continued to be made thrice annually, in August, October, and May. If the 30% of CAT revenue earmarked for local taxing unit reimbursement had exceeded the amount required to pay total reimbursements, the Director of Budget and Management would have been authorized to transfer the excess to the GRF (as under continuing law).

Reimbursement for county administrative fee losses (VETOED)

(R.C. 5751.23)

Continuing law compensates county auditors and treasurers for the loss of administrative fees payable on the basis of property tax collections. A percentage of taxing units' reimbursable revenue loss is used to reimburse the county auditors, county treasurers, and real estate assessment funds for the loss of these fees. The percentage is 1.1159% if the county's 2004 tax collections from all tax duplicates (other than the estate tax list) were $150 million or less, and 0.9659% if the county's 2004 collections were more than $150 million. The fee reimbursement compensation is phased out according to the reimbursement phase-out schedule for local taxing units, and currently is scheduled to end in 2017.

The Governor vetoed amendments that would have eliminated the phase-out of the county fee reimbursement so that the reimbursement amount each year throughout 2017 would not decline incrementally each year. Reimbursement would have ended in 2017, as under continuing law.

Property tax administration fund

(R.C. 5703.80)

Under continuing law, the state collects a fee for administration of property taxes. The fee is excised from property tax distributions to local taxing units. It is based upon two percentages: a percentage of the total tax reduction due to the 10% rollback for real property for the previous year, and a percentage of the taxes charged for the previous tax year against public utility personal property and against business personal property of multi-county taxpayers. The Department of Taxation is responsible for ensuring that real property is properly valued for tax purposes by reviewing county auditors' valuations. The Department also is responsible for assessing public utility personal property and the tangible personal property of businesses having such property in more than one county (although the final year for most business property assessment was 2008).

Under prior law, the percentage of the 10% rollback tax reduction for real property excised for the Property Tax Administration Fund was 0.35%. The act raises this percentage for fiscal year 2010 to 0.42%, and for 2011 and thereafter to 0.48%.

The percentage of public utility and business personal property taxes excised for the administration fund previously was 0.725%. The act raises the percentage for fiscal year 2010 to 0.8% and for 2011 and thereafter to 0.951%.

Manufactured home tax reduction reimbursement

(R.C. 319.302, 321.24, 323.156, and 4503.068)

Continuing law requires the state to reimburse local governments for the 10% and 2.5% homestead property tax reductions, which are available to manufactured and mobile homes as well as residential real estate. Prior law required the county treasurer, within 30 days after the April and September tax settlements, to certify the amount of the semiannual tax reductions to the Tax Commissioner. Upon receipt of the certification, the Commissioner was required to provide for payment to the treasurer for distribution to taxing units.

The act consolidates the semiannual reimbursements into one annual payment. The county treasurer is required to certify the annual tax reduction to the Commissioner on or before the second Monday in September of each year. Within 90 days after receipt of the certification, the Commissioner must provide for payment to the treasurer for distribution to taxing units.

Homestead exemption: reimbursement of county auditors

(R.C. 319.54(B))

Am. Sub. H.B. 119 of the 127th General Assembly expanded eligibility for the homestead exemption by eliminating the former income eligibility criteria. H.B. 119 reimbursed county auditors for the increased number of homestead applications that were filed because of the expanded eligibility. The increased reimbursement equals 1% of the total homestead tax reductions in the county; this 1% reimbursement is in addition to the preexisting 2% reimbursement paid to county auditors and treasurers. Whereas the 2% reimbursement is made on a semi-annual basis, the 1% reimbursement is made annually, on August 1 each year.

The act requires that the additional 1% reimbursement to county auditors be made at the same time as the original 2% reimbursements that are paid on a semi-annual basis.

Exemption: port authority

(Section 757.10)

Under continuing law, property that is owned by an airport and leased to a port authority for an initial period of at least 30 years may be exempted from real property taxation. Before R.C. 5715.27 was amended by Sub. H.B. 160 of the 127th General Assembly, it required the applicant for exemption to own the property for which it sought exemption. Sub. H.B. 160 was precipitated by an Ohio Supreme Court holding that a petitioner who did not own property did not have standing to petition the Tax Commissioner for exemption under R.C. 5715.27 where the petitioner did not hold legal title to the property as formerly required under that section. *Performing Arts Sch. of Metro. Toledo, Inc. v. Wilkins,* 104 Ohio St.3d 284 (2004).

The act authorizes the exemption and abatement of unpaid taxes or remittance of taxes paid on airport property that is leased to a port authority for the time that it was precluded from exemption because the port authority did not own the property, as required under prior law, at the time it submitted the application for exemption. The application for exemption and abatement or remittance must be submitted by the current owner of the property to the Tax Commissioner on or before January 1, 2010. The application must include a copy of the Tax Commissioner's final determination dismissing the previous application for exemption and a certificate issued by the county treasurer stating the amount of taxes that have been paid or that are owed on the property for which exemption is sought.

School district property tax to offset funding formula charge-off increases

(R.C. 5705.211)

The state's share of a school district's total per-pupil funding amount depends in part on the district's "recognized valuation," which is the aggregate taxable value of property in the school district. The state's share is determined by multiplying district's recognized valuation by a percentage and subtracting the product (called the "charge-off") from the district's total funding amount. (Under prior law, the percentage was 2.3%. The act phases in a reduction of the percentage over five years to 2.0%. See R.C. 3306.13(C).)

Increases in property values are added to a district's recognized valuation in one-third increments over the three-year property reassessment cycle. As a district's recognized valuation increases or decreases in response to changes in property values, the charge-off increases or decreases accordingly, which in turn causes a district's per-pupil funding to decrease or increase by a factor of 2.3% (under prior law) of the change

in recognized valuation. (In many instances, a district's recognized valuation will increase without a corresponding increase in the district's property tax revenue.)

Continuing law authorizes a school district, with voter approval, to levy a property tax designed to raise an amount of revenue in the first year approximately equal to the reduction in state funding caused by a district's increased recognized valuation. The rate of the levy is to be adjusted each year so the levy raises an amount equal to a percentage (e.g., 2.3%) of the appreciation in real property values insofar as that appreciation is reflected in the charge-off.

The act conforms the levy computation to the act's reduction in the charge-off percentage from 2.3% to 2.0%. Under the act, the levy rate adjustment must yield an amount ultimately equal to 2.0% of the real property value increase; during the charge-off phase-in period, the rate adjustment must reflect the declining charge-off rate.

II. Sales and Excise Taxes

Kilowatt-hour tax for self assessing purchasers

(R.C. 5727.81)

Continuing law permits a commercial or industrial purchaser of electricity that receives more than 45 million kilowatt hours of electricity per year at a single location in Ohio to self-assess the kilowatt-hour tax, in lieu of the electricity distributor assessing the tax. Under prior law, the tax was computed on the basis of both volume and price: $.00075 per kilowatt hour on the first 504 million kilowatt hours distributed to the location during the registration year, plus 4% of the total price of the electricity distributed to the location through the meter reading period that includes June 30, 2008, and 3.5% of the total price beginning for the meter reading period including July 1, 2008, and thereafter.

The act modifies the computation for meter reading periods including January 1, 2011, and thereafter by basing the self-assessor tax solely on volume and establishing a graduated volumetric rate schedule: the new rates are $.00257 per kilowatt-hour for the first 500 kilowatt hours, and $.001832 per kilowatt hour for each kilowatt hour in excess of 500 million.

Taxation of Medicaid health insurance companies

Insurance corporation franchise tax

(R.C. 5725.18, 5725.25, and 5729.03)

Continuing law requires insurance companies to pay an annual franchise tax based on the amount of premiums received by the corporation. The tax is 1.0% of the premiums received by a health-insuring corporation, and 1.4% of premiums received by any other insurance company. Under prior law, the franchise tax premiums base excluded amounts received under the Medicare program administered by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services and amounts received under the state's Medicaid care management system. Instead, health-insuring corporations that participated in the state's Medicaid care management system were required to pay a franchise permit fee equal to 4.5% of the managed care premiums received by the corporation.

Beginning October 1, 2009, the act eliminates the franchise permit fee, and includes Medicaid premiums received by insurance companies on and after that date within the companies' franchise tax base. (See "**Medicaid health insuring corporation franchise permit fee.**")

Sales tax

(R.C. 5725.25, 5739.01, 5739.03, 5739.033, and 5739.051)

Under ongoing law, in addition to the franchise tax, insurance companies are required to pay tax on real estate. But the franchise tax is "in lieu of" all other taxes on the property and assets of domestic insurance companies, except for tangible personal property taxed under Chapter 5711. Under prior law, services provided by a health insuring corporation were not subject to the sales and use taxes under Chapters 5739. and 5741.

Beginning October 1, 2009, the act subjects to sales taxation all health care services provided or arranged by a Medicaid health-insuring corporation for Medicaid enrollees residing in Ohio under the corporation's contract with the state (R.C. 5739.01(B)(11)(a)), unless the taxation of those services is determined to be an "impermissible health-care related tax" that reduces the state's Federal Financial Participation under federal law (discussed below). The act designates the corporations as the consumers of the services, rather than the individual receiving the services. As the consumer, a corporation is liable for and must pay the tax on services it provides or arranges for Medicaid enrollees residing in Ohio. The corporations will be issued direct payment permits allowing them to remit the tax directly to the state. Payment must be

made monthly. The act situses these sales at the "location of the enrollee" for whom the corporation receives premium payments. The "price" of the transactions for which a corporation incurs sales tax liability is the amount of monthly managed care premiums the corporation receives.

Impermissible health care-related tax

Under federal Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services law, a state's Medicaid Federal Financial Participation (federal Medicaid assistance received by the states) is reduced by the amount of revenues generated by impermissible "health care-related taxes." A tax is considered to be related to health care if at least 85% of the burden of the tax falls on health care providers. A health care-related tax is "permissible" if the tax is "broad-based" and "uniformly imposed."

A tax is "broad based" if it is imposed on all health care items or services in a class, or if it is imposed on all providers of such items or services of a class furnished by all nonfederal and nonpublic providers and it is imposed uniformly.[388] A health care-related tax is considered to be imposed uniformly if, among other possibilities, the tax is imposed at a uniform rate on revenues or receipts for all services or items in the class, or is otherwise found by federal authorities to be imposed equally on all service providers. The criteria for permissible health care-related taxes are specified in 42 U.S.C. 1396b and 42 C.F.R. 433.55 *et seq.*

The act specifies that the proposed extension of sales and use tax to Medicaid health-insuring corporations is not a tax that the franchise tax is in lieu of.

Cigarette and tobacco dealer licensing

(R.C. 5743.15 and 5743.61)

License fees

Continuing law requires manufacturers, importers, and wholesale and retail businesses wishing to engage in the trafficking of cigarettes in Ohio to first obtain a license to do so. Under prior law, those licenses were obtained from the county auditor of the county in which the manufacturer, importer, wholesaler, or retailer wished to conduct business. Distributors of other tobacco products were also required to obtain a license for each place of business.

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[388] Among the separate classes defined by federal law are inpatient hospital services; outpatient hospital services; nursing facility services; physician services; home health care; and services of a Medicaid managed care organization.

To obtain a license, an applicant was required to file annually with the Tax Commissioner for a tobacco product distributor license or with the county auditor for a wholesale or retail cigarette license. A license was and continues to be valid for one year. Annual licensing fees were $100 for a tobacco product distributor license, $200 for a cigarette wholesale license, and $30 for each cigarette retail license for the first five retail places of business and $25 for each additional retail place of business. Wholesale and retail licenses were assignable to another person in the same county upon application to the county auditor. Failure to obtain a license is a fourth-degree misdemeanor.

The act transfers responsibility for issuing wholesale cigarette licenses from the county auditor to the Tax Commissioner, and increases the annual fees for tobacco product distribution licenses to $1,000, wholesale cigarette licenses to $1,000, and retail cigarette licenses to $125 for each place of business. If a license is issued for less than one year, the fee is reduced proportionately to the remainder of the year, but not to less than $25 for a retail license or $200 for a wholesale cigarette or tobacco product distributor license. The act eliminates the authority of cigarette wholesale and retail licensees to assign such licenses to another person, and increases the transfer fees (from one place of business to another) from $1 to $5 for retail licenses and from $1 to $25 for wholesale licenses. The act increases the retail license replacement fee from 50¢ to $5 and the wholesale license replacement fee from 50¢ to $25. It also imposes $25 fees for replacing and transferring (from one place of business to another place of business of the same licensee) a tobacco product distribution license.

Fee distribution

Under prior law, of the fees collected from cigarette wholesale licenses, 37.5% was distributed to the municipal corporation or township where the business was located, 15% to the county general fund, and 47.5% to the Cigarette Tax Enforcement Fund. (The Cigarette Tax Enforcement Fund is used to pay the state's expenses in enforcing the cigarette and tobacco products excise taxes and the Unfair Cigarette Sales Act (R.C. 1333.11 to 1333.21), which generally prohibits selling cigarettes at less than cost with intent to lessen competition.) Of the fees collected from retail cigarette licenses for the first five places of business, 62.5% was distributed to the municipal corporation or township treasury where the business was located, 22.5% to the county general fund, and 15% to the Cigarette Tax Enforcement Fund. Of the fees from licenses for additional retail places of business, 75% was paid to the municipal corporation or township, and 25% to the county general fund.

The act increases the percentage of cigarette wholesale license fees paid into the Cigarette Tax Enforcement Fund to 100%. The act also increases the percentage of cigarette retail license fees paid to the Cigarette Tax Enforcement Fund to 60%. Thirty

per cent is distributed to the municipal corporation or township treasury where the business is located, and 10% to the county general fund. The act requires late cigarette license fees collected by county auditors to be sent to the Treasurer of State by the last day of the month following the month in which the money was collected, rather than by December 31, as was required under prior law.

The changes made to the cigarette and tobacco product licensing provisions take effect January 1, 2010.

Natural gas distribution tax

(R.C. 5727.811; Section 803.50)

Under continuing law, there is an excise tax on natural gas distribution companies for the purpose of raising revenue for public education and state and local government operations. The tax is levied on every natural gas distribution company for all natural gas volumes billed by, or on behalf of, the company and distributed through the "meter of an end user in this state."[389] (If there is no meter used to measure the gas, then the tax applies to the estimated quantity of gas distributed to the unmetered location.) Distribution is measured by 1,000 cubic feet of natural gas, or "MCF." For purposes of the MCF tax, a "natural gas distribution company" is a natural gas company or a combined natural gas and electric company that is subject to the natural gas company gross receipts tax and that distributes natural gas through a meter of an end user in this state.

The MCF tax is levied quarterly, at a rate that decreases as more natural gas is distributed. Except for natural gas distribution companies with 50,000 customers or less or "flex" customers, for the first 100 MCF per month distributed to an end user, the rate is $.1593 per MCF; for the next 101 to 2,000 MCF per month, the rate is $.0877; and for 2,001 MCF per month and above, the rate is $.0411.

For a natural gas distribution company with 50,000 customers or less, the rate is lower. Such a company may elect to apply the three rate brackets to the aggregate of the natural gas distributed by the company through the meters of all its customers in this state, and upon that election, this method must be used to determine the amount of tax to be paid by the company.

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[389] The "meter of an end user in this state" is the last meter used to measure the MCF of natural gas distributed by a natural gas distribution company to a location in this state, or the last meter located outside of this state that is used to measure the natural gas consumed at a location in this state.

The act extends to natural gas distributors with 70,000 or fewer customers the authority to aggregate all of the natural gas distributed by the company in the state when determining the tax rate. The tax rate varies according to the volume distributed to each customer (a lower rate on higher volumes), so aggregating reduces the total tax due.

Lodging tax for convention facilities authority

(R.C. 351.021(C)(2))

The act authorizes a convention facilities authority (CFA) in a county with a 2000-census population between 100,000 and 135,000, and containing entirely within its boundaries a city with a 2000-census population of more than 50,000, to levy a lodging tax of up to 3% to finance the construction, operation, and maintenance of a convention, entertainment, or sports facility. The CFA board of directors may adopt a resolution levying the tax only if the board of county commissioners adopts a resolution authorizing the CFA to levy the tax. The CFA's resolution must be adopted on or before November 1, 2009.

The CFA's authority to levy the tax is subject to referendum if a valid petition signed by 10% of county electors is filed within 30 days after the board of county commissioners adopts its resolution authorizing the CFA to proceed with the tax levy. The board of commissioners' resolution authorizing the tax levy is the subject of the referendum. If a referendum is to be held, the CFA may adopt its resolution before the election occurs, but the resolution and the tax does not take effect unless the commissioners' resolution is approved at the referendum election.

Lodging tax

(R.C. 5739.01(M) and 5739.09(G))

Continuing law authorizes counties, townships, and municipal corporations to levy lodging taxes subject to various restrictions on the rate and purpose of the tax. If a tax is levied, it applies to any "hotel," which prior law defined as any "establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests, in which five or more rooms are used for the accommodation of such guests, whether the rooms are in one or several structures." Continuing law authorizes the taxing authorities to modify the definition of "hotel" for local tax purposes by applying the tax to establishments with fewer than five guest rooms.

The act authorizes local authorities to further modify the definition of which hotels are subject to local lodging taxes by specifying both of the following: (1) that the

five-room minimum threshold is to be determined regardless of whether each room is accessible through its own keyed entry or several rooms are accessible through the same keyed entry, and (2) in determining the number of rooms, all rooms are included regardless of the number of structures in which the rooms are situated or the number of parcels of land on which the structures are located if the structures are under the same ownership and the structures are not identified in advertisements of the accommodations as distinct establishments. For this purpose, the act specifies that two or more structures are under the same ownership if they are owned by the same person, or if they are owned by two or more persons the majority of the ownership interests of which are owned by the same person. (In this context, "person" is used in its legal sense and not in reference only to individuals. It includes all forms of business associations. R.C. 5701.01.)

Salt severance tax revenue

(R.C. 5749.02(B))

Continuing law levies an excise tax on the severance of minerals, including salt. Under prior law, with respect to the severance of salt, 15% of revenues are credited to the Geological Mapping Fund, and the remainder is credited to the Unreclaimed Lands Fund. (Money in the Unreclaimed Lands Fund is used for the purpose of reclaiming land affected by mining or for controlling mine drainage and for paying the expenses and compensation of the Council on Unreclaimed Strip Mined Lands, which gathers information regarding eroded or strip mined lands and makes recommendations for future use.)

The act requires all salt severance tax revenue to be credited to the Geological Mapping Fund. Money in that fund is used for purposes of performing necessary field, laboratory, and administration tasks to map and make public reports on the geology and mineral resources of each county.

III. Tax Credits

New Markets Tax Credit

(R.C. 5725.33, 5725.98, 5729.16, 5729.98, 5733.01, 5733.58, and 5733.98)

The act creates a nonrefundable tax credit with a four-year carryforward against the Insurance Corporation and Financial Institution Franchise taxes for insurance companies and financial institutions that purchase and hold securities issued by low-income community organizations to finance investments in qualified active low-income community businesses in Ohio, in accordance with the federal New Markets Tax Credit law.

Federal credit

Federal law provides a tax credit against the federal income tax, totaling 39% of the cost of the investment at original issue, for making qualified equity investments in investment vehicles known as Community Development Entities (CDEs). A CDE is a United States corporation or partnership with the primary mission of serving or providing investment capital for low-income communities or low-income persons, that maintains accountability to residents of low-income communities through representation by them on the CDE's governing board or an advisory board, and that is certified as a CDE by the Secretary of the Treasury.

A qualified equity investment is the purchase of capital stock or capital interest in a partnership. The credit provided to the investor is applied over a seven-year period. Substantially all of the taxpayer's investment must in turn be used by the CDE to make qualified investments in "low-income communities." The federal credits are awarded by the Community Development Financial Institutions (CDFI) Fund, which is responsible for administering the federal New Markets Tax Credit. A limited amount of federal tax credits is available for allocation among CDEs throughout the United States: $3.5 billion was made available for allocation in 2008 and 2009 (and none thereafter), but the recently enacted federal economic "stimulus" bill increased the amount to $5 billion for each of those years ("American Recovery and Reinvestment Act of 2009," H. Res. 1, Section 1403). Under the federal act, the additional $1.5 billion made available for 2008 is to be allocated among CDEs that applied for a 2008 allocation but did not receive one or received less than they applied for. No allocation has been made for 2010 or thereafter. The federal credit is governed by Section 45D of the Internal Revenue Code (26 U.S.C. 45D).

For the purposes of the credit, a low-income community (LIC) is any population census tract where either: (1) the poverty rate is at least 20%, or (2) the median family income does not exceed 80% of statewide median family income (in the case of a tract not located within a metropolitan area[390]), or, if within a metropolitan area, 80% of the greater of statewide median family income or the metropolitan area median family income.

Ohio credit

The act's Ohio New Markets Tax Credit totals 39% of the "adjusted purchase price" of qualified equity investments in qualified active low-income community

[390] Metropolitan area means a statistical area, as defined by the Director of the Office of Budget and Management, with a population of 250,000 or more, and any other area designated as such by the appropriate Federal financial supervisory agency.

businesses. To obtain the Ohio credit, a person must have qualified for the federal credit by holding a qualified equity investment. Under the Federal program, a CDE can make qualified investments in any state. For purposes of the Ohio credit, the "adjusted purchase price" of qualified investments is the percentage of those investments that are made in businesses located in Ohio. A qualified equity investment is an equity investment in a qualified CDE. It must be acquired after the act's effective date (October 16, 2009), for cash, and at least 85% of the purchase price must be used by the issuer to make qualified low-income community investments. The investment may be transferred, so long as the transferee's holding would qualify if the transferee were the purchaser at the original issuance.

Beginning January 1, 2010, credits must be applied over a seven-year period. For the first two years no credit may be applied, 7.0% may be applied for the third year, and 8.0% for each of the last four years. The amount of qualified low-income community investments is the total amount of investments that are invested in qualified active low-income community businesses, not exceeding $2,564,000 per business, for a maximum credit of $1 million.

A "qualified active low-income community businesses" is any partnership or corporation that derives less than 15% of its annual revenue from the rental or sale of real property (except for certain special purpose entities owned by the business and created for the purpose of renting or selling the property back to the tenant) and that, for any tax year, satisfies all of the following:

(1) At least 50% of total gross income of the entity is derived from the active conduct of qualified business within a low-income community;

(2) A substantial portion of the use of the tangible property of the entity (whether owned or leased) is within a low-income community;

(3) A substantial portion of the services performed for the entity by its employees are performed in a low-income community;

(4) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to collectibles (other than collectibles held primarily for sale in the ordinary course of business);

(5) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to nonqualified financial property.[391]

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[391] Nonqualified financial property is financial property (debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar

The Ohio Department of Development may award a combined maximum of $10 million of tax credits annually (disregarding credit carry-forwards).

Recapture; rule-making

The act requires an insurance company or financial institution to repay credits if the issuing CDE is no longer a "qualified" CDE, substantially all of the cash is not used by the CDE to make qualified low-income community investments, or the investment is redeemed before the end of the seven-year credit period (except that in the seventh year, only 75% of the purchase price must be used for qualified low-income community investments).

The act gives rule-making authority to the Director of Development to determine how credits are to be awarded and recaptured, if necessary. Under continuing law, there is a three-year statute of limitations on assessing unpaid tax. The act specifies that the statute of limitations does not apply to tax assessments related to the recapture of the credit.

The act authorizes the Director to charge fees to cover expenses of administering the tax, and it establishes the New Markets Tax Credit Operating Fund for that purpose.

Technology investment tax credit increase

(R.C. 122.151(D)(2))

Continuing law authorizes a tax credit against certain state taxes for a person who invests in an Ohio business with annual gross revenue or a net book value under $2.5 million that is engaged primarily in research and development, technology transfer, bio-technology, information technology, or the application of new technology developed through research and development or acquired through technology transfer. The credit may be claimed by persons subject to the income tax, corporation franchise tax, dealers in intangibles tax, or the gross receipts excise taxes on natural gas companies and certain other public utilities.

Prior law limited the total amount of tax credits that may allowed to not more than $30 million.

The act raises this limit to $45 million.

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property) that is not working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less; or accounts or notes receivable acquired in the ordinary course of business for services rendered, or from the sale of stock or inventory in the taxpayer's ordinary course of business.

Job retention tax credit

(R.C. 122.171, 5725.98, and 5729.98)

Credit base

(R.C. 122.171(A) and (B))

Continuing law establishes a job retention grant program administered by the Tax Credit Authority (TCA) under which an eligible business may receive nonrefundable tax credits against specified taxes for retaining full-time employment positions and investing minimum amounts in a facility "project site." Under prior law, the credit equaled a percentage, up to 75%, of annual Ohio income tax withholdings from employees filling full-time employment positions. Generally, a "full-time employment position" was a position for consideration for at least an average of 35 hours a week that had been filled for at least 180 days immediately preceding the date the eligible business filed its application for the credit. (For purposes of this analysis, employees filling such positions are referred to as full-time employees.)

The act eliminates the use of Ohio income tax withholdings from full-time employees as the base for determining the credit amount. Under the act, the credit base is comprised of Ohio income tax withholdings from all employees employed in the project, regardless of when they were hired, except those whose withholdings have been used as a basis for the job creation tax credit.

Eligible business

(R.C. 122.171(A)(2))

Prior law required a business seeking job retention credits to meet certain criteria, two of which are as follows. The business must have invested in the project at least $200 million, or $100 million if the average wage for full-time employees at the project site was greater than 400% of the federal minimum wage, over the three preceding years. The amount invested could include lease payments made to the business (except by a "related member," discussed below) for a lease lasting at least 20 years. The business also was required to employ an average of at least 1,000 full-time employees during the 12 months preceding the date of credit application.

The act reduces the investment threshold and the minimum number of employees, and it permits part-time employees to count toward the employee quota; it reduces the required investment to not less than $50 million if the business is engaged at the project site primarily as a manufacturer, or $20 million if the business is engaged primarily in significant corporate administrative functions, over the three preceding

years; and it reduces the employee threshold to not less than 500 "full-time equivalent employees" as of the date the TCA grants the tax credit. A "full-time equivalent employee" is an employee whose hours of compensation, standing alone or when combined with those of another employee, totals 2080 hours for the year. The employee, however, may not be one whose withholdings formed the basis for a job creation tax credit.

Related member

(R.C. 122.171(A)(2))

The act adds as an "eligible business" the eligible business' "related members." Generally, a related member is a corporate or non-corporate entity that substantially owns, or is substantially owned by, the business, either through direct ownership or through a chain of other business entities. The effect of including a business' related members is not clear. The only other use of the term is in connection with an eligible business's minimum required investment: payments by the eligible business to a related member do not qualify as an investment in the project for purposes of the minimum required investment.

Applicable taxpayers

(R.C. 122.171(B), 5725.98, and 5729.98)

Prior law limited credit eligibility to taxpayers under the corporation franchise tax, the income tax, and, for corporations converting from the franchise tax, the commercial activity tax.

The act expands eligibility to domestic and foreign insurance companies and, when applicable, requires the Superintendent of Insurance to administer the credit.

Credit limits

(R.C. 122.171(M))

The act limits the annual amount of tax credits that may be allowed. For year 2010 the limit is $13 million. In years 2011 through 2023, the limit increases by $13 million each year. For years 2024 and thereafter, the limit is $195 million. The limit applies only to credits for projects approved on or after July 1, 2009.

Tax credit agreement

(R.C. 122.171(D) and (E))

Prior law authorized the TCA and the business to enter into a tax credit agreement if the TCA determined, among other matters, that the political subdivisions in which the project is located agreed to provide substantial financial support to the project. The act removes this condition.

Under prior law, a business was required to maintain a negotiated number of full-time employees at the project site (at least 1,000) for the term of the credit. The act replaces the minimum of 1,000 actual full-time employees with a minimum of 500 full-time equivalent employees.

Under prior law, a credit was not allowed for any year in which the total number of full-time employees for each day of the calendar year divided by 365 is less than 90% of the negotiated number of full-time employees. The act removes this prohibition.

Prior law required the agreement to prohibit the business from relocating any Ohio jobs to the project location unless the Director determined their current location was inadequate to meet market and industry conditions or other business considerations.

Under the act, the agreement must provide that the business may not relocate a "substantial number" of employment positions unless the Director determines the business has notified the local jurisdiction from the employment positions will be relocated. The inadequacy condition is eliminated.

Under prior law, a business was required to maintain operations at the project site for at least the greater of (a) the term of the credit plus three years, or (b) seven years. If the business failed to do so, the TCA could require the business to reimburse the state for up to 100% of the credit allowed and actually received if the business maintained operations at the project location for less than the term of the credit, and up to 50% of the credit allowed if business maintained operations for the term of the credit or more.

Under the act, if the business maintains operations at the project site for at least the term of the credit but less than the greater of seven years or the term of the credit plus three years, the TCA may require the business to reimburse the state for up to 75% of the credit allowed and actually received.

Under prior law, a business was required to provide to the Director information regarding full-time employment positions and related withholdings.

Under the act, a business must provide such employment, tax withholding, and investment information as is necessary to enable the Director to verify compliance with the agreement. The agreement also must state the anticipated income tax revenue to be generated.

Agreement noncompliance

(R.C. 122.171(F) and (J))

Under prior law, if a business failed to comply with the agreement, the TCA could amend the agreement to reduce the percentage or term of the tax credit. The reduction could take effect in the taxable year immediately following the taxable year in which the TCA amended the agreement, or in the first tax period beginning in the calendar year immediately following the calendar year in which the TCA amended the agreement. The reduction also could take effect in the taxable year immediately following the taxable year in which the Director of Development notified the business in writing of such failure, or in the first tax period beginning in the calendar year immediately following the calendar year in which the Director notified the business in writing of such failure. If the business failed to annually report information required under the agreement within the time required by the Director, the reduction of the percentage or term of the tax credit could take effect in the current taxable year.

The act provides that, in the event of any noncompliance, the percentage or credit term reduction may take effect in the current taxable or calendar year.

Prior law prohibited a business that relocated employment positions in violation of the agreement from claiming any allowed credits. The act eliminates this prohibition. A relocation of employment, therefore, could constitute a failure to comply with the agreement with the associated possibility of having the credit term or percentage reduced.

Director's report

(R.C. 122.171(L))

Prior law required the Director to report to the Governor, the Speaker of the House, and the President of the Senate on the tax credit program on or before March 31 of each year. The act changes this date to August 1.

Additional credit for call centers

(R.C. 122.171(M))

The act removes statutory references to an additional credit available to an "applicable corporation," which is defined generally as a business engaged in call center operations.

Job creation tax credit

(R.C. 122.17)

Credit base

(R.C. 122.17(A) and (B))

Continuing law establishes a job creation grant program administered by the Tax Credit Authority (TCA) under which a business may receive refundable tax credits against specified taxes for creating new full-time employment positions. Under prior law, the credit amount was based on annual state and school district income tax withholdings from new full-time employees. Generally, a "full-time employee" was an individual who is employed for consideration for at least an average of 35 hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

The act eliminates the use of withholdings only from new full-time employment positions as a base for determining the credit amount. Under the act, the credit base is comprised of incremental increases in withholdings from all employees employed in the project. The credit amount equals a percentage of the growth in tax withholdings from a base year to the year for which credit is claimed ("excess income tax revenue"). The base year is the 12 months immediately preceding the date the TCA approves the business' credit application. The base year withholding amount is adjusted by an annual pay increase factor determined by the TCA. This adjusted base year amount becomes the starting base year amount for the next year. A job creation credit may not be claimed on the basis of tax withholdings from any employee whose withholdings are the basis for a job retention tax credit (if a business were to have both a job creation and job retention credit agreement).

The credit may be based only on amounts withheld after the business became eligible for the credit. If the business first becomes eligible for a credit midway through the first year of its credit eligibility, the first year's withholding base is adjusted proportionately.

Tax credit agreement

(R.C. 122.17(D) and (K))

Prior law authorized the TCA and the business to enter into a tax credit agreement if the TCA determined, among other matters, that the business' project would create new jobs in Ohio.

The act eliminates the explicit job creation condition and substitutes a requirement that the TCA determine whether a business' project will increase payroll and income tax revenue.

Under prior law, a business was required to maintain operations at the project site for at least twice the term of the credit. If the business failed to do so, the TCA could require the business to reimburse the state for up to 25% of the credit allowed if the business maintained operations at the project location for one and one-half times the term of the credit or more; up to 50% of the credit allowed if business maintained operations for the term of the credit or more; and up to 100% of the credit allowed if the business failed to maintain operations for the term of the credit.

Under the act, the agreement must require the business to maintain operations at the project site for the greater of (1) seven years or (2) the term of the credit plus three years. If the business fails to do so, the act authorizes the TCA to require the business to reimburse the state for up to 75% of the credit allowed and actually received if the business maintained operations at the project location for at least the term of the credit but less than the greater of seven years or the term of the credit plus three years. If the business fails to maintain operations at the project location for at least the term of the credit, the TCA may require the business to reimburse the state for 100% of the credit allowed and received.

Prior law required the agreement to prohibit the business from relocating any Ohio jobs to the project location unless the Director determined their current location was inadequate to meet market and industry conditions or other business considerations.

Under the act, the agreement must provide that the business may not relocate a "substantial" number of employment positions unless the Director determines the business has notified the local jurisdiction from which the employment positions will be relocated. The inadequacy condition is eliminated.

Under prior law, a business was required to provide to the Director information regarding new full-time employment positions and related withholdings, and required

the Director to verify the business' compliance with the agreement and certify such verification to the business.

Under the act, a business must provide such employment, tax withholding, and investment information as is necessary to enable the Director to verify compliance with the agreement. The Director's certification must state the credit amount allowed.

The agreement must state the pay increase factor to be applied to the base year withholding amount.

Agreement noncompliance

(R.C. 122.17(E))

Under prior law, if a business failed to comply with the agreement, the TCA could amend the agreement to reduce the percentage or term of the tax credit. The reduction could take effect in the taxable year immediately following the taxable year in which the TCA amended the agreement, or in the first tax period beginning in the calendar year immediately following the calendar year in which the TCA amended the agreement. The reduction also could take effect in the taxable year immediately following the taxable year in which the Director of Development notified the business in writing of such failure, or in the first tax period beginning in the calendar year immediately following the calendar year in which the Director notified the business in writing of such failure. If the business failed to annually report information required under the agreement within the time required by the Director, the reduction of the percentage or term of the tax credit could take effect in the current taxable year.

The act provides that, in the event of any noncompliance, the percentage or credit term reduction may take effect in the current taxable or calendar year.

Prior law prohibited a business that relocated employment positions in violation of the agreement from claiming any allowed credit. The act makes this prohibition part of the agreement and modifies it so that a relocation is not in violation of the agreement if the Director determines that the business notified the local government from which the positions were moved. A relocation of employment, therefore, could constitute a failure to comply with the agreement with the associated possibility of having the credit term or percentage reduced.

Director's report

(R.C. 122.17(L))

Prior law required the Director to report to the Governor, the Speaker of the House, and the President of the Senate on the tax credit program on or before March 31 of each year. The act changes this date to August 1.

Movie and television production tax credit

(R.C. 122.85, 5733.59, 5733.98, 5747.66, and 5747.98)

The act authorizes a refundable credit against the corporation franchise tax or the income tax for a motion picture company that produces at least part of a motion picture in Ohio. The credit may be claimed against the corporation franchise tax even if the corporation is no longer subject to the tax due to the phase-out and cessation of the tax for nonfinancial corporations. Because the tax no longer applies to nonfinancial corporations, in effect the credit is not subtracted from any tax liability; it is essentially a means of awarding the credit amount in the form in which a refundable tax credit would be paid if the tax still applied. To receive the credit, a corporation must file a return as if it were still subject to the tax.

For purposes of the income tax, pass-through entity allocation is permitted for individuals who own all or part of a motion picture company organized as a pass-through entity.

Credit amount; overall limit

A credit is available only if the lesser of budgeted or actual eligible production expenditures exceeds $300,000. The credit equals 25% of the lesser eligible production expenditure amount (excluding budgeted or actual expenditures for resident cast and crew) plus 35% of budgeted or actual expenditures for resident cast and crew. Not more than $20 million in credits may be allowed per fiscal biennium ($30 million for the FY 2010-2011 biennium), not more than $10 million of which may be allowed in the first year of a biennium. Not more than $5 million in credits may be allowed per production.

Eligible productions and expenditures

"Motion picture" is defined as "entertainment content" created partly or wholly in Ohio for distribution or exhibition to the general public. It includes feature-length films; documentaries; television series, miniseries, and specials; interactive web sites; sound recordings; videos; music videos; interactive television; interactive games; videogames; commercials; any format of digital media; and any trailer, pilot, video

teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in either a product or a motion picture by any means and media in any digital media format, film, or videotape, provided the motion picture qualifies as a motion picture. It excludes sexually explicit productions for which records must be maintained under 18 U.S.C. 2257 and television news, weather, sports, market reports, award shows and galas, fundraisers, "infomercials," political advertising, and in-house advertising.

"Eligible production expenditures" is defined to mean expenditures made after June 30, 2009, for goods or services (including payroll) purchased and consumed in Ohio directly for the production. It includes costs of crew accommodations, set construction and operation, editing, photography, sound synchronization, lighting, wardrobe, makeup, film processing, sound mixing, special and visual effects, music, location fees, and equipment or facility purchase or rental.

Application for production certification and credit certificate

To be eligible to receive a credit, a motion picture company must first apply to the Director of Development for certification of the motion picture as a tax credit-eligible production. The Director determines the manner and form of application. The application must include the following information, among other things:

(1) A list of the scheduled first preproduction date through the scheduled last production date in Ohio;

(2) The total production budget;

(3) The total budgeted eligible production expenditures and the percentage that amount is of the total production budget;

(4) The total percentage of the motion picture being shot in Ohio;

(5) The level of employment of cast and crew who reside in Ohio;

(6) A synopsis of the script and the shooting script;

(7) A creative elements list that includes the names of the principal cast and crew, and the producer and director;

(8) The motion picture's distribution plan, including domestic and international distribution, and sales estimates for the picture;

(9) Documentation of financial ability to undertake and complete the motion picture;

(10) Estimated tax credit amount.

If the Director of Development certifies the motion picture as a tax credit-eligible production, the motion picture company must submit "sufficient evidence of reviewable progress" to the Director within 90 days of the certification, and at any time thereafter upon the Director's request. If the company fails to do so, the Director may rescind the certification. If the Director rescinds the certification, the company may reapply.

If a motion picture company's production has been certified as a tax-credit eligible production, the company may apply for a tax credit certificate on or after July 1, 2009. The form and manner of the application are determined by the Director in consultation with the Tax Commissioner.

Examination of expenditures

Before a credit certificate may be issued, the production must be complete, and the company must hire, at its own expense, an independent certified public accountant (CPA) to determine the production expenditures that qualify as eligible production expenditures. The CPA must issue a report certifying the eligible production expenditures to the Director of Development and to the motion picture company, and must provide to the Director any additional information the Director requires.

After receiving the report, the Director may disallow any expenditure certified by the CPA that the Director determines is not an eligible production expenditure. If the Director disallows an expenditure, the Director must issue a written notice to the motion picture company stating that the expenditure is disallowed and the reason for the disallowance. Upon examination of the CPA's report and denial of any eligible production expenditures, the Director must determine, for purposes of computing the credit, the lesser of total budgeted eligible production expenditures as stated in the application for certification, or the actual eligible production expenditures. After making that determination, and so long as the applicable eligible production expenditures amount is greater than $300,000, the Director must determine the credit amount and issue a tax credit certificate to the motion picture company. The credit amount is not subject to adjustment unless the Director determines an error was made in the computation of the credit amount.

Credit certificate

The credit certificate must contain a unique identifying number and state the credit amount and the amount of the eligible production expenditures on which the credit is based. The certificate information must be recorded in a register maintained by the Director of Development. Upon issuance of a certificate, the Director must certify the Tax Commissioner the name of the applicant, the amount of eligible production

expenditures shown on the certificate, and any other information required under rules adopted to administer the credit program.

Administrative rules

The act requires the Director of Development, in consultation with the Tax Commissioner, to adopt rules pursuant to Chapter 119. to administer the tax credit program. The rules must address what constitutes a tax credit-eligible production and eligible expenditures, activities that constitute the production of a motion picture, reporting sufficient evidence of reviewable progress, a competitive process for approval of credits, and geographical distribution of credits.

Motion Picture Tax Credit Program Operating Fund

The Director of Development may require applicants for certification and applicants for tax credits to pay a "reasonable" fee to pay administrative costs of the tax credit. Fee proceeds must be credited to the Motion Picture Tax Credit Program Operating Fund, which the act creates. Fund money may include the fee proceeds, grants, gifts, and contributions, and must be used for administering the tax credit program, for marketing and promoting the motion picture industry in Ohio and funding the Department of Development's Ohio Film Office.

Use of state's name in credits

The act specifies that the state reserves the right to refuse the use of its name in the credits of any tax credit-eligible production.

Historic rehabilitation tax credit

(R.C. 5733.47 and 5747.76)

The act permits companies entitled to claim the historic rehabilitation tax credit to allocate the company's credit among the company's equity owners in amounts or proportions other than their pro rata ownership shares if the company is organized as a partnership or other form of pass-through entity (e.g., limited liability company or S corporation). Generally, a pass-through entity's income items for tax purposes (including credits) are distributed among the entity's owners in proportion to each owner's ownership share unless the owners' entity agreement provides otherwise (see Internal Revenue Code sec. 704).

The rehabilitation tax credit is available for owners of historic buildings that rehabilitate the buildings according to standards prescribed by the U.S. Department of the Interior and whose rehabilitation project is approved for the credit by the Director of Development. (See R.C. 149.311.) The credit equals 25% of the qualifying

expenditures. It may be claimed against the income tax, corporation franchise tax, and dealers in intangibles tax.

IV. Commercial Activity Tax

Penalty: billing or invoicing for the tax

(R.C. 5751.06)

Under continuing law, a person subject to the commercial activity tax is expressly prohibited from billing or invoicing another person for the tax under R.C. 5751.02(B), but is explicitly permitted to recover the tax by including the tax in the price of a good or service. Under prior law, there was no civil penalty for violating this provision, but violations were punishable by a criminal fine of up to $500 or imprisonment for up to 30 days (R.C. 5751.99(B)).

The act authorizes a lessor to bill or invoice a lessee for the commercial activity tax under a written lease agreement, but under all other circumstances requires the Tax Commissioner to notify a taxpayer by certified mail the first time the taxpayer bills or invoices another person for the taxpayer's commercial activity tax liability. For each subsequent violation the Commissioner is required to impose a $500 civil penalty. The Tax Commissioner may, but is not required to, impose a penalty of up to $500 for the taxpayer's first violation. The penalty is in addition to any criminal fine.

Personal property tax reimbursement

(R.C. 5751.20(E)(2))

Under continuing law, the state is required to reimburse school districts for losses due to the phase-out of business personal property taxes. Losses are divided into two categories: losses for taxes levied at a specified rate ("fixed-rate levy losses") and losses for taxes levied to raise a specific amount of money ("fixed-sum levy losses"). Losses from fixed-sum levies--"emergency" school district levies, for example--are reimbursed through 2010, and thereafter reimbursed until the levy expires or, if they are renewed or otherwise succeeded by another emergency levy, until the successor expires, until 2017. Levies qualifying for reimbursement are those that were levied in tax year 2004, or in 2005 if on the ballot before September 1, 2005. Levies enacted after 2005 are not reimbursed unless they renew such a "qualifying" levy.

Recently, school districts were authorized to levy a "substitute" levy, which may be levied only to replace an expiring emergency levy.

The act requires property tax loss reimbursement for a substitute levy replacing an emergency levy that qualified for reimbursement. Reimbursement continues under the same terms as if the substitute levy were a renewal of an expiring emergency levy: i.e., through the earlier of 2017 or the last year of the substitute levy, and only if the substitute levy raises the same amount of revenue as the expiring emergency levy less the 2006 reimbursement for the emergency levy.

Tax Reform System Implementation Fund

(R.C. 5751.20(B))

Under continuing law, 100% of commercial activity tax revenue is credited to the Commercial Activities Tax Receipts Fund and thereafter credited to funds that reimburse school districts and local governments for losses due to the phase-out of business personal property taxes. Beginning in 2012, an increasing percentage of Fund money will be credited to the General Revenue Fund as the percentage needed to reimburse local governments is phased down. (The percentage of CAT revenue earmarked for school districts remains at 70% on a permanent basis.)

The act creates the Tax Reform System Implementation Fund, which will receive 0.85% of commercial activity tax revenue. Money in the fund must be used to defray the costs of administering the CAT and to implement "tax reform measures," which the act does not further define.

Excluded persons and taxable gross receipts

(R.C. 5751.01 (E) and (F))

The commercial activity tax (CAT) applies to taxable gross receipts, which is the portion of a taxpayer's total gross receipts sitused to Ohio under the CAT situsing provisions. Total gross receipts is defined broadly to include the total amount realized by a person, without deduction for the cost of goods sold or other expenses, that contributes to the production of that person's gross income. It includes the fair market value of any property and any services received and any debt transferred or forgiven as consideration. The CAT law also specifies certain examples of gross receipts.

Continuing law provides some exclusions from gross receipts, including, among others, proceeds on the account of payments from life insurance policies; gifts or charitable contributions, membership dues, and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; fundraising receipts if excess receipts are donated or used exclusively for charitable purposes; and proceeds received by a nonprofit organization, including those proceeds realized with regard to its unrelated business taxable income.

Under the act, there is a new exclusion for payroll deductions by an employer to reimburse the employer for advances made on an employee's behalf to a third party. The act expands the exclusion for insurance policies so that proceeds from any insurance policy are excluded, not just life insurance, unless the insurance reimburses for business revenue losses. The act also narrows the exclusion for membership dues so that they are excluded only if they are for membership in a trade, professional, homeowners', or condominium association.

Under prior law, certain bad debts, cash discounts, returns and allowances, and accounts receivable are deducted when calculating taxable gross receipts. The act excludes them from the broader definition of gross receipts instead of treating them as a deduction from gross receipts.

Besides changes to the exclusions from taxable gross receipts, the act also re-characterizes nonprofit organizations and the state, its agencies, instrumentalities, and political subdivisions as "excluded persons" (nontaxpayers) instead of excluding them from the broader definition of "person."

Registration and fee

(R.C. 5751.04 and 5751.08; Section 399.20)

Under continuing law, every legal person subject to the CAT must register with the Tax Commissioner within 30 days after first becoming subject to the tax. A one-time $15 registration fee is payable if the person registers electronically; if registration is not done electronically, the fee is $20. The fee is credited toward the first tax payment due. If a person pays the fee after the date by which the person is required to register, an additional fee of up to $100 per month may be charged (up to a maximum of $1,000), which the Tax Commissioner may abate; the additional fee is not credited against the tax due. Under prior law, persons that would otherwise be subject to the tax but that begin business after November 30 in any year were exempt from the fee, as were persons that did not surpass the $150,000 taxable gross receipts threshold as of December 1.

The act eliminates the initial CAT registration fee exemption for new companies starting business after November 30 or surpassing the $150,000 threshold only after December 1. The act also permits companies that registered for or paid the tax for 2005 or 2006 in error to have their registrations cancelled, and their tax payment refunded, if the company was not subject to the tax either because they did not have nexus with the state or did not have $150,000 of taxable gross receipts; failed to cancel their registration before May 10, 2006; cancelled registration before February 10, 2007; and were not required to file returns or pay the minimum tax due February 9 of 2007, 2008, or 2009.

Consolidated elected taxpayer group

(R.C. 5751.01(R), 5751.011, 5751.013, and 5751.014)

Continuing law permits a group of commonly owned or controlled persons (including the common owner) to elect to file and pay the tax on a consolidated basis in exchange for excluding otherwise taxable gross receipts arising from transactions with other members of the group. For purposes of the election, common ownership or control means at least an 80% interest, or a 50% interest, as chosen by the group, but prior law permitted each group to apply only one of the percentage-ownership tests. Foreign corporations may be included in a group if they satisfy the group's chosen ownership test, but the group must include either all such foreign corporations or none.

Once made, the consolidation election means the group must file as a single taxpayer for at least the next eight consecutive calendar quarters so long as at least two members satisfy the ownership and control criteria. If a person is no longer under common ownership or control with the group, the person must report and pay the tax as a separate taxpayer, as part of a combined taxpayer group (see below), or as a member of a different consolidated taxpayer that is eligible to file and pay tax on a consolidated basis. If a person is added to the group after the election, the person must be added to the consolidated group for the purpose of paying and reporting the tax on a consolidated basis, and the group must notify the Tax Commissioner of the addition with the next return filed. The exemption for taxpayers having taxable gross receipts of $150,000 or less does not apply to a company that is a member of a consolidated elected taxpayer group.

The act permits groups of affiliated companies that have elected to be treated as a consolidated group to change the ownership test on which the initial election was made. A group that made its initial election on the basis of the 80% ownership test, by written request to the Tax Commissioner, may change its election so that its consolidated elected taxpayer group is formed on the basis of the 50% ownership test. It may do so if, when the initial election was made, the group did not include any person satisfying the 50% ownership test; if one or more of the initial members subsequently acquired an ownership interest satisfying the 50% ownership test but not the 80% ownership test, and the acquired person satisfies the criteria that would require it to be included in a combined taxpayer group under R.C. 5751.012; and if the group has not previously changed its election.

The act defines "reporting person" as a person included in a consolidated elected taxpayer or combined taxpayer group and designated by the group to legally bind the group for all CAT filings and tax liabilities and to receive all CAT-related legal notices. "Reporting person" also includes a separate taxpayer that is not a member of such a

group for CAT reporting purposes. Each member of a consolidated elected taxpayer group remains jointly and severally liable for the group's tax and any associated penalty and interest, and is individually subject to assessment, as under prior law (only the pertinent language is moved).

Combined taxpayer group

(R.C. 5751.01, 5751.012, 5751.013, and 5751.014)

Under continuing law, all persons subject to the CAT that have more than 50% of their ownership interests owned or controlled by common owners, but that do not elect to be treated as consolidated elected taxpayers, are treated, together with their common owners, as "combined taxpayers." Like a consolidated elected taxpayer, a combined taxpayer must report and pay the tax as a single taxpayer. A combined taxpayer must register as a group and is subject to the same $20 per-member registration fee as a consolidated elected taxpayer, up to a maximum of $200. If a person is added to the combined taxpayer group, the group must notify the Tax Commissioner of the addition with the next return filed. The exemption for taxpayers having taxable gross receipts of $150,000 or less does not apply to a company that is a member of a combined taxpayer group. However, unlike members of a consolidated elected taxpayer, members of a combined taxpayer may not exclude receipts arising from transactions between the members.

The act specifies that the $150,000 exemption from the CAT applies to members of a group of companies affiliated through majority ownership that do not elect to be treated as a consolidated elected taxpayer group. Like members of a consolidated elected taxpayer, each member of a combined taxpayer group remains jointly and severally liable for the group's tax and any associated penalty and interest and is individually subject to assessment.

Tax periods

(R.C. 5751.03, 5751.04, 5751.05 and 5751.051)

The commercial activity tax is computed on the basis of "tax periods," which are either calendar quarters or calendar years for each taxpayer depending on the taxpayer's level of taxable gross receipts. Taxpayers generating annual taxable gross receipts of $1 million or more are required to pay the tax on a quarterly basis. Such taxpayers are referred to as "calendar quarter taxpayers." They must report and pay the tax within 40 days after the end of each quarterly period, which corresponds with the calendar quarters: January through March, April through June, July through September, and October through December. The fourth-quarter report is considered to be the annual report, and must reflect quarterly underpayments or overpayments for

the year. The Tax Commissioner is authorized to approve alternative filing and payment schedules for a taxpayer if the taxpayer shows the need for an alternative.

Under prior law, taxpayers having estimated annual taxable gross receipts of $1 million or less could report and pay the tax on a calendar year basis, but only if the taxpayers made an election to do so. Such taxpayers are referred to as "calendar year taxpayers." (All other taxpayers are, by default, calendar quarter taxpayers.) The tax report and payment is due within 40 days after the end of the calendar year. Once a calendar year taxpayer's annual taxable gross receipts exceed $1 million, the taxpayer must begin to report and pay on a quarterly basis in the following year, and must continue to do so until the taxpayer again qualifies for annual reporting and payment and receives written approval to do so from the Tax Commissioner.

Under the act, taxpayers with taxable gross receipts of less than $1 million must report and pay the tax on a calendar year basis, and register as calendar year taxpayers, rather than "electing" that status as under prior law. Taxpayers that anticipate taxable gross receipts of more than $1 million must notify the Tax Commissioner on the taxpayer's initial registration form, and file and pay on a quarterly basis.

The act also changes commercial activity tax return filing dates. Previously, returns had to be filed within 40 days after the end of the quarterly or annual reporting period. Under the act, calendar year taxpayers must file and pay the tax by the tenth day of May following the end of each calendar year. For calendar quarter taxpayers, the due date is the tenth day of the second month after the end of each calendar quarter.

V. Income Taxes

Income tax petition for reassessment

(R.C. 5747.13(E))

Prior law required a taxpayer, an employer required to withhold income tax from employees, and a qualifying pass-through entity or trust to pay some or all of an assessment under the personal income tax upon filing a petition for reassessment contesting an assessment of liability by the Tax Commissioner.[392] Whether all or some part of the assessment was to be paid depended on several conditions, including the reason for the assessment, the basis of the taxpayer's objection, and whether a return was filed.

[392] A qualifying pass-through entity or trust is a pass-through entity or trust with a nonresident owner or beneficiary on behalf of whom the entity or trust is required by law to withhold income tax to ensure payment by the owner or beneficiary.

The act eliminates the various conditions and corresponding payment requirements, and requires payment of the entire amount assessed if any of the following circumstances exist:

(1) A person files a tax return reporting Ohio adjusted gross income, less personal exemptions, of less than one cent for reasons other than the required computations of taxable income;

(2) A person files a tax return that the Tax Commissioner determines to be incomplete, false, fraudulent, or frivolous;

(3) A person does not file a tax return, and the failure is for some reason other than that the person asserts it is not subject to Ohio taxation due to a lack of nexus with the state, or that the computations to determine a taxpayer's tax liability, or application of allowed credits, result in a tax liability of less than $1.01.

School district income tax

(R.C. 5748.02 and 5748.03)

Continuing law allows a board of education to propose a resolution to renew an expiring school district income tax levy, so long as the tax rate that will be imposed by the new levy is not higher than that of the expiring levy. Under these circumstances, the resolution may describe the new levy as a "renewal tax" instead of an "additional" tax.

The act authorizes multiple school district income tax levies that expire on the same date to be combined into a single renewal levy, so long as the total tax rate being proposed by the new levy is not higher than the total tax rate of those that are expiring.

Municipal income taxation of justices and judges

(R.C. 718.04; Section 803.20)

Under continuing law, a municipal corporation may levy a tax on the income of a nonresident only if taxation of the nonresident is consistent with the Due Process Clause of the Fourteenth Amendment of the United States Constitution:

> "Th[e] test is . . . whether the taxing power exerted by the [local government] bears fiscal relation to protection, opportunities and benefits given by the [government]. The . . . question is whether the [local government] has given anything for which it can ask return.

Wisconsin v. J. C. Penney Co. (1940), 311 U.S. 435, 444; and *Angell v. Toledo* (1950), 153 Ohio St. 179. Under Section 13, Article XVIII of the Ohio Constitution, the General Assembly has authority to further limit the taxing jurisdiction of municipal corporations.

The act provides that only the City of Columbus and the municipal corporation of residence are authorized to levy an income tax on the income of the Chief Justice and the justices of the Ohio Supreme Court received as a result of services rendered as a justice. The act further provides that only the municipal corporation of residence is authorized to levy a tax on the income of a judge sitting by assignment of the Chief Justice, or of a judge of a district court of appeals sitting in multiple locations within the district, and received as a result of services rendered as a judge. The act first applies these amendments to taxable years beginning on or after January 1, 2010.

VI. Miscellaneous Tax Provisions

Incorporation of changes to the Internal Revenue Code

(R.C. 5701.11)

Ohio's tax laws incorporate some provisions of federal law, and because federal law is susceptible to being amended frequently, ongoing Ohio law specifies the version of federal law that is incorporated. Specifically, under prior law, a reference in the tax title (Title 57) of the Ohio Revised Code to the Internal Revenue Code (IRC) or other laws of the United States meant those laws as they existed on December 30, 2008, unless the Revised Code section contains a date certain that specifies the day, month, and year. (December 30, 2008, is the effective date of H.B. 458 of the 127th General Assembly, which is the most recent act to incorporate federal tax law changes.)

The act incorporates into Ohio tax law references to the IRC or United States Code all changes to the IRC or United States Code between December 30, 2008, and R.C. 5701.11's effective date (which is the 91st day after the Governor signs the act and files it with the Secretary of State). The principle federal act whose tax law changes are incorporated is The American Recovery and Reinvestment Act of 2009--the federal "stimulus" bill. As under prior law, this incorporation does not apply to references to the IRC or federal laws as of a date certain specifying the day, month, and year.

Prior law authorized a taxpayer whose taxable year ended after December 21, 2007, and before December 30, 2008, to irrevocably elect to apply to the taxpayer's state tax calculation the federal tax laws that applied to that taxable year. The election was available to taxpayers subject to the corporation franchise tax or personal income tax and to electric companies subject to municipal income tax.

The act revises this election so that it may be made for a taxpayer's taxable year ending after December 30, 2008, but before R.C. 5701.11's effective date. The act retains the provision specifying that similar elections made under prior versions of R.C. 5701.11 remain effective for the taxable years to which the previous elections applied.

Service of tax-related notices and orders

(R.C. 4303.331, 5703.37, 5728.12, 5739.131, 5747.16, 5749.12, and 5751.09)

The act modifies the means by which the Tax Commissioner notifies persons of alleged outstanding tax liabilities or orders persons to take some action. Prior law required the Commissioner to serve such notices or orders by sending a certified copy by certified mail or by delivering it personally. One particular circumstance in which notice is made in this manner is when the Tax Commissioner issues an assessment, which is a formal notification of tax due; the issuance of an assessment initiates a person's opportunity to appeal the assessment, and establishes when the 60-day appeal filing period begins and when the statute of limitations for collection begins. Prior law required a person who received such an order to notify the Department of Taxation whether the person accepts the terms of the order and would obey it; the person's reply had to be made by personal service, certified mail, or one of several kinds of delivery services specified by law and approved by the Commissioner.

The foregoing notice and mailing provisions (as modified by the act) apply to the existing notices and orders issued by the Tax Commissioner under ongoing law, and are also extended by the act to notices provided to nonresident taxpayers and taxpayers whose whereabouts are not known with respect to the motor fuel excise tax, sales and use taxes, income tax, natural resource severance tax, commercial activity tax, and the tax on alcoholic beverage distributors. Previously, process or notice for such a person had to be served upon the Secretary of State by leaving a copy of the process or notice at the Secretary of State's office at least 15 days before the return day, and by sending a copy by certified mail to the person's address listed in the registration or last known address.

The act eliminates the requirement that a person receiving an order must notify the Department whether the order is accepted and will be obeyed. The act eliminates the requirement that the copy of a notice or order be a "certified" copy. The act also specifies that mailings by certified mail be such that they notify the Tax Commissioner of the delivery date (presumably this refers to certified mail with return receipt requested).

The act authorizes the Tax Commissioner to enter a written agreement with a person affected by a notice or order, whereby the notice or order is delivered by alternative means, including secure electronic mail.

The act prescribes courses of action for when a mailing by the Tax Commissioner is returned, either because of an undeliverable address or some other reason (e.g., the addressee declines to accept delivery). When certified mail is returned because of an "undeliverable address," the Tax Commissioner is required to use "reasonable means" to obtain a new last known address of the person, including through an address service offered by the U.S. Postal Service. For purposes of the act, "undeliverable address" does not include the situation when an addressee fails to acknowledge or accept a mailing.

For the purposes of certifying a debt to the Attorney General for collection, assessments will be deemed final 60 days after a notice or order that is sent by certified mail is first returned to the Commissioner. (Under continuing law, the date when an assessment becomes final determines when the statute of limitations on collections begins.) Certification of an assessment by the Commissioner to the Attorney General is deemed to be prima-facie evidence that delivery is complete and that the notice or order has been served. Even if a notice or order has been certified to the Attorney General for collection, a person has 60 days in which to file a petition for reassessment after an initial contact is made with the person by the Commissioner, Attorney General, or either's designee.

If a notice or order that is sent by certified mail is returned for some reason other than an undeliverable address, the act requires the Commissioner to resend it, by ordinary mail, showing the date on which the notice or order is sent, and including a statement that the notice or order is deemed to be served ten days from the date shown, and that the time within which an appeal may be filed apply from and after that date. The mailing is deemed to be prima-facie evidence that delivery of the notice or order was completed ten days after the Commissioner sent the notice or order by ordinary mail, and that the notice or order was served. If the mailing by ordinary mail is returned because of an undeliverable address, the Commissioner must proceed as when a certified mailing is returned because of an undeliverable address, as described above.

If the notice delivery requirements are satisfied, the act prescribes that there is a presumption of delivery and service, and that the presumption can be rebutted by a preponderance of the evidence that the address to which the notice or order was sent was not an address with which the person was "associated" at the time the Commissioner originally mailed the notice or order by certified mail.

A person is associated with an address at the time the Commissioner originally mailed the notice or order if, at that time, the person was residing, receiving legal

documents, or conducting business at the address; or if, before that time, the person had conducted business at the address and, when the notice or order was mailed, the person's agent or the person's affiliate was conducting business at the address. A person's affiliate is any other person that, at the time the notice or order was mailed, owned or controlled at least 20%, as determined by voting rights, of the addressee's business.

If a person elects to protest an assessment certified to the Attorney General for collection, the person must do so within 60 days after the Attorney General's initial contact with the person. Then, the Attorney General can either enter into a compromise with the person under ongoing law authorizing the compromise of tax claims, or send the person's petition for reassessment to the Tax Commissioner for consideration as any other petition for reassessment under the applicable law.

Use of DTAC Fund for Foreclosure Prevention, Nuisance Abatement

(R.C. 321.261)

Under continuing law, a Delinquent Tax and Assessment Collection (DTAC) Fund is established in each county treasury. The fund receives 5% of collections of delinquent property taxes, manufactured home taxes, and special assessments. In most counties, the fund may be used only to pay the expenses of the county prosecuting attorney and the county treasurer in collecting additional delinquent taxes and assessments. In any county with a 2006 population of more than 100,000, the treasurer and prosecuting attorney may spend any DTAC money not needed for delinquent tax collection to assist townships and municipal corporations to abate "foreclosed residential nuisances;" the prosecuting attorney also may spend excess DTAC money to prosecute violations of "criminal and civil laws governing real estate and related transactions." The total amount spent for purposes other than delinquent tax collection may not exceed $3 million per year. In Cuyahoga County, which is the only county authorized to create a county land reutilization corporation (see R.C. Chapter 1724.), DTAC money may be used to fund the corporation.

The act authorizes the treasurer or prosecuting attorney of any county to use money in the DTAC to fund residential mortgage foreclosure prevention efforts and to address foreclosure-related problems. Specifically, the DTAC money may be used to "provide financial assistance in the form of loans to borrowers in default on their home mortgages, including for the payment of late fees, to clear arrearage balances, and to augment moneys used in the county's foreclosure prevention program. " The amount spent for those purposes in any year may not exceed the amount that would result in the DTAC Fund reserve falling below 20% of the amount spent the preceding year on collecting delinquent taxes. DTAC money also may be spent to assist cities, villages,

and townships in nuisance abatement of "deteriorated residential buildings in foreclosure" or vacant, abandoned, tax-delinquent, or blighted real property.

The act prohibits the treasurer or prosecuting attorney of any county from spending DTAC money for "land reutilization" unless the county's investment advisory committee authorizes such spending. (A county investment advisory committee is composed of either two county commissioners and the county treasurer, or three county commissioners, the county treasurer, and the clerk of the court of common pleas.) It is not clear whether "land reutilization" refers to foreclosure prevention and related problems or to some other activity or process.

Disclosure of information: employer compliance

(R.C. 5703.21(B)(12) and 5747.18)

Continuing law generally prohibits agents and employees of the Department of Taxation from disclosing taxpayer information. There are various exceptions to this general rule, most of which authorize information to be disclosed to other governmental bodies for governmental purposes.

The act expressly authorizes the Department of Taxation to disclose information to the Department of Job and Family Services, Industrial Commission, and Bureau of Workers' Compensation solely to enable those agencies to identify employers that misclassify employees as independent contractors or that do not properly report and pay employer taxes. The act expressly limits the release of information to only such information that is necessary to verify employer compliance with Ohio law administered by those agencies.

Forfeiture proceeds of Department of Taxation

(R.C. 2981.13(C)(2))

Sub. H.B. 120 of the 127th General Assembly added references to the Department of Taxation and its Enforcement Division and related funds in the appropriate places in the forfeiture law (R.C. Chapter 2981.). This was done to retain the Department's preexisting authority to obtain forfeiture and use the property or the proceeds, which had been inadvertently omitted in prior legislation.

The act makes a technical change to include an omitted reference to the Department of Taxation as the entity authorized to determine how money in the Department's Enforcement Fund is to be used for the Department's law enforcement purposes.

DEPARTMENT OF TRANSPORTATION (DOT)

- Creates a Division, and a Deputy Director of, Equal Employment Opportunity in the Department of Transportation.
- Would have required ODOT to permit the construction of a curb cut on State Route 91 in Lake County (VETOED).

Division and Deputy Director of Equal Employment Opportunity in the Department of Transportation

(R.C. 5501.04)

The act creates a Division of Equal Opportunity in the Department of Transportation. The division is headed by a deputy director. The division ensures that minority groups and all groups protected by state and federal civil rights laws are afforded equal opportunity to be recruited, trained, and work in the employment of, or on projects of, the Department of Transportation, and to participate in any contracts the department awards. The Director of Transportation must report each year to the Governor and General Assembly on the division's activities and accomplishments.

Curb cut on State Route 91 (VETOED)

(Section 503.95)

The act would have required the Director of Transportation to permit the construction of a curb cut on State Route 91, near Vine Street, in Lake County.

TUITION TRUST AUTHORITY (TTA)

- Places the Ohio Tuition Trust Authority within the office of the Chancellor of the Board of Regents.
- Renames the 11-member panel that formerly constituted the Authority as the Ohio Tuition Trust Authority Board, limits its powers and duties, and requires the Ohio Tuition Trust Authority within the Chancellor's office to perform all other duties and responsibilities under the College Savings Program Law that the act does not assign to the new Board.

- Requires the Authority to obtain the Board's advice and consent in the hiring of its executive director, and authorizes only the Board to remove the executive director, which it may do at any time, subject to the advice and consent of the Chancellor.

- Requires the Authority, by December 31, 2009, to conduct a study of guaranteed tuition plans and report recommendations for a new guaranteed tuition plan to the General Assembly and the Governor.

- Authorizes the Authority to establish and administer more than one plan for the sale of tuition units, including plans in which the risks are shared among institutions of higher education, the state, the Authority, and investors.

- Authorizes the Board to contract with any business, entity, or governmental agency to perform the Board's investment powers.

Background

Under section 529 of the Internal Revenue Code, states may establish and maintain a state tuition program under which a person (1) may purchase credit toward tuition on behalf of a designated beneficiary that entitles the beneficiary to the waiver or payment of qualified higher education expenses or (2) may make contributions to an account set up for the purpose of meeting the qualified higher education expenses of a designated beneficiary. These programs receive favorable federal and state tax treatment for their assets and distributions to beneficiaries. In Ohio, the "Ohio Tuition Trust Authority" operates two college savings programs that correspond to the types permitted by federal law: (1) a guaranteed savings program and (2) a variable savings program. Each program allows beneficiaries to acquire savings toward the future payment of college tuition. Under former law, the Authority was an independent agency of state government, but the act makes the Authority part of the office of the Chancellor of the Board of Regents.

Contributors to the Guaranteed College Savings Program could purchase tuition credits on behalf of a designated beneficiary at approximately 1% of the weighted average tuition charged at public four-year universities in Ohio for the year the credits are purchased. (But the actual cost could be higher if a price adjustment was necessary to maintain the actuarial soundness of the program.) Tuition credits under the Guaranteed Program are backed by the full faith and credit of the State of Ohio. The sale of new credits under the Guaranteed Program has been suspended since 2003.

Under the Variable College Savings Program, rather than purchasing tuition credits, an individual contributes money to an investment account managed by the

state, or its agent, for the benefit of the beneficiary. Assets of the Variable Program are invested in savings accounts, life insurance or annuity contracts, securities, bonds, or other investment products. Because the program is market-based, it generally provides a variable rate of return and contributors assume all investment risk.

Administrative restructuring

(R.C. 3334.03, 3334.08, 3334.11, and 3334.12; Section 733.10)

The act places the Ohio Tuition Trust Authority "within the office of the Chancellor of the Ohio Board of Regents." It renames the 11-member panel that under former law constituted the Authority as the "Ohio Tuition Trust Authority Board," and limits its powers and duties. Accordingly, the powers and duties specified in law that the act does not specifically assign to the Board are to be exercised by "the Authority." Presumably, this leaves the Authority's remaining powers and duties to its executive director and staff, with the Chancellor ultimately responsible for oversight of activities no longer under the Board's purview. But precise lines of responsibility may not be clear.

Ohio Tuition Trust Authority Board

(R.C. 3334.03)

The act renames the 11-member Ohio Tuition Trust Authority as the "Ohio Tuition Trust Authority Board." Under former law, this panel consisted of six members appointed by the Governor with the advice and consent of the Senate, two state senators appointed by the Senate President, two state representatives appointed by the Speaker of the House, and the Chancellor. The act keeps the 11-member format but permits the Chancellor to designate another to represent the Chancellor on the Board.[393] The Chancellor remains a voting member.

[393] Of the Governor's appointees, under both former law and the act, one must represent state institutions of higher education, one must represent private nonprofit colleges and universities in Ohio, one must have experience in the field of marketing or public relations, and one must have experience in the field of information systems design or management. Also, two members appointed by the Governor must have experience in the field of banking, investment banking, insurance, or law.

Board powers and duties

Employment and dismissal of executive director

(R.C. 3334.03(B)(2) and (3) and 3334.08(A)(11))

Under the act, the Authority, not the Board, is responsible for employing an executive director and other personnel. Therefore, it may not be clear which state officer is specifically authorized to hire these staff persons. One possible interpretation could be that the Chancellor is responsible for hiring the executive director and the executive director is responsible for hiring other staff. In any event, the act requires that the official who hires the executive director obtain the advice and consent of the Board, in the form of a majority vote of the Board in favor of the hiring.

The act permits only the Board to remove the executive director, which it may do "at any time," but subject to the advice and consent of the Chancellor (who is a voting member of the Board).

Other powers and duties

(R.C. 3334.03(B)(2))

Under the act, the Board largely retains its prior investment and fiduciary responsibilities pertaining to college savings programs. However:

(1) With respect to college savings bonds, the Authority must exercise administrative responsibilities, including marketing, promoting, and advertising.

(2) With respect to expenditures under both the Guaranteed and Variable savings programs, the Board must consult with the Chancellor prior to changing the order of priority from, first, payments on behalf of beneficiaries; second, refunds; and third, payment of investment fees and costs.

(3) The Board must consult with the Chancellor prior to entering into a contract with a firm to exercise the Board's investment powers (see "**Investment contractors**" below).

(4) The Board must consult with the Chancellor prior to establishing a partnership, trust, limited liability company, corporation, or any other legal entity to transact business.

New guaranteed programs; study

(R.C. 3334.07)

Background--constitutional pledge of state's full faith and credit

Ohio Constitution, Article VI, Section 6, which the voters adopted in 1994, declares it "a public purpose for the state to maintain a program for the sale of tuition credits such that the proceeds of such credits . . . shall be guaranteed to cover a specified amount when applied to the cost of tuition" of an institution of higher education. Section 6 also declares that a college tuition credit program is "backed by the full faith and credit and taxing power of the state," and requires the General Assembly to "appropriate money sufficient to offset any deficiency that occurs in the Ohio Tuition Trust Fund, at any time necessary to make payment of the full amount of any tuition payment or refund that would have been required by a tuition payment contract, except for the contract's limit of payment to money available in the Trust Fund." This pledge appears to apply to any tuition credit program the state might establish, and not merely the Guaranteed Savings Program.

The act

The act authorizes the Authority, not the Board, to establish and administer more than one plan for the sale of tuition credits within the Ohio Tuition Trust Fund. The plans may use "similar principles" specified in law for the Guaranteed College Savings Program or may be "modeled after a plan that was included in the study" required by the act (see below). This would appear to permit the Authority to proceed with new guaranteed tuition plans without the need for further legislation. If the Authority establishes and administers more than one plan for the sale of tuition units, the money received under each plan must be segregated within the Ohio Tuition Trust Fund.

Study

The act requires the Authority, not the Board, to study guaranteed tuition program plans and make recommendations for a new guaranteed tuition plan. Not later than December 31, 2009, the Authority must submit a report to the Speaker of the House, the President of the Senate, and the Governor. The Authority's report must include "consideration of a guaranteed tuition program plan in which the risks of the plan are shared equitably among institutions of higher education, the state, the Ohio Tuition Trust Authority,[394] and the investors in the program."

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[394] The intent, if any, for differentiating between "the state" and the Authority may not be clear.

The extent to which a plan that involves selling tuition credits could partition investment risk may not be clear, given the constitutional pledge of the state's full faith, credit, and taxing power to secure the guarantees of any tuition credit program. While a new program might not guarantee that new tuition credits will cover 100% of future tuition, the constitutional pledge would appear to commit the state to bear all risk of providing at least the level of return that the program does guarantee.

Investment contractors

(R.C. 3334.11(E))

Under former law, the Authority could approve the Public Employees Retirement Board to exercise the Authority's investment powers. The act revises this provision to permit the Tuition Trust Authority Board to enter into an agreement with any business, entity, or governmental agency to perform the Board's investment powers. As under prior law, the contractor must exercise these powers in a manner agreed upon by the Board "that maximizes the return on investment and minimizes the administrative expenses."

OHIO TURNPIKE COMMISSION (TPC)

- Would have made the Ohio Turnpike Commission responsible for the major maintenance and repair and replacement of grade separations at intersections of any turnpike project with county and township roads in a county that, as of January 1, 2009, had closed one or more roads as a result of grade separation failure, and would have made the appropriate board of county commissioners or the board of township trustees responsible for routine maintenance of such a grade separation (VETOED).

Major maintenance and repair and replacement at grade separations of the Ohio Turnpike and county and township roads (VETOED)

(R.C. 5537.051)

The Governor vetoed a provision that would have made the Ohio Turnpike Commission responsible for the major maintenance and repair and replacement of grade separations at intersections of any turnpike project with county and township roads in any county that, as of January 1, 2009, had closed one or more roads as a result of grade separation failure. The appropriate board of county commissioners or the

board of township trustees would have been responsible for routine maintenance of such grade separations.

DEPARTMENT OF VETERANS SERVICES (DVS)

- Removes language exempting from competitive selection or Controlling Board approval reimbursements for pharmaceutical and patient supply purchases that are paid to the United States Department of Veterans Affairs on behalf of the Ohio Veterans' Home Agency and instead exempts the Department of Veterans Services purchase of goods and services in accordance with contracts entered into by the United States Department of Veterans Affairs.

Purchasing without competitive selection or Controlling Board approval

(R.C. 127.16)

Every state agency generally is required to make any purchase from a particular supplier that would amount to $50,000 or more by competitive selection or with Controlling Board approval. Prior law exempted from this requirement reimbursements paid to the United States Department of Veterans Affairs for pharmaceutical and patient supply purchases made on behalf of the Ohio Veterans' Home Agency. The act removes the language exempting from competitive selection or Controlling Board approval the reimbursements for pharmaceutical and patient supply purchases and instead permits the Department of Veterans Services to purchase goods and services in accordance with contracts entered into by the United States Department of Veterans Affairs without competitive selection or Controlling Board approval.

DEPARTMENT OF YOUTH SERVICES (DYS)

- Modifies the amount of money the Department of Youth Services must withhold from future payments to a county's Felony Delinquent Care and Custody Fund and enacts a mechanism for determining the amount to be so withheld from a county that is linked to the *maximum balance carry-over* (defined in the act) that is permitted at the end of the previous fiscal year from funds allocated to the county during that previous fiscal year.

County Felony Delinquent Care and Custody Fund

(R.C. 5139.43(B))

Under continuing law, the Department of Youth Services (DYS), with the advice of the RECLAIM advisory committee, allocates annual operational funds to juvenile courts for juvenile felony delinquent care and custody programs and grants state subsidies to counties to be used for unruly or delinquent children under the Youth Services Law. Each county must create a Felony Delinquent Care and Custody Fund, and the funds and subsidies received by a county are deposited in the county's Fund. Former law provided that beginning June 30, 2008, at the end of each fiscal year, the balance in the Fund in any county could not exceed the total moneys, i.e., the aforementioned operational funds and state subsidies, allocated to it during the previous fiscal year, unless the county was granted an exemption by DYS. DYS was required to withhold from future payments to a county an amount equal to any moneys in the county's Fund that exceeded the total moneys allocated to the county during the preceding fiscal year, and to reallocate the amount withheld.

The act modifies the amount of moneys DYS must withhold from future payments to a county for deposit into the county's Felony Delinquent Care and Custody Fund and enacts a mechanism for determining the amount that must be so withheld. Under the act, the *maximum balance carry-over* at the end of each respective fiscal year in the Fund in any county from the operational funds allocated and state subsidies granted to the county in the previous fiscal year cannot exceed an amount calculated as provided in the formula described in the next sentence, unless the county is granted an exemption by DYS. Beginning June 30, 2008, the *maximum balance carry-over* at the end of each respective fiscal year must be determined by the following formula: for fiscal year 2008, the maximum balance carry-over is 100% of the fiscal year 2007 allocation, to be applied in determining the fiscal year 2009 allocation; for fiscal year 2009, it is 50% of the fiscal year 2008 allocation, to be applied in determining the fiscal year 2010 allocation; for fiscal year 2010, it is 25% of the fiscal year 2009 allocation, to be applied in determining the fiscal year 2011 allocation; and for each fiscal year subsequent to fiscal year 2010, it is 25% of the immediately preceding fiscal year's allocation, to be applied in determining the allocation for the next immediate fiscal year. DYS is required to withhold from future payments to a county in any fiscal year an amount equal to any moneys in the county's Fund that exceed the *maximum balance carry-over* that applies for that county for the fiscal year in which the payments are being made, and to reallocate the amount withheld.

MISCELLANEOUS (MSC)

- Requires a state agency director to request that the Controlling Board increase the agency's capital appropriations if the director and the Controlling Board determine such an increase is needed for the agency to receive and use funds under the federal American Recovery and Reinvestment Act of 2009.

- Provides that payments received by or on behalf of a public issuer under the federal Build America Bond program may be credited to the fund or account in which those proceeds are held or to the general fund or other fund or account as the public issuer authorizes.

- Provides that income from the investment of proceeds of public obligations or fractionalized interests in public obligations, in addition to payments received under the Build America Bond program, may also be credited to the fund or account from which debt charges on those public obligations are paid.

- Expressly includes non-interest bearing government-issued obligations among the "public obligations" local governments may issue.

- Provides that the estimated interest rate for local government general obligation bonds be expressed as a net average based on factors that include "existing market conditions," expected direct payments from the U.S. government, and the effect of expected federal tax credits related to the bonds.

- Specifies that continuing law's substantially equal principal payment requirement for securities issued in multiple installments or series by a political subdivision for the same purpose may be applied with reference to either each installment or series, or all installments or series on a consolidated basis.

- Authorizes a taxing authority to fund or refund outstanding securities from a source other than new securities.

- Permits, rather than requires, the Residential Construction Advisory Committee to model a recommended building code on a code issued by a national model code organization.

- Permits the Committee to provide the Board of Building Standards with any rule the Committee recommends to update or amend the state residential building code.

- Makes various changes to the procedure by which the Committee recommends rules to the Board.

- Allows any person to petition the Committee to recommend a rule to the Board regarding the Ohio Residential Building Code.

- Adds four new members to the Board.

- Adds as members of the Ohio Family and Children First Cabinet Council the Directors of Aging and of Rehabilitation and Correction.

- Would have modified the requirements that a newspaper or newspaper of general circulation must comply with for purposes of any legal publication that is required by law to be made in such a newspaper circulated in a political subdivision, and that would have permitted any notice required to be so published to appear on an insert placed in the newspaper (VETOED).

- Authorizes a licensed funeral director who sells preneed funeral contracts and who also sells preneed cemetery merchandise and services contracts to meet the annual preneed cemetery contract reporting requirement by filing the necessary documentation with the Board of Embalmers and Funeral Directors along with or as part of the annual preneed funeral contract report.

- Authorizes a cemetery company or association that sells preneed cemetery merchandise and services contracts and that also sells preneed funeral contracts to meet the annual funeral contract reporting requirement by filing the necessary documentation with the Division of Real Estate of the Department of Commerce along with or as part of the annual preneed cemetery contract report.

- Creates the Budget Planning and Management Commission to complete a study and make recommendations designed to provide relief to the state during the current difficult fiscal and economic period.

- Requires the Commission, in developing recommendations, to develop a strategy for balancing the state budget for fiscal years 2012 and 2013.

- Requires the Commission to submit its written report of recommendations not later than November 30, 2010, after which the Commission ceases to exist.

- Includes investigators of the Bureau of Criminal Identification and Investigation among the protected individuals whose residential and familial information is not a public record for purposes of the Public Records Law.

- Includes investigators of the Bureau of Criminal Identification and Investigation among the protected individuals who may request the county auditor to remove the person's name from the general tax list of real and public utility property and the

general duplicate and use the person's initials instead as the name that appears on a deed.

- Requires a county auditor, upon the request of a protected individual, to use the person's initials, not only on the general tax list and duplicate, but also on any record made available to the general public on the Internet or a publicly accessible database.

- Requires the Ohio Venture Capital Authority to give equal consideration, in selecting program administrators, to certain minority owned and controlled firms, firms owned and controlled by women, and ventures involving minority owned and controlled firms and firms owned and controlled by women.

- Requires the Ohio Venture Capital Authority, the Chancellor of the Board of Regents, and the Administrator of Workers' Compensation to submit an annual report containing information regarding the minority or women-owned businesses with which it contracts as program administrators or investment managers.

- Designates August as "Ohio Military Family Month."

- Creates the Ohio Legislative Commission on the Education and Preservation of State History; requires it to review organizations that provide services and instructions on Ohio's history and that have received specified state funding, make recommendations regarding those organizations, and identify alternative funding sources for them; and requires it to issue a report on its findings and recommendations by July 1, 2010.

- Authorizes conveyance of the state interest in real estate situated in Fairfield in Butler County to Fairfield Village Realty, LLC.

- Authorizes the conveyance of state-owned real estate in Jackson County to the Jackson City Schools Board of Education.

- Authorizes the Governor to execute a Governor's Deed conveying to the Dayton Public School District/Dayton Board of Education, and its successors and assigns, all of the state's right, title, and interest in certain real estate located in Montgomery County.

- Authorizes the conveyance of state-owned real estate in Hamilton County to the City of Cincinnati.

Controlling Board authority to increase capital appropriations

(Section 245.10)

The act requires a state agency director to request that the Controlling Board increase the amount of the agency's capital appropriations if the director determines such an increase is necessary for the agency to receive and use funds under the federal American Recovery and Reinvestment Act of 2009. The act authorizes the Board to make such increase up to the exact amount necessary under the federal act if the Board concurs that the increase is necessary.

Disposition of Build America Bond payments by the state or local governments

(R.C. 133.02)

Under prior law, the income from the investment of proceeds of public obligations or fractionalized interests in public obligations of a public issuer could be credited to the fund or account in which those proceeds are held or to the general fund or other fund or account as the public issuer authorizes. Such income was to be used for the purposes of the relevant fund or account. The act provides that such income may also be credited to the fund or account from which debt charges on those public obligations are paid.

The act also provides that any payments received by or on behalf of a public issuer pursuant to the federal Build America Bond program may be credited in the same manner as income from investment of proceeds of public obligations and fractionalized interests in public obligations of a public issuer. The Build America Bond program is a program authorized under the federal American Recovery and Reinvestment Act of 2009 to allow state and local governments to issue taxable bonds in 2009 and 2010 for eligible projects and to receive a payment from the federal government to defray a portion of the borrowing costs (*see* 26 U.S.C. 6431).

Government issued securities and obligations

Public obligation: definition

(R.C. 133.01(GG)(2))

Under prior local government public securities law definitions, "public obligations" included government-issued securities and other obligations that are interest-bearing. Obligations that did not bear interest were not included in the definition of "public obligation." The act includes obligations among "public obligations" regardless of whether the obligations bear interest.

Estimated interest rate of bonds

(R.C. 133.18(B))

Under continuing law, local governments, when issuing general obligation bonds, are required to state the estimated interest rate and maximum maturity of the bonds.

The act provides that the interest rate be expressed as an "estimated net average" interest rate that is determined by the taxing authority based on existing market conditions, adjustments for anticipated payments from the U.S. government, the effect of anticipated federal tax credits for owners of the bonds, among other factors.

Securities: payment of principal

(R.C. 133.21)

Under continuing law, principal payments for securities issued by political subdivisions must be made in substantially equal annual or semi-annual installments or in amounts such that the total principal and interest payments in any fiscal year is not more than three times the amount of those payments in any other fiscal year.

The act specifies that the substantially equal payment requirement for securities issued in multiple installments or series for the same purpose may be applied with reference to either each installment or series, or all installments or series on a consolidated basis.

Sources of funding securities

(R.C. 133.34)

Under prior law, a taxing authority could fund or refund outstanding securities only by issuing new securities.

The act expressly authorizes a taxing authority to fund or refund outstanding securities and public obligations from sources other than new securities if authorized to do so by law or the Ohio Constitution.

Ohio Residential Building Code

(R.C. 3781.10)

Continuing law requires the Board of Building Standards to adopt a state residential building code that governs one-, two-, and three-family dwellings. Rules that govern those residential buildings are uniform requirements for residential

buildings in any area certified to enforce the Ohio Residential Building Code. No local code or regulation can differ from the Ohio Residential Building Code unless that code or regulation addresses subject matter not addressed by the Ohio Residential Building Code.

Adoption of the Ohio Residential Building Code

(R.C. 3781.10 and 4740.14)

Law largely unchanged by the act requires the Residential Construction Advisory Committee to recommend to the Board of Building Standards a building code for residential buildings. Under prior law, the Committee had to recommend a code that it modeled on a residential building code issued by a national model code organization, with adaptations necessary to implement the code in Ohio. The act permits, rather than requires, the Committee to model the recommended code on a code issued by a national model code organization.

Under continuing law, the Committee must consider all of the following in making its recommendation to the Board:

(1) The impact that the Ohio Residential Building Code may have upon the health, safety, and welfare of the public;

(2) The economic reasonableness of the Ohio Residential Building Code;

(3) The technical feasibility of the Ohio Residential Building Code;

(4) The financial impact that the Ohio Residential Building Code may have on the public's ability to purchase affordable housing.

If the Board decides not to adopt a code recommended the Committee, the Committee must revise the rejected code and resubmit it until the Board adopts a code the Committee recommends as the Ohio Residential Building Code. Correspondingly, the Board is required to adopt rules establishing a code as the Ohio Residential Building Code upon receiving a recommended code from the Committee that is acceptable to the Board.

The act allows the Committee to provide the Board with any rule the Committee recommends to update or amend the Ohio Residential Building Code or any rule that the Committee recommends to update or amend the Ohio Residential Building Code after receiving a petition (see "**Petitions for Changes to the Ohio Residential Building Code**," below). The act allows the Board to either accept or reject the proposed rule. If the Board does not act to accept or reject the proposed rule within 90

days after receiving the proposed rule from the Committee, the proposed rule becomes part of the Ohio Residential Building Code.

Under the act, the Committee must provide the Board with a written report of the Committee's findings for each consideration required under continuing law, as described above. Additionally, the act prohibits the Committee from making any recommendation to the Board that relates to the Ohio Residential Building Code, rules that update or amend the Ohio Residential Building Code, certification of building officials who enforce the Ohio Residential Building Code, or the interpretation of the Ohio Residential Building Code until the Committee has considered the matters required under continuing law, as described above.

Petitions for changes to the Ohio Residential Building Code

(R.C. 3781.12 and 4740.14)

Continuing law permits any person to petition the Board of Building Standards to adopt, amend, or annul a rule adopted as part of the Ohio Commercial or Residential Building Code and specifies certain procedures to be followed by the petitioner and the Board upon the filing of such a petition. The act additionally permits any person to petition the Residential Construction Advisory Committee to recommend a rule to the Board that the Board adopts regarding the Ohio Residential Building Code. The Committee must provide the Board with any rule the Committee recommends after receiving such a petition and considering the matters described in "**Adoption of the Ohio Residential Building Code**" (above).

Board of Building Standards

(R.C. 3781.07; Section 747.10)

Law largely unchanged by the act has established the Board of Building Standards within the Department of Commerce. Formerly, the Board consisted of only 11 members appointed by the Governor. Those members included the following:

(1) One attorney admitted to the Ohio bar;

(2) Two registered architects;

(3) Two professional engineers, one in the field of mechanical and one in the field of structural engineering, each of whom must be duly licensed to practice that profession in Ohio;

(4) One person of recognized ability, broad training, and 15 years experience in problems and practice incidental to the construction and equipment of certain buildings;

(5) One person with recognized ability and experience in the manufacture and construction of industrialized units;

(6) One member of the fire service with recognized ability and broad training in the field of fire protection and suppression;

(7) One person with at least ten years of experience and recognized expertise in building codes and standards and the manufacture of construction materials;

(8) One general contractor with experience in residential and commercial construction;

(9) One mayor of a municipal corporation in which the Ohio Residential and Nonresidential Building Codes are being enforced in the municipal corporation by a certified building department.

Under continuing law, the mayoral member described in (8), above, must be chosen from a list of three names the Ohio Municipal League submits to the Governor.

The act adds four new members to the Board. Those members include the following:

(1) Two general contractors who have recognized ability in the construction of residential buildings;

(2) One person with recognized ability and experience in the use of advanced and renewable energy in the construction of commercial and residential buildings;

(3) One person with recognized ability and experience in the use of energy conservation in the construction of commercial and residential buildings.

The general contractors described in (1), immediately above, must be chosen from a list of ten names the Ohio Home Builders Association submits to the Governor.

The act requires the Governor to appoint these new members within 60 days after the effective date of the section. The initial terms of the general contractor-members expire October 13, 2012. The initial term of the member with recognized ability and experience in the use of advanced and renewable energy in the construction of commercial and residential buildings expires on October 13, 2011. The initial term of the member who has recognized ability and experience in the use of energy

conservation in the construction of commercial and residential buildings expires on October 13, 2010. Upon the expiration of these initial terms, all successive appointments must be made as provided for under continuing law and must last for four years, as provided for under continuing law.

Ohio Family and Children First Cabinet Council

(R.C. 121.37)

The Ohio Family and Children First Cabinet Council helps families seeking government services by streamlining and coordinating existing government services. The Council is composed of the Superintendent of Public Instruction and the Directors of Youth Services, Job and Family Services, Mental Health, Health, Alcohol and Drug Addiction Services, Mental Retardation and Developmental Disabilities, and Budget and Management. The chairperson of the Council is the Governor or the Governor's designee.

The act adds the Directors of Aging and of Rehabilitation and Correction as members of the Council.

Newspapers qualified for publication of legal notices--requirements (VETOED)

(R.C. 7.12 and 5721.01)

The law prescribes the requirements that a newspaper or newspaper of general circulation in a political subdivision must meet to qualify for publication of legal notices required by law. In addition to all other requirements, such a newspaper or newspaper of general circulation must be a publication bearing a title or name, regularly issued as frequently as once a week for a definite price or consideration paid for by not less than 50% of those to whom distribution is made, having a second class mailing privilege, being not less than four pages, published continuously during the immediately preceding one-year period, and circulated generally in the political subdivision in which it is published.[395] The publication must be of a type to which the general public resorts for passing events of a political, religious, commercial, and social nature, current happenings, announcements, miscellaneous reading matter, advertisements, and other notices.

[395] Apparently a newspaper is not required to meet these qualifications, yet nevertheless qualifies to publish legal notices, if it is a legal newspaper that publishes court calendars and has done so for at least one year preceding the publication in the newspaper of any other sort of legal notice.

With respect to publications pertaining to tax collections, continuing law requires a newspaper or newspaper of general circulation to be a publication that meets the requirements identical to those described in the preceding paragraph.

The Governor vetoed all the amendments the act made to these qualifications. One vetoed amendment would have removed from the qualifications described above the requirement that a newspaper or newspaper of general circulation be a publication that is regularly issued for a definite price or consideration paid for by not less than 50% of those to whom distribution is made and have a second class mailing privilege. The effect of the veto is to leave these qualifications in the law. Another, related veto removed a new qualification that would have required a newspaper or newspaper of general circulation to have at least 25% editorial, nonadvertising content, exclusive of inserts, measured relative to total publication space, and an audited circulation to at least 50% of the households in the newspaper's retail trade zone as defined by the audit. This new qualification would have replaced the new qualification described above that, but for the first veto, would have been removed from the law. A third veto removed a seemingly general amendment that would have specified that any notice required to be published in a newspaper or newspaper of general circulation could have appeared on an insert placed in such a newspaper. And a final veto removed yet another seemingly general amendment that would have required a responsible party who was required to publish a notice in a newspaper or a newspaper of general circulation to consider various advertising media to determine which media might reach the intended public most broadly. A responsible party would have been required to publish the notice in only one qualified medium to meet the requirements of law.

Reporting of preneed cemetery and preneed funeral contracts

(R.C. 1721.211 and 4717.31)

A person who sells preneed cemetery contracts is required to file an annual reporting affidavit with the Division of Real Estate. And a person who sells preneed funeral contracts is required to file an annual report with the Board of Embalmers and Funeral Directors. Under the act, a licensed funeral director who sells both preneed funeral contracts and preneed cemetery contracts is deemed to have met the annual preneed cemetery contract reporting duty if the funeral director submits the annual preneed cemetery contract affidavit to the Board of Embalmers and Funeral Directors along with or as part of the funeral director's annual preneed funeral contract report. Similarly, a cemetery company or association that sells both preneed cemetery contracts and preneed funeral contracts is deemed to have met the annual preneed funeral contract reporting duty if the cemetery company or association submits the annual preneed funeral contract report to the Division of Real Estate along with or as part of the company's or association's annual preneed cemetery contract affidavit.

Budget Planning and Management Commission

(Section 509.10)

The act creates the Budget Planning and Management Commission consisting of six members. The Speaker of the House of Representatives appoints three members of the House, not more than two of whom may be members of the same political party, and the President of the Senate appoints three members of the Senate, not more than two of whom may be members of the same political party. Initial appointments to the Commission must be made not later than 90 days after the effective date and vacancies are filled in the same manner as the original appointments. The Commission must appoint two of its members as co-chairpersons: one must be a member of the majority party of the House, and one must be a member of the majority party of the Senate. The act specifies that Commission meetings take place at the call of the co-chairpersons and that the Commission must conduct its meetings during the period of July 1, 2009, through November 30, 2010. The act requires the Legislative Service Commission to provide technical, professional, and clerical support necessary for the Budget Planning and Management Commission to perform its duties.

Under the act, the Commission must complete a study and make recommendations that are designed to provide relief to the state during the current difficult fiscal and economic period. In developing the recommendations, the Commission must develop a strategy for balancing the state budget for fiscal years 2012 and 2013.

The Commission must submit a written report of its recommendations to the Speaker of the House, the President of the Senate, and the Governor not later than November 30, 2010. Upon submission of its report, the Commission ceases to exist.

Protected public record status for investigators of the Bureau of Criminal Identification and Investigation

(R.C. 149.43, 149.45, 319.28, and 319.54)

Under Ohio's Public Records Act, the residential and familial information of specified protected individuals is excluded from the definition of a public record. The individuals afforded this protected status include peace officers, parole officers, prosecuting attorneys, assistant prosecuting attorneys, correctional employees, youth services employees, firefighters, and EMTs. The residential address, social security number, bank information and the like of such a protected individual therefore is not public information.

Protected individuals also are authorized to request that a public office other than a county auditor redact the person's address from any record made available to the general public on the Internet.

Similarly, protected individuals may submit a written request by affidavit to the county auditor requesting the auditor to remove the name of the protected individual from the general tax list of real and public utility property and the general duplicate and insert the initials of the protected individual instead of the name that appears on a deed. The county auditor is prohibited from charging a fee to a protected individual who requests the use of initials.

The act adds investigators of the Bureau of Criminal Identification and Investigation to the class of protected individuals for purposes of the provisions described above. It also requires a county auditor, when requested, to use the initials of a protected individual, not only on the general tax list and duplicate, but also on any record made available by the county auditor to the general public on the Internet or a publicly accessible database.

Minority and women-owned investment managers and agents

Ohio Venture Capital Authority

(R.C. 150.05)

Under ongoing law, the Ohio Venture Capital Authority, after soliciting and evaluating requests for proposals, must select, as program administrators, not more than two private, for-profit investment funds to acquire loans for the program fund and to invest money in the program fund as prescribed in the investment policy established or modified by the Authority.

The act requires the Authority to give equal consideration, in selecting these program administrators, to minority owned and controlled investment funds, to funds owned and controlled by women, to ventures involving minority owned and controlled funds, and to ventures involving funds owned and controlled by women that otherwise meet the policies and criteria established by the Authority.

Annual report--minority or women-owned businesses

(R.C. 150.051, 3334.111, and 4123.446)

The act requires the Ohio Venture Capital Authority, the Chancellor of the Board of Regents (for the Ohio College Savings Plan), and the Administrator of Workers'

Compensation to submit annually to the Governor and to the General Assembly[396] a report containing the following information:

(1) The name of each program administrator or investment manager that is a minority business enterprise[397] or a women's business enterprise[398] with which the Authority, Chancellor, or Administrator contracts;

(2) The amount of assets managed by program administrators or investment managers that are minority business enterprises or women's business enterprises, expressed as a percentage of assets managed by program administrators or investment managers with which the Authority, Chancellor, or Administrator has contracted; and

(3) Efforts by the Authority, Chancellor, or Administrator to increase utilization of program administrators or investment managers that are minority business enterprises or women's business enterprises.

Designation of August as "Ohio Military Family Month"

(R.C. 5.2265)

The act designates August as "Ohio Military Family Month."

Ohio Legislative Commission on the Education and Preservation of State History

(Section 701.05)

The act creates the Ohio Legislative Commission on the Education and Preservation of State History consisting of the following members:

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[396] Whenever any statute requires that a report be submitted to the General Assembly, the requirement is fulfilled by the submission of a copy of the report, recommendation, or document to the Director of the Legislative Service Commission, the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives (R.C. 101.68, not in the act).

[397] "Minority business enterprise" means an individual who is a United States citizen and owns and controls a business, or a partnership, corporation, or joint venture of any kind that is owned and controlled by United States citizens, which citizen or citizens are Ohio residents and are members of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, and Asians.

[398] "Women's business enterprise" means a business, or a partnership, corporation, limited liability company, or joint venture of any kind, that is owned and controlled by women who are United States citizens and Ohio residents.

(1) Three members of the Senate appointed by the President of the Senate, one of whom must be from the minority party and be recommended by the Minority Leader of the Senate;

(2) Three members of the House of Representatives appointed by the Speaker of the House of Representatives, one of whom must be from the minority party and be recommended by the Minority Leader of the House of Representatives; and

(3) Three members appointed by the Governor who must have specific knowledge regarding museum or archive management.

The Commission may appoint nonvoting members to the Commission who represent state agencies, educational institutions, or private organizations and who have expertise in museum or archive management. Appointments must be made to the Commission not later than 30 days after the act's effective date. A member of the Senate appointed by and so designated by the President of the Senate must be the chairperson of the Commission, and a member of the House of Representatives appointed by and so designated by the Speaker of the House of Representatives must be the vice-chairperson.

The Commission must meet as often as necessary to carry out its duties and responsibilities. Members of the Commission serve without compensation. The Legislative Service Commission must provide professional and technical support that is necessary for the Ohio Legislative Commission on the Education and Preservation of State History to perform its duties.

The act requires the Ohio Legislative Commission on the Education and Preservation of State History to do all of the following:

(1) Review the overall delivery of services and instruction on Ohio's history by organizations that have individually received in the previous two bienniums a total of at least $1,000,000 in funding through legislative appropriation for their operations. The review must include a needs assessment with regard to each organization for historic sites owned or managed by the organization, archives owned or maintained by the organization, programs offered by the organization, the governance structure of the organization, and a comparison of the organization's operations with the operations of organizations that are located inside and outside the state and that have similar functions.

(2) Following the review, make recommendations on improving the efficiency of the organizations, alternative methods for the performance or discharge of state-mandated functions and other functions by the organizations, best practices regarding

governance structures for the organizations, and any other recommendations that the Commission determines to be necessary; and

(3) Identify alternative public and private funding sources to support the organizations.

The Commission must issue a report of its findings and recommendations to the President of the Senate, the Speaker of the House of Representatives, and the Governor not later than July 1, 2010. Upon submission of the report, the Commission ceases to exist.

Conveyance of state land in Butler County

(Section 753.40)

The act authorizes the Governor to execute a Governor's quitclaim deed[399] in the name of the state conveying to Fairfield Village Realty, LLC ("grantee"), an Ohio limited liability company, and its successors and assigns, all of the state's right, title, and interest in real estate situated in the City of Fairfield in Butler County. The real estate is to be conveyed as an entire tract and not in parcels. Any personal property located on the real estate is to be transferred to the grantee through a bill of sale.

Consideration for conveyance of the real estate is $450,000. As additional consideration, the grantee and Empowering People, Inc. ("EPI"), an Ohio corporation and the licensed operator of the facility on the real estate, have executed and delivered to the Department of Developmental Disabilities, a cognovit promissory purchase note,[400] dated June 30, 2008, for $5,000,000. The grantee and EPI are entitled to credits against the note for certain completed improvements and development obligations defined in the "Improvement Plan" in the "Definitive Agreement" dated June 30, 2008, and signed by the grantee and EPI. The balance of the note is to be forgiven if the grantee and EPI complete all development obligations set forth in the "Definitive Agreement," the "Improvement Plan," and the note.

The deed is to contain restrictions that prohibit, within five years from the date of closing, the grantee from transferring the real estate to a third party, and from assigning its interest in the real estate to a third party, without the prior written approval of the

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399 A quitclaim deed issued in the name of the state is a deed that transfers the state's complete interest in the real property described in the deed, whatever it may be. Such a quitclaim deed neither asserts nor warrants that the state's title to the interest conveyed is valid. Black's Law Dictionary 446 (8th ed.)

400 A cognovit promissory note contains a clause that confesses judgment on the note. Such a clause allows a court to enter judgment for payment of the note without prior judicial proceedings to establish liability on the note. Black's Law Dictionary 227 (8th ed.)

Department of Developmental Disabilities. But if a transfer or assignment involves a reduction or termination of the level of services provided to individuals with mental retardation and developmental disabilities, the Department is not to approve the transfer or assignment unless the reduction or termination is otherwise required by law, including a judicial proceeding, so long as any such judicial proceeding was not caused by any act or omission of the grantee. Prior approval of a transfer or assignment is not required if the transfer or assignment is due to the death or disability of the grantee's owner.

Before the execution of the deed, possession of the real estate is to be governed by an existing interim lease between the Department of Administrative Services and the grantee, the operating license between the Department of Developmental Disabilities and EPI, and the "Definitive Agreement" between the grantee, EPI, and the Department of Developmental Disabilities.

The consideration is to be paid by the grantee to the state at the closing, according to an executed Offer to Purchase Real Estate Agreement that was reached between the state, through the Department of Administrative Services, and the grantee.

The Auditor of State, with the assistance of the Attorney General, is to prepare the deed to the real estate. The deed must state the consideration and the restrictions. The Governor is to execute the deed in the name of the State. The deed then is to be countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee is to present the deed for recording in the Office of the Butler County Recorder. The grantee is to pay the costs of the conveyance, including the costs of recording the deed.

This conveyance authorization expires two years after its effective date.

Jackson County land conveyance

(Section 753.50)

The act authorizes the Governor to convey, in the name of the state, two tracts of land in Franklin Township in Jackson County to the Jackson City Schools Board of Education in exchange for a tract of land in Lick Township in Jackson County. The School Board must pay the costs of the conveyance. Upon the conveyance of the tract from the School Board, the Auditor of State, with the assistance of the Attorney General, must prepare a deed to the two tracts of state land. The deed must state the consideration. The deed must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the School

Board. The School Board must present the deed for recording in the Office of the Jackson County Recorder.

The authority for this land exchange expires one year after its effective date.

Land conveyance from state to Dayton Public Schools

(Section 753.60)

The act authorizes the Governor to execute a Governor's Deed in the name of the state conveying to the Dayton Public School District/Dayton Board of Education ("grantee"), and its successors and assigns, all of the state's right, title, and interest in 45.3599 acres of real estate situated in the City of Dayton in Montgomery County. The 45.3599 acres must be conveyed as an entire tract and not in parcels.

Consideration for conveyance of the 45.3599 acres is the transfer by the grantee to the state at no cost of 8.9874 acres adjacent to the remaining Twin Valley Behavioral Healthcare/Dayton Campus, subject to the following conditions:

(1) Within 180 days after conveyance of the 45.3599 acres, the grantee at its own cost must complete construction of a new western extension off Mapleview Avenue to provide a new entrance roadway to the remaining Twin Valley Behavioral Healthcare/Dayton Campus and provide an easement to the state for full utilization of the roadway for the benefit of the remaining Twin Valley Behavioral Healthcare/Dayton Campus until the 8.9874 acres is transferred to the state.

(2) Within 340 days after the occupancy of the New Belmont High School, the grantee must demolish and environmentally restore the 8.9874 acres.

In lieu of the transfer of the 8.9874 acres, if the Director of Mental Health determines that the grantee has insufficiently performed the construction, demolition, and environmental restoration obligations contemplated by the conditions described above, the grantee must pay as consideration a purchase price of $1,175,000 to the state, which is the appraised value of the 45.3599 acres less the cost of demolition, site, and utility work.

Upon transfer of the 8.9874 acres to the state or payment of the purchase price, the Auditor of State, with the assistance of the Attorney General, must prepare a deed to the 45.3599 acres. The deed must state the consideration and must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee must present the deed for recording in the Office of the Montgomery County Recorder.

The grantee must pay all costs associated with conveyance of the 45.3599 acres, including recordation costs of the deed.

If the payment of $1,175,000 is made in lieu of the transfer of the 8.9874 acres to the state, the proceeds of the conveyance of the 45.3599 acres must be deposited into the state treasury to the credit of the Department of Mental Health Trust Fund and the easement to the state for full utilization of the roadway for the benefit of the remaining Twin Valley Behavioral Healthcare/Dayton Campus becomes a permanent easement.

The act prohibits the grantee, during any period that any bonds issued by the state to finance or refinance all or a portion of the 45.3599 acres are outstanding, from using any portion of the 45.3599 acres for a private business use[401] without the prior written consent of the state.

Authority to make the conveyance described above expires two years after the effective date of the section of law in which it is expressed.

Hamilton County Land Conveyance

(Section 753.70)

The act authorizes the Governor to execute a deed in the name of the state conveying to the City of Cincinnati ("grantee"), its successors and assigns, all of the state's right, title, and interest in 12.956 acres of real estate located in Mill Creek Township in the City of Cincinnati, Hamilton County. The grantee must pay $1,230,000 to the state as consideration for the conveyance. The real estate must be sold as an entire tract and not in parcels.

The act prohibits the grantee from using, developing, or selling the real estate such that it will interfere with the quiet enjoyment of the adjacent state-owned land.

Upon payment of the purchase price, the Auditor of State, with the assistance of the Attorney General, must prepare a Governor's Deed to the real estate. The Governor's Deed must state the consideration and the condition. The deed must be

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[401] "Private business use" means use, directly or indirectly, in a trade or business carried on by any private person other than use as a member of, and on the same basis as, the general public. Any activity carried on by a private person who is not a natural person is presumed to be a trade or business. "Private person" means any natural person or any artificial person, including a corporation, partnership, limited liability company, trust, or other entity, including the United States or any agency or instrumentality of the United States, but excluding any state, territory, or possession of the United States, the District of Columbia, or any political subdivision thereof that is referred to as a "State or local governmental unit" in Treasury Regulation § 1.103-1(a) and any person that is acting solely and directly as an officer or employee of or on behalf of any such governmental unit.

executed by the Governor in the name of the State, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee must present the deed for recording in the Office of the Hamilton County Recorder.

The grantee must pay all costs associated with the purchase and conveyance of the real estate, including deed recordation costs. The net proceeds of the sale must be deposited in the State Treasury to the credit of the Department of Mental Health Trust Fund.

The authority for this land conveyance expires two years after the authorization's effective date.

NOTE ON EFFECTIVE DATES

(Sections 809.10 to 812.50)

Section 1d, Article II of the Ohio Constitution states that "[l]aws providing for tax levies [and] appropriations for the current expenses of the state government and state institutions *** shall go into immediate effect," and "shall not be subject to the referendum." R.C. 1.471 implements this provision with respect to appropriations, providing that a codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if (1) it is an appropriation for current expenses, (2) it is an earmarking of the whole or part of an appropriation for current expenses, or (3) its implementation depends upon an appropriation for current expenses that is contained in the act. The statute states that the General Assembly is to determine which sections go into immediate effect.

The act includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section in the act is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The act also includes many exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect. For example, many of the act's provisions that provide for or are essential to the implementation of a tax levy go into immediate effect. Provisions that are or relate to an appropriation for current expenses also go into immediate effect.

The act also specifies 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, 2011, unless its context clearly indicates otherwise.

HISTORY

ACTION	DATE
Introduced	02-12-09
Reported, H. Finance & Appropriations	04-28-09
Passed House (53-45)	04-29-09
Reported, S. Finance & Financial Institutions	06-02-09
Passed Senate (20-11)	06-03-09
House refused to concur in Senate amendments (1-98)	06-10-09
Senate requested conference committee	06-10-09
House acceded to request for conference committee	06-10-09
House agreed to conference committee report (54-44)	07-13-09
Senate agreed to conference committee report (17-15)	07-13-09

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