



Lynda J. Jacobsen

*Final Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 544**

123rd General Assembly  
(As Passed by the General Assembly)

**Reps. Peterson, Schuler, Calvert, Grendell, Terwilleger, Tiberi, Taylor, Buehrer, Robinson, Hartnett, Young, Harris, Winkler, O'Brien, Clancy, Krebs, Widener, Trakas, Olman, Hoops, Amstutz, Stevens**

**Sens. Schafrath, Kearns, White, Gardner, Herington**

**Effective date: \***

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### **ACT SUMMARY**

- Authorizes a regional or county planning commission to send certain notices by electronic mail.
- Requires regional or county planning commissions to send notice to all townships at least 30 days before a public hearing on the adoption or amendment of its rules.
- Changes the composition of county planning commissions and permits the appointment of alternates for commission members.
- Extends the period of time over which property owners may pay special assessments for county road improvements from 10 to 20 years.
- Specifies that the procedures for adopting resolutions in the Limited Home Rule Township Law apply only to resolutions adopted under a township's limited home rule powers.
- For a period of 30 days after the act's effective date, permits a township to transfer surplus funds from a township artificial lighting fund to another township fund.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

- Increases the maximum fines for violating county and township zoning regulations from \$100 to \$500.
- Authorizes certain county appointing authorities to count prior service with a regional council of government for the purpose of determining the credit for unused sick leave when a person transfers to the county service.
- Authorizes certain county appointing authorities to count prior service with a regional council of government for the purpose of determining years of service for the accrual of earned vacation leave.
- Declares an emergency.

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## CONTENT AND OPERATION

### County and regional planning commissions

#### Background law

County and regional planning commissions carryout a wide range of planning activities and review and approve plats for their county or region. These

commissions can adopt rules governing plats and the subdivision of land. The purpose of those rules is to secure and provide for the proper arrangement of streets or highways in relation to existing or planned streets or highways or to the county or regional plan, for adequate and convenient open spaces for traffic, utilities, access of fire-fighting equipment, recreation, light, and air, and for the avoidance of congestion of population. Those rules also may require the county department of health to review and comment on a plat and require proof of compliance with any applicable zoning resolutions as a basis for plat approval. (Sec. 711.10.)

### **Changes made by the act**

A county or regional planning commission's rules are adopted or amended only after the conduct of a public hearing. The act requires that notice of a rule adoption or amendment hearing be sent to *all townships* in the county or region by regular or electronic mail at least 30 days before the hearing. The act also permits a county or regional planning commission to provide notice of meetings scheduled to consider the approval of submitted plats by *electronic mail*, or as under continuing law by regular mail, to the clerk of the board of township trustees of the township in which the proposed plat is located. (Sec. 711.10.)

### **County planning commission members**

#### **Former law**

Previously, county planning commissions consisted of eight members appointed by the board of county commissioners plus the board members themselves. This resulted in a total membership of 11 on a county planning commission. Appointments to the commission by the board generally were required to be made as follows (sec. 713.22(A)):

(1) *Municipal corporations*: If the population of the portion of any city in the county exceeded 50% of the total population of the county, then at least three of the appointed members were required to be selected from persons nominated by the planning commission of that city. Otherwise, three members were required to be appointed from municipal corporations in the county.

(2) *Townships*: Three members were required to be appointed from the unincorporated area of the county and were required to be selected from persons nominated by the townships in the county. If there were one or more *limited home rule government townships* in the county, then at least one of the three township appointees were required to be selected from persons nominated by a limited home rule government township.

(3) *Public members:* Two citizens were required to be selected in the board's discretion from residents of the county, and one of them was required to reside in the unincorporated area of the county and represent townships and the other was required to reside in the incorporated area of the county and represent municipal corporations.

An *exception* to those appointment procedures existed if a county contained two or less townships with unincorporated territory. In that case, there were eight citizen members on the county planning commission, who generally were appointed by the board of county commissioners in its discretion, plus the commissioners themselves. However, if the population of the portion of any city located in the county exceeded 50% of the total population of the county, then at least three of those appointed members were required to be selected from persons nominated by that city's planning commission. (Sec. 713.22(A) and (B).)<sup>1</sup>

### **Changes made by the act**

**Appointment scenarios.** The act continues the requirement that a county planning commission consist of 11 total members: *eight appointed members* plus the three members of a board of county commissioners (sec. 713.22(A)). However, it changes who the appointed members represent, as follows (sec. 713.22(B)(1), (2), (3), and (4)):

(1) *If the population of the portion of any city located in the county exceeds 50% of the total population of the county and if the county also contains three or more townships with unincorporated territory, the board of county commissioners must select **three** members from persons nominated by the planning commission of that city. Then, the board generally must appoint **three** members from the unincorporated territory from persons recommended by the townships; but, if any of those townships is a limited home rule government township (hereafter, "home rule township"), the board must appoint at least one of those three township representatives from persons recommended by a home rule township. The remaining **two** members must be selected at the board's discretion from county residents; one must reside in the unincorporated territory of the county and represent townships, and the other must reside in the incorporated territory of the county and represent municipal corporations. (Sec. 713.22(B)(1).)*

(2) *If a county does not contain the portion of any city with at least 50% of the county's total population but does contain three or more townships with unincorporated territory, and if one or more of those townships are home rule*

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<sup>1</sup> *The law relative to county planning commission members was recently amended by Am. Sub. H.B. 187 of the 123rd General Assembly (effective September 20, 1999).*

*townships, one* of the eight members must be a resident of a home rule township selected in the board of county commissioners' discretion from persons recommended by a home rule township. **One** member must be a resident of the municipal corporation with the largest population contained within the portion of the municipal corporation located in the county, selected in the board's discretion from persons recommended by the municipal corporation. The **six** remaining members must be appointed at the board's discretion from persons residing in the county. (Sec. 713.22(B)(2).)

(3) *If a county does not contain the portion of any city with at least 50% of the county's total population but does contain three or more townships with unincorporated territory, and if there are no home rule townships in the county,* the board of county commissioners in its discretion must appoint any **eight** residents of the county to the county planning commission (sec. 713.22(B)(3)).

(4) In any county that contains *two or less townships with unincorporated territory,* the board of county commissioners must appoint **eight** residents of the county selected in the board's discretion, except that, if the population of the portion of any city located in the county exceeds 50% of the county's total population, at least three of the appointive members must be selected from persons nominated by that city's planning commission (sec. 713.22 (B)(4)).

**Implementation provisions.** If at anytime *a change occurs* within a county so that the population of a portion of a city within the county exceeds or no longer exceeds 50% of the county's total population, or a township becomes a limited home rule government township, thus creating a situation where the county planning commission's membership should be altered to comply with the membership requirements explained above, within 30 days after the occurrence of either of those changes, the board of county commissioners, in its discretion, may make changes on the commission by resolution so that its membership representation complies with those membership requirements. If the board does not adopt a resolution to make such changes, the board must phase-in the necessary changes in the commission's membership by waiting until a member's term of office expires and appointing new members so as to meet the representation requirements as soon as possible without interfering with any member's term of office. (Sec. 713.22(C) and (F).)

As to the membership of a county planning commission that does not meet the act's membership requirements *on the act's effective date,* the changes to the composition of the commission are to be implemented so that any member serving on the commission on the act's effective date serves out the member's term of office, even if the membership would not meet the act's representation requirements, unless the board of county commissioners within 30 days after the

act's effective date determines by resolution that the commission's membership should comply with the act's representation requirements. If the board determines that those requirements should apply, the board may remove members from the commission and appoint members to the commission whose appointments comply with those requirements. Otherwise, as new members are appointed to the commission, those members will be required to meet the act's representation requirements as soon as possible without interfering with any member's term of office. (Section 3.)

**Alternate members.** The act permits alternates for any member of a county planning commission, all of whom must be county residents. For *county commissioners*, an alternate can be designated by a county commissioner sending a letter of appointment to the alternate and delivering a copy of that letter to the clerk of the board of county commissioners. Then, at the next regular meeting of the board, the clerk must inform the board of the designation, and it will be entered on the board's journal. (Sec. 713.22(A) and (E).)

In the case of *any other member* of the planning commission, the member must send to the clerk of the board of county commissioners a letter of appointment designating an individual to serve as the member's alternate. At the next regular meeting of the board, the clerk must inform the board of the designation, and the board can either approve or disapprove that individual to serve as the alternate. The board's decision must be entered on its journal, and, if the alternate is approved, the name of the alternate also must be journalized. The clerk must notify the commission member of the board's action, and that member must inform the individual. (Sec. 713.22(A).)

An alternate for a county planning commission member serves at the pleasure of the designating member. Removal of an alternate must be made by a letter of removal, delivered and journalized by the same method that designated the alternate. (Sec. 713.22(A).)

Once an alternate is designated, if the planning commission member is absent from a commission meeting, the alternate has the right to vote and participate in all proceedings and actions of the commission at that meeting as if that alternate were the commission member (sec. 713.22(A) and (E)).

### **County road improvements**

#### **Continuing and former law**

Under continuing law, a county is authorized to improve its county roads, including the construction or reconstruction of necessary bridges and culverts. These improvements can be paid for by a variety of methods, such as tax levies or



special assessments upon real estate abutting or within one-half to two miles of an improvement (depending upon the specific situation). (Secs. 5555.06 and 5555.41, not in the act.)

Prior law required that, if assessments were made for a county road improvement, the principal of those assessments had to be paid in not more than *20 semiannual installments* extending over a period of not more than *ten years*. In addition, if bonds were issued to pay the compensation, damages, and expenses incident to the improvement, the principal sum of the assessments was required to be payable in the number of semiannual installments that would provide a fund for the redemption of those bonds. The "assessments . . . [had to] bear interest from the date of and at the same rate as the bonds, and the interest . . . [had to] be collected in like manner as the principal of . . . [the] assessments." (Sec. 5555.46.)

### **Changes made by the act**

The act changes the maximum number of permissible semiannual assessment installments from 20 to 40 and, correspondingly, increases the maximum period over which the installment payments may be made from ten years to *20 years* (sec. 5555.46).

### **Limited home rule township procedure**

The Limited Home Rule Township Law contains a procedure for the passage of resolutions and motions that requires a majority vote of the board of trustees for passage, unless a measure is an emergency resolution, which instead requires a unanimous vote of the board. Emergency resolutions and resolutions that appropriate money, submit a question to the electorate, determine to proceed with an election, or provide for revision, codification, recodification, rearrangement, or publication of resolutions are effective within ten days after the date they are filed with the clerk of the township, unless the resolution indicates a later time. All other resolutions become effective 30 days after being filed with the clerk. (Sec. 504.11(A) and (B).)

The Limited Home Rule Township Law also provides that resolutions must be recorded and copies made available to the public. Failure or refusal of a township clerk to sign a resolution does not invalidate an otherwise properly enacted resolution. (Sec. 504.11(A) and (C).)

The act adds a statement to the Limited Home Rule Township Law that states that the voting procedures mentioned above "apply only to resolutions adopted pursuant to a township's limited home rule powers as authorized by [the Law]." Without court interpretation, it is unclear what actions of a limited home

rule township are taken under that Law and which, if any, are not. (Sec. 504.11(D).)

**Transfer from township artificial lighting fund to another township fund**

The act permits, for a 30-day period after its effective date, the clerk of any township that has created a fund for the deposit of special assessments for artificial lighting to transfer any surplus in that fund to another township fund under both of the following conditions (Section 4):

(1) The surplus in the artificial lighting fund occurred due to overcharges by the company providing the artificial lighting.

(2) The board of township trustees adopts a resolution (a) finding that the surplus has occurred, (b) indicating the exact amount of the surplus, and (c) requesting the clerk to transfer the surplus to another fund within the township treasury specified in that resolution.

**Increase in maximum fines for violations of zoning regulations**

Under former law, the maximum fine that could be imposed for violations of county and township zoning regulations was \$100. The act increases the maximum fine to \$500. (Secs. 303.99 and 519.99.)

**Authorization for county appointing authorities to transfer certain accrued sick leave**

**Continuing law**

Under continuing law, employees in county service generally are entitled for each completed 80 hours of service to sick leave of four and six-tenths hours with pay. Unused sick leave is cumulative without limit. If an employee separates from public service and is reemployed within ten years after the date of separation, previously accumulated and unused sick leave is credited to the employee. In addition, if an employee *transfers from one public agency to another*, any unused balance of accumulated sick leave up to a permitted maximum of the new public agency employer is credited to the employee. (Sec. 124.38.) Under this provision of law, "public agency," although not statutorily defined, has been consistently construed to mean those agencies that are required by law to accumulate sick leave under section 124.38, so that one public agency is not bound to accept a more generous sick leave time accumulated elsewhere.<sup>2</sup> Thus, in order for a person to

<sup>2</sup> 1960 Op. Att'y Gen. No. 1302. See also 1971 Op. Att'y Gen. No. 71-055 and 1954 Op. Att'y Gen. No. 3643.



receive credit under section 124.38 for accumulated sick leave, either upon transfer to or re-employment with another public agency, the leave must have accrued while the employee was in the service of those entities governed by this statute (generally, any county, municipal corporation, civil service township, state college or university, or board of education for whom sick leave is not provided by section 3319.141--the section generally providing sick leave for persons employed by boards of education).

Regional councils of government are entities established by agreement of the governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions. The membership of a regional council consists of those entities entering into the establishing agreement and those entities admitted subsequently under the agreement. Representation on a regional council may be provided for in the agreement, or it may be in accordance with statute. Regional councils have various powers, including to study areas of common governmental concern such as matters affecting health, safety, welfare, education, economic conditions, and regional development. They may promote cooperative agreements, coordinated action, and contracts among their members and other governmental agencies and private entities. They may perform planning directly or under contract and, among other things, may perform such other functions and duties as are performed or capable of performance by their members and are necessary or desirable for dealing with problems of mutual concern. (Chapter 167.--not in the act.) Regional councils are not public agencies for purposes of section 124.38.<sup>3</sup>

### **Changes made by the act**

The act allows county appointing authorities to permit the transfer of all or any part of a person's accrued, but unused sick leave acquired during service with a regional council of government to be credited to that employee when that employee transfers to the county service. Thus, the act treats the previous employment as if it were employment with a public agency even though regional councils of government are not governed by section 124.38 and may afford a different sick leave benefit. (Sec. 124.38.)

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<sup>3</sup> 1992 Op. Att'y Gen. No. 92-079.

**Authorization for county appointing authorities to accept prior service time for the determination of vacation leave**

**Continuing and former law**

Under continuing law, a statute generally applicable to county employees entitles an employee to amounts of vacation leave based on the years of service the employee has with the county or any *political subdivision* of the state (sec. 325.19). Since a regional council of government is not a political subdivision of the state, a person who formerly worked with a regional council could not use that service time under former law for the purpose of determining the person's vacation leave benefit when the person was subsequently employed by a county.

**Changes made by the act**

The act authorizes county appointing authorities to permit all or any part of a person's prior service with a regional council to be considered as service with the county or a political subdivision of the state for the purpose of determining the person's vacation leave benefit (sec. 325.19(A)(1)). The act also provides similar authority in the statute that applies to the vacation leave benefit of employees of a county department of job and family services (sec. 124.13(B)).

In a related provision of law, an employee *who has retired* in accordance with any retirement plan offered by the state and who is employed by the state or any political subdivision on or after June 24, 1987, is prohibited, under continuing law, from having the employee's prior service with the state or any political subdivision counted for the purpose of computing vacation leave. The act expands this prohibition to include prior service with a regional council of government that any person who has retired under a state plan and is later employed by the state or any political subdivision may have had (sec. 9.44). So, although the act allows a person to use prior service with a regional council of government to compute the person's vacation leave benefit as explained above, if that person has retired under a state plan, that prior service cannot be used to compute vacation leave upon post-retirement employment with the state or any political subdivision.

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**HISTORY**

| ACTION                                       | DATE     | JOURNAL ENTRY |
|--|----------|---------------|
| Introduced                                   | 01-13-00 | pp. 1515-1516 |
| Reported, H. Local<br>Government & Townships | 03-28-00 | pp. 1717-1718 |
| Passed House (96-0)                          | 03-29-00 | pp. 1734-1736 |



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|--|----------|-----|-----------|
| Reported, S. State & Local<br>Gov't & Veterans Affairs | 05-16-00 | pp. | 1699-1700 |
| Passed Senate (32-1)                                   | 05-16-00 | pp. | 1707-1708 |
| Concurrence (94-3)                                     | 05-17-00 | pp. | 1976-1979 |

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