



H.B. 365

123rd General Assembly
(As Introduced)

Reps. Goodman, Tiberi, Peterson, Mottley, Gerberry, O'Brien, Patton, Taylor, Bender, Trakas, Willamowski, Terwilleger, Britton, Flannery, Allen, Verich

BILL SUMMARY

- Provides for the automatic suspension of elected county officers upon the filing of an indictment or information charging an officer with any felony offense.

CONTENT AND OPERATION

The bill provides that, whenever an indictment or information is filed charging a county officer with a felony, that county officer is automatically suspended from office.¹ Upon such a suspension, the county central committee of the political party with which the suspended officer is affiliated must appoint a suitable person to perform the duties of that suspended officer's office until (1) the suspended officer is restored to office after not having been found guilty of any felony or restored to office because the felony charge was dismissed with prejudice, or (2) a successor is elected and qualified to that office. If the suspended officer was elected as an independent candidate, the board of county commissioners must make the appointment of the suitable person to perform the suspended officer's duties, except that if the suspended officer is a county commissioner, the prosecuting attorney and the remaining commissioners (or a majority of them) must make the appointment. Once the appointed successor gives bond and takes the oath of office, the appointed successor can perform all the duties and is subject to all the obligations and liabilities of the suspended officer's office. (Sec. 305.20(B).)

¹ An "information" is an accusation against a person for a criminal offense presented by a competent public officer on his or her oath of office, instead of by a grand jury on their oath as is an "indictment."

The county elected officials covered by the bill's provisions are the county commissioners, prosecuting attorney, sheriff, coroner, county engineer, county recorder, county auditor, county treasurer, and clerk of the court of common pleas (sec. 305.20(A)'s definition of "county officer"). The bill also repeals provisions in current law that provide for the suspension or removal of the county auditor and treasurer from office following differing procedures (secs. 319.25, 319.26, 321.37, and 321.38).

COMMENT

Section 38 of Article II of the Ohio Constitution provides that all "officers" are to be removed from office "upon *complaint and hearing* . . . for any misconduct involving moral turpitude or for other cause provided by law" (emphasis added). The Revised Code provides the procedures for such a hearing. That same section of the Constitution states that any other removal from office must be either by impeachment or by a method provided by the Constitution. The Constitution does give the General Assembly authority to exclude from eligibility for office any person *convicted* of a *felony*.² The General Assembly has enacted a provision making any person convicted of a felony (whether federal or state) incompetent to hold office.³

It is unclear whether the automatic suspension of an elected county or other official upon the filing of an indictment or information--not a conviction--for a felony would violate the above Constitutional provision that requires a complaint and hearing prior to removal from office.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-26-99	p. 729

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² *Section 4 of Article V of the Ohio Constitution.*

³ *Section 2961.01 O.R.C.*