



H.B. 35

124th General Assembly
(As Passed by the House)

Reps. Grendell, Jolivette, Seitz, Willamowski, Callender, Salerno, DePiero, Latta, Manning, Sulzer, Jones, Jerse, Core, Carey, Stapleton, Damschroder, DeWine, Husted, Schmidt, Hughes, Hoops, Redfern, Flannery, Collier

BILL SUMMARY

- Exempts an administrative-related appeal of a final order that is not for the payment of money from the statutory requirement that the appellant give a supersedeas bond.

CONTENT AND OPERATION

Background law

Under the General Appeal Law (R.C. Chapter 2505.), every final order, judgment, or decree of a court and, if provided by law, the *final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality* may be reviewed on appeal by a court of common pleas, a court of appeals, or the Supreme Court, whichever has jurisdiction. Unless the Administrative Procedure Law or other sections of the Revised Code apply in the case of an administrative-related appeal, the General Appeal Law and, to the extent that Law does not contain a relevant provision, the Rules of Appellate Procedure govern an *administrative-related appeal*. (R.C. 2505.03--not in the bill.) (See **COMMENT 1**.)

An appeal is perfected in the case of an appeal of a final order, judgment, or decree of a court when a written notice of appeal is filed in accordance with the Rules of Appellate Procedure or the Rules of Practice of the Supreme Court, or in the case of an administrative-related appeal when a written notice of appeal is filed with the administrative officer, agency, board, department, tribunal, commission, or other instrumentality involved (R.C. 2505.04--not in the bill). Generally, an appeal does *not* operate as a stay of execution until a stay of execution has been obtained and a *supersedeas bond* is executed by the appellant to the appellee, with sufficient sureties and in a sum that is not less than the amount of the final order, judgment, or decree and interest involved, if applicable, and that is directed by the

court that rendered the final order, judgment, or decree sought to be superseded or by the court to which the appeal is taken (R.C. 2505.09--not in the bill). (See **COMMENT 2**.)

Administrative-related appeal; supersedeas bond

Existing law

Supersedeas bond requirement. With certain exemptions specified or implied in the General Appeal Law, an administrative-related appeal is not effective as an appeal upon *questions of law and fact* until the final order appealed is superseded by a bond and unless the bond is filed at the time the notice of appeal is required to be filed (R.C. 2505.06--not in the bill). (See **COMMENT 3**.) The amount of the supersedeas bond is a sum that is not less than the amount of the final order and interest involved, if applicable, and that is directed by the court to which the appeal is taken. A supersedeas bond is payable to the appellee or otherwise as may be directed by the court if the conflicting interests of the parties require it, is subject to the condition that the appellant must abide and perform the order, judgment, or decree of the appellate court and pay all money, costs, and damages that may be required of or awarded against the appellant upon the final determination of the appeal, and is subject to any other conditions that the court provides. If the final order, judgment, or decree appealed is for the payment of money, the bond may provide that, if the final order, judgment, or decree is not paid upon final affirmance, it may be entered against the sureties on the bond. (R.C. 2505.09 and 2505.14--not in the bill.)

Exemptions. Existing law exempts certain appellants from the requirement to give a supersedeas bond in connection with *any* appeal, as follows (R.C. 2505.12):

- (1) Executors, administrators, guardians, receivers, trustees, or trustees in bankruptcy, who are acting in their respective trust capacities and who have given bond in this state, with surety according to law;
- (2) The state or any political subdivision of the state;
- (3) Any public officer of the state or of any of its political subdivisions who is suing or is sued solely in the officer's representative capacity as such officer.

In regard to an administrative-related appeal, since existing law expressly requires a supersedeas bond if the appeal is upon questions of law and fact, the law implicitly does not require a supersedeas bond if the appeal is solely upon

questions of law. (See "Supersedeas bond requirement," above, and COMMENT 3.)

Operation of the bill

The bill continues the existing law's exemptions from the requirement that an appellant give a supersedeas bond and additionally exempts from that requirement an administrative-related appeal of a final order that is *not for the payment of money* (R.C. 2505.12(B)). (See COMMENT 4.)

COMMENT

1. The General Appeal Law defines "administrative-related appeal" as an appeal to a court of the final order of an administrative officer, agency, board, department, tribunal, commission, or other instrumentality (R.C. 2505.01(B)--not in the bill).

Under the General Appeal Law, an order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following (R.C. 2505.02--not in the bill):

(1) An order that affects a "substantial right" (defined as a right that the United States or the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect) in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a "special proceeding" (defined as an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity) or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a "provisional remedy" (defined as a proceeding ancillary to an action, including a proceeding for a preliminary injunction, attachment, discovery of privileged matter, or suppression of evidence) and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

(5) An order that determines that an action may or may not be maintained as a class action.

As provided in R.C. 2506.01 (not in the bill), every final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any *political subdivision of the state* may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located as provided in the General Appeal Law, except as modified by Chapter 2506.

2. Under the Administrative Procedure Act, the filing of a notice of appeal does not automatically operate as a suspension of the order of the agency. If it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal, the court may grant a suspension and fix its terms. (R.C. 119.12--not in the bill.)

3. The General Appeal Law defines "appeal on questions of law and fact" or "appeal on questions of fact" as a rehearing and retrial of a cause upon the law and the facts, and defines "appeal on questions of law" as a review of a cause upon questions of law, including the weight and sufficiency of the evidence (R.C. 2505.01(A)(2) and (3)--not in the bill).

4. It appears that the exemption added by the bill is already recognized in certain rulings of the Courts of Appeals.

In *Mahoney v. City of Berea* (8th Dist. 1986), 33 Ohio App.3d 94, the Court of Appeals for Cuyahoga County addressed the question whether the General Assembly, by enacting R.C. 2505.06, intended to require a supersedeas bond in an appeal on questions of law and fact from the decision of a city civil service commission pursuant to R.C. 124.34. Examining the relevant statutes, the Court noted that R.C. 124.34 does not mention or even suggest the requirement of a supersedeas bond and that R.C. 2505.06 applies to appeals other than appeals pursuant to R.C. 124.34. The Court stated:

R.C. 2505.06 provides for a bond "in the amount and with the conditions provided in sections 2505.09 and 2505.14 * * *." R.C. 2505.09 provides that the bond should be for an amount "not less than the amount of the judgment and interest * * *." R.C. 2505.14 provides that as a condition of the bond the

party appealing "shall abide and perform the order and judgment of the appellate court and pay all money, costs, and damages which may be required of or awarded against him * * *." After considering these related statutes, it is clear that the bond required under R.C. 2505.06 relates to a judgment rendered by a trial court for money damages. . . . In the case at bar, no judgment was rendered by the trial court, and no money is at stake. Therefore, from the plain language of R.C.2505.06 and its related statutes, the bond requirement is not applicable in the instant case. (At p. 96, footnote omitted.)

The Court in *Mahoney* also determined that there was no purpose in requiring a bond since the city had no interest that could be lost or squandered by the appellant during the appeal and that the city would want secured by a bond pending an appeal. The Court concluded that R.C. 2505.06 is not applicable to appeals pursuant to R.C. 124.34.

Relying on the *Mahoney* ruling, the Court of Appeals for Hamilton County in *Cleavinger v. Hamilton Cty. Bd. of Commrs.* (1st Dist. 1991), 72 Ohio App.3d 187, which involved an appeal of landowners from an order of the Hamilton County Board of Commissioners denying an annexation petition, held that the lack of a judgment rendered for money damages or of the appellees' identification of an interest that would need to be secured by a bond pending appeal renders R.C. 2505.06 inapplicable to the case. See also *Bettio v. Village of Northfield* (9th Dist. 1991), Nos. 14621, 14622, Court of Appeals (Summit County), unreported, *Trademark Homes v. Avon Lake Bd. of Zoning Appeals* (9th Dist. 1993), 92 Ohio App.3d 214, and *Houghtaling v. Medina Bd. of Zoning Appeals* (9th Dist. 1999), 134 Ohio App.3d 541.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-31-01	p. 99
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