



S.B. 258

124th General Assembly
(As Introduced)

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BILL SUMMARY

- Requires the fire chief of a township, fire district, city fire department, or village fire department to request the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) to conduct a criminal records check with respect to any person who is under final consideration for appointment or employment as a full-time paid firefighter.
- Permits the fire chief of a township, fire district, city fire department, or village fire department to request the Superintendent of BCII to conduct a criminal records check with respect to any person who is under final consideration for appointment as a volunteer firefighter.
- Exempts from the Public Records Law specified residential and familial information of a member of a fire department.
- Provides that a record kept by a public office that is a "security record" or "infrastructure record" is not a public record under the Public Records Law and is not subject to mandatory release or disclosure under that Law.

CONTENT AND OPERATION

Criminal records checks

Required for full-time paid firefighters; permissible for volunteer firefighters

The bill requires the fire chief of a township, fire district, city fire department, or village fire department (hereafter fire chief refers to a fire chief of all of the four entities) to request the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) to conduct a criminal records check with respect to any person who is under final consideration for appointment or

employment as a full-time paid firefighter. The bill permits the fire chief to request the Superintendent of BCII to conduct a criminal records check with respect to any person who is under final consideration for appointment as a volunteer firefighter.

The bill requires a fire chief who requests a criminal records check to inform each person who is the applicant, at the time of the person's initial application for appointment or employment that the person subject to the criminal records check is required to provide a set of impressions of the person's fingerprints and that a criminal records check is required to be conducted and satisfactorily completed. (R.C. 505.381(A) and (G), 737.081(A) and (G), and 737.221(A) and (G).)

Upon receipt of a request for a criminal records check under the bill, the completed information form, and a set of fingerprint impressions, the Superintendent of BCII must conduct a criminal records check to determine if any information exists that indicates that the person subject to the request has been convicted of or pleaded guilty to any disqualifying offense (see "Appointment," below). The Superintendent must review all records gathered by BCII, any relevant sealed information, and, upon request, any Federal Bureau of Investigation (FBI) provided information. The Superintendent must respond within 90 days after receipt of the request (R.C. 109.572(A)(6), (A)(9), and (B)).

Procedure

The bill provides that if a person subject to a criminal records check does not present proof that the person has been a resident of this state for the five-year period immediately prior to the date upon which the criminal records check is requested or does not provide evidence that within that five-year period the Superintendent of BCII has requested information about the person from the FBI in a criminal records check, the fire chief may request that the Superintendent of BCII obtain information from the FBI as a part of the criminal records check. If the person subject to the criminal records check presents proof that the person has been a resident of this state for that five-year period, the fire chief may request that the Superintendent of BCII include information from the FBI in the criminal records check. The fire chief, therefore, may request FBI information whether or not the person has been a resident for the five-year period or FBI information has been provided during that five-year period.

The bill also provides that a fire chief required to request a criminal records check must provide to each person who is subject to a criminal records check a copy of the information form and standard fingerprint impression sheet prescribed under current law, obtain the completed information form and impression sheet from the person, and forward the completed information form and impression

sheet to the Superintendent of BCII at the time the criminal records check is requested.

The bill further provides that any person who is subject to a criminal records check, who receives a copy of the information form and a copy of the fingerprint impression sheet, and who is requested to complete the information form and provide a set of fingerprint impressions must complete the information form or provide all the information necessary to complete the information form and must provide the impression sheet with the impressions of the person's fingerprints. If the person fails to provide the information necessary to complete the form or fails to provide impressions of the person's fingerprints, the appointing authority is prohibited from appointing or employing the person as a permanent full-time paid firefighter or a volunteer firefighter. (R.C. 505.381(B), 737.081(B), and 737.221(B).)

Appointment

The bill prohibits an appointing authority from appointing or employing a person as a permanent full-time paid firefighter or a volunteer firefighter if the person previously has been convicted of or pleaded guilty to any of the following: (a) a felony, (b) arson, or (c) a violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to a felony or arson.

The bill permits an appointing authority to appoint or employ a person as a permanent full-time paid firefighter or volunteer firefighter conditionally until the criminal records check is completed and the fire chief receives the results of the criminal records check. If the results of the criminal records check indicate that the person does not qualify for appointment or employment, the fire chief must release the person from appointment or employment. (R.C. 505.381(C), 737.081(C), and 737.221(C).)

Miscellaneous provisions relating to the criminal records check

The bill requires the fire chief to pay to BCII the fee required under current law for each criminal records check conducted in accordance with the current law upon a request under the bill. The bill permits the fire chief to charge the person subject to the criminal records check a fee for the costs the fire chief incurs in obtaining the criminal records check. The fee charged cannot exceed the amount of fees the fire chief pays for the criminal records check. If a fee is charged to the person subject to the criminal records check, the fire chief must notify the person who is the applicant at the time of the person's initial application for appointment or employment of the amount of the fee and that, unless the fee is paid, the person

will not be considered for appointment or employment. (R.C. 505.381(D), 737.081(D), and 737.221(D).)

The bill exempts from the Public Records Law the report of any criminal records check conducted by BCII pursuant to a request made under the bill. The report may not be made available to any person other than the person who is the subject of the criminal records check or the person's representative or the fire chief requesting the criminal records check or the fire chief's representative. (R.C. 505.381(E), 737.081(E), and 737.221(E).)

The bill requires the appointing authority to adopt rules in accordance with the Administrative Procedure Act to implement the provisions of the bill. The rules must include rehabilitation standards a person who has been convicted of or pleaded guilty to a felony, arson, or an equivalent offense must meet for the appointing authority to appoint or employ the person as a permanent full-time paid firefighter or a volunteer firefighter (R.C. 505.381(F), 737.081(F), and 737.221(F)).

The bill defines "appointing authority" as any person or body that has the authority to hire, appoint, or employ permanent, full-time paid firefighters and volunteer firefighters (R.C. 505.381(H)(1), 737.081(H)(1), and 737.221(H)(1)).

Public Records Law

Existing law

In general. The existing Public Records Law (R.C. 149.43) specifies that, generally, all "public records" (see below) must be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon request, a public office or person responsible for public records generally must make copies available at cost, within a reasonable period of time. (R.C. 149.43(B).)

Public record. For purposes of the Public Records Law, "public record" generally means any "record" (see below) that is kept by any "public office" (see below), including, but not limited to, state, county, city, village, township, and school district units. But, "public record" does not mean any of the following: (1) medical records, (2) records pertaining to probation and parole proceedings, (3) records pertaining to certain abortion-related actions and to appeals of those actions, (4) records pertaining to adoption proceedings, including the contents of an adoption file maintained by the Department of Health, (5) information in a record contained in the Putative Father Registry, (6) certain adoption-related records, (7) trial preparation records, (8) confidential law enforcement investigatory records, (9) certain mediation and civil rights action records, (10)

DNA records stored in BCII's DNA Database, (11) inmate records released by the Department of Rehabilitation and Correction to the Department of Youth Services or a court of record, (12) records maintained by the Department of Youth Services pertaining to children in its custody released by it to the Department of Rehabilitation and Correction, (13) intellectual property records, (14) donor profile records, (15) records maintained by the Department of Job and Family Services in its New Hires Directory, (16) peace officer residential and familial information, (17) in the case of a county hospital, information that constitutes a trade secret, (18) information pertaining to the recreational activities of a person under the age of 18, (19) generally, records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board, (20) certain records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney pertaining to the death of a child, (21) test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers or contracts under that section with a private or government entity to administer, or (22) records the release of which is prohibited by state or federal law. (R.C. 149.43(A)(1).)

The Law also defines "confidential law enforcement investigatory record," "medical record," "trial preparation record," "intellectual property record," "donor profile record," "peace officer residential and familial information" (see **COMMENT 1**), and "information pertaining to the recreational activities of a person under the age of 18 (R.C. 149.43(A)(2) to (8)).

Public office; record. Existing R.C. 149.011, not in the bill, defines certain terms for use throughout R.C. Chapter 149., as follows (R.C. 149.011):

(1) "Public office" includes any state agency, public institution, political subdivision, or any other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government. As used in this definition, "state agency" includes every department, bureau, board, commission, office, or other organized body established by the Constitution and laws of Ohio for the exercise of any function of state government, including any state-supported institution of higher education, the General Assembly, or any legislative agency, any court or judicial agency, or any political subdivision or agency thereof.

(2) "Records" includes any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

Operation of the bill

The bill enacts two new, specific exceptions to the Public Records Law.

First, the bill provides that, for purposes of the Public Records Law, "public record" does not include firefighter residential and familial information. (R.C. 149.43(A)(1)(w) (see **COMMENT 2**).)

Second, the bill provides that a record kept by a public office that is a "security record" or "infrastructure record" (see below) is not a public record under the Public Records Law and is not subject to mandatory release or disclosure under that Law.

It also provides that, notwithstanding any other Revised Code section, a public office's or a public employee's disclosure of a security record or infrastructure record that is necessary for construction, renovation, or remodeling work on any public building or project does not constitute public disclosure for purposes of waiving the preceding paragraph and does not result in that record becoming a public record for purposes of the Public Records Law. (R.C. 149.433(B) and (C).)

The bill specifies that, as used in the above provisions, the following terms have the following meanings (R.C. 149.433(A)):

(1) "Act of terrorism" has the same meaning as in R.C. 2909.21 (R.C. 149.433(A)(1) (not in this bill, see **COMMENT 3**)).

(2) "Infrastructure record" means any record that discloses the configuration of a public office's critical systems including, but not be limited to, communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of the building in which a public office is located. "Infrastructure record" does not mean a simple floor plan that discloses only the spatial relationship of components of a public office or the building in which a public office is located. (R.C. 149.433(A)(2).)

(3) "Security record" means either of the following (R.C. 149.433(A)(3)):

(a) Any record that contains information directly used for protecting or maintaining the security of a public office against attack, interference, or sabotage;

(b) Any record assembled, prepared or maintained by a public office or public body to prevent, mitigate, or respond to acts of terrorism, including the following: (i) those portions of records containing specific and unique vulnerability assessments or specific and unique response plans either of which is

intended to prevent or mitigate acts of terrorism, and communication codes or deployment plans of law enforcement or emergency response personnel, (ii) specific intelligence information and specific investigative records shared by federal and international law enforcement agencies with state and local law enforcement and public safety agencies, and (iii) national security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies, and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism.

COMMENT

1. Existing law defines "peace officer residential and familial information" as any information maintained in a personnel record of a peace officer that discloses any of the following: (a) the address of the actual personal residence of a peace officer, except for the state or political subdivision in which the peace officer resides, (b) information compiled from referral to or participation in an employee assistance program, (c) the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, (d) the name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer by the peace officer's employer, (e) the identity and amount of any charitable or employment benefit deduction made by the peace officer's employer from the peace officer's compensation unless the amount of the deduction is required by state or federal law, and (f) the name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer.

Existing law also defines "peace officer residential and familial information" as any record that identifies a person's occupation as a peace officer other than statements required to include the disclosure of that fact under the campaign finance law. (R.C. 149.43(A)(7).)

2. The bill does not define "firefighter residential and familial information" in a manner similar to the definition of "peace officer residential and familial information" under existing law or in any other manner.

3. Am. Sub. S.B. 184, signed by the Governor on May 15, 2002, enacts a definition of "act of terrorism," which means an act that is committed within or outside the territorial jurisdiction of this state or the United States, that constitutes

a specified offense if committed in this state or constitutes an offense in any jurisdiction within or outside the territorial jurisdiction of the United States containing all of the essential elements of a specified offense, and that is intended to do one or more of the following: (1) intimidate or coerce a civilian population, (2) influence the policy of any government by intimidation or coercion, or (3) affect the conduct of any government by the act that constitutes the offense (R.C. 2909.21(A)).

HISTORY

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Introduced	04-23-02	p. 1690

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