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*Final Analysis*  
Legislative Service Commission

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(As Passed by the General Assembly)

**Reps. Buehrer, Widener, Olman, D. Evans, Kilbane, Hagan, Taylor, Flowers, Hughes, Martin, Schaffer, Setzer**

**Sens. Mumper, Wachtmann, Blessing, Armbruster**

**Effective date:** \*

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**ACT SUMMARY**

- Establishes three types of regulations governing residential buildings: a state residential building code, local residential building regulations (for municipal corporations, counties, and townships), and existing structures codes (for counties and townships).
- Requires the Board of Building Standards to adopt a state residential building code separate from the nonresidential building code (ongoing law's Ohio Building Code).
- Specifies that local residential building regulations may not differ from the state residential building code unless their subject matter is not addressed by the state code or a specified "conflict" procedure is followed.
- Requires enforcement of the state residential building code only where a local building department is certified to enforce it and does not require building departments to apply for residential enforcement certification.
- Gives counties, townships, and municipal corporations the option of adopting the state residential building code, or an essentially identical local residential building code, or no residential building code at all.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Permits, but does not require, municipal corporation, county, and township adoption and enforcement of local residential building regulations, and authorizes counties and townships to adopt specified existing structures codes.
- Re-establishes the Residential Construction Advisory Committee and requires it to recommend a state residential building code to the Board of Building Standards.
- Permits a certified building department established by a county, township, or municipal corporation to administer and enforce the state residential building code, the nonresidential building code, or both.
- Specifies that an owner of a residential building in an area *without* a local building department certified to enforce the state residential building code is not required to receive approval of the plans and specifications for the building.
- Provides procedures for the Board of Building Standards to determine whether a conflict exists with a local residential building regulation, and requires the incorporation of a local regulation into the state residential building code if it technically conflicts with the state code but is necessary for health or safety.
- Requires a county, township, or municipal corporation with a certified building department to collect, on behalf of the Board of Building Standards, a fee equal to 1% of any local fees collected in connection with residential buildings.
- Removes detailed requirements that the Board of Building Standards adopt energy conservation and thermal efficiency standards for residential structures, while retaining an energy conservation requirement in a general manner for state building codes.
- Adds penalty provisions for violations of the Ohio Building Standards Law.
- Provides procedures for a homeowner and residential contractor to follow before a homeowner files a civil action against the contractor or seeks arbitration for an alleged construction defect.

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## CONTENT AND OPERATION

### *Residential building codes and regulations*

#### *Residential structures under former law*

Under former law, single-, two-, and three-family dwelling houses that were not constructed as industrialized units were not governed by the Ohio Building Code (OBC) adopted by the Board of Building Standards (BBS). The OBC governed the construction of most other types of buildings in the state. Municipal corporations, townships, and counties had authority under former law to adopt and enforce regulations for single-, two-, and three-family dwelling houses.

#### *Overview of the act*

The act requires the BBS to adopt a *state residential building code* that is separate from the nonresidential building code (the name of the ongoing OBC under the act).<sup>1</sup> The act also establishes a framework for state and local regulation

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<sup>1</sup> Neither the ongoing OBC nor the new residential building code governs manufactured homes, as defined in R.C. 3781.06(C)(4); federal law requires their construction to meet federal standards.

of one-, two-, and three-family dwelling houses which includes three types of regulations for these residential buildings:

- A state residential building code to be enforced by municipal, county, and township building departments that are certified for residential enforcement in those areas where a certified residential building department has jurisdiction;
- Local residential building regulations, which counties, townships, and municipal corporations may adopt and enforce;
- An existing structures code, which counties and townships may adopt and enforce.

Under the act, *local residential building regulations* may not differ from the state residential building code unless a regulation addresses subject matter not addressed by the state code or a "conflict" procedure specified in the act is followed to permit an exception. An *existing structures code* also may not conflict with the state code. The act also contemplates an option of no state or local residential building regulation or enforcement if a county, township, or municipal corporation chooses not to be certified for residential enforcement or not to adopt any local regulations.

Under the act, if there is any local regulation of residential buildings, it generally must mirror the state residential building code that the BBS is required to adopt. But, the state code may be enforced only in locations where a building department is certified for residential enforcement. A building department may be certified for residential enforcement only if the local government requests residential enforcement certification.

#### **State residential building code**

**In general.** The act directs the BBS to adopt a state residential building code that is separate from the ongoing Ohio Building Code (which the act refers to as the nonresidential building code). The new code applies to residential buildings, defined as one-, two-, and three-family dwelling houses and accessory structures incidental to those dwelling houses. Dwelling houses used as a model for the purpose of promoting the sale of similar dwelling houses are included, but industrialized units as well as manufactured and mobile homes are not to be governed by the residential building code. An accessory structure means a structure that is attached to a residential building and serves the principal use of the residential building. Included are garages, porches, and screened-in patios. (R.C. 3781.06(C)(9) and (11) and 3781.10(A).)

**Residential and nonresidential building codes.** The act adds references to *residential* or *nonresidential* building codes in appropriate sections of the Ohio Building Standards Law and certain other laws to reflect that the BBS has authority for adopting both types of codes and certifying building departments, in the discretion of the local governing authority, to enforce both types of codes (see, for example, R.C. 3703.01, 3781.06, 3781.10, 3781.11, 3781.18, 3791.04, 4703.18, 4733.18, and 4740.01).

**Regions in which the state residential building code applies.** The state residential building code must provide standards and requirements that are uniform throughout the state but will apply only in a county, township, or municipal corporation that chooses to have a residential building code. Under the act, although there is authority for local residential building regulations, a local code generally may *not differ* from the state code unless a "conflict" procedure specified in the act is followed; it is permissible for a local code, however, to address subject matter not addressed by the state code. This circumstance differs from the ongoing (nonresidential) OBC, which generally prescribes *minimum* standards for nonresidential buildings and allows alternatives that comply with performance standards.

Unlike the ongoing (nonresidential) OBC, statewide enforcement of the state residential building code is *not required*. The state residential building code is to be enforced only if there is jurisdiction by a municipal, county, or township building department that is certified for residential enforcement. The act specifically states that the BBS may not require a building department, its personnel, or any persons that it employs to be certified for residential building code enforcement if that building department does not choose to enforce the state residential building code. Unlike the ongoing (nonresidential) OBC, if there is no building department with residential enforcement certification, there is no requirement that an owner of a proposed residential building submit plans for approval to any entity.

Although a local government may seek certification for residential enforcement, it is not required to do so. A local government also may contract for another governing body's certified building department to enforce the state residential building code within its jurisdiction, but it is not required to do so. (R.C. 307.37(F)(1), 307.38(B), 505.75(C) and (D), 3781.10(A) and (E), 3781.11(A), and 3791.04(A)(1)(b).)

**Procedures for adopting the state residential building code.** The act re-establishes the Residential Construction Advisory Committee within the Department of Commerce and charges the Advisory Committee with recommending a residential building code and providing continuing advice to the

BBS.<sup>2</sup> The Advisory Committee consists of eight persons appointed by the Director of Commerce, including: three general contractors with recognized ability and experience in the construction of residential buildings, two building officials with experience administering and enforcing a residential building code, one person who is chosen from a list of three names the Ohio Fire Chief's Association submits, who is from the fire service, who is certified as a fire safety inspector, and who has at least ten years experience enforcing fire or building codes, one person who is a residential contractor with recognized ability and experience in the remodeling and construction of residential buildings, and one person who is a registered architect with recognized ability and experience in the architecture of residential buildings. (R.C. 4740.14.)

The act establishes procedures for the appointment of the Advisory Committee's members, their three-year terms of office, and the responsibilities of the Advisory Committee in addition to those mentioned in the previous and following paragraphs. The members of the Committee are not to receive any salary for performing their duties but are entitled (1) to their actual and necessary expenses incurred in performing those duties and (2) a per diem for each day in attendance at an official Advisory Committee meeting. (R.C. 4740.14.)

The Advisory Committee is required to recommend, within 120 days after the act's effective date, a residential building code that the BBS finds acceptable. The act directs the BBS to establish such a code by rule within 180 days following the act's effective date. The code is to be modeled on a residential building code issued by a national model code organization, with any adaptations necessary to implement the code in Ohio. The code may not address zoning, statutory "set aside" requirements concerning the percentage of contracts that must be awarded to any specifically identified type of disadvantaged contractor, or architectural preferences that are not integral to the safety of residential buildings. The code, after being adopted by BBS rules, is not effective until one year after the act's effective date. (R.C. 3781.10(H) and 4740.14; Section 3 of the act.)

**Enforcement of the state residential building code.** Under continuing law, the BBS certifies municipal corporation, township, and county building departments and personnel to enforce the OBC for nonresidential buildings. Continuing law also permits the enforcement functions to be exercised by persons, firms, corporations, or a political subdivision under contract with a municipal corporation, township, or county. The BBS specifies the standards for the certification of building departments and other code enforcement personnel.

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<sup>2</sup> *The Residential Construction Advisory Committee existed under previous law but was abolished by Am. Sub. H.B. 25 of the 125th General Assembly, which became effective 10/29/03.*

The act directs the BBS to provide a *certification procedure* for building departments and personnel choosing to enforce the state residential building code. The requirements for residential and nonresidential certification may differ.

The act specifies that the BBS may not require a building department to become certified for residential building code enforcement if it *does not choose to enforce* the state residential building code, and, as under prior law, certification is available only if the local governing entity applies for certification. The act sets forth that building departments and other entities have jurisdiction only for the types of codes for which they are certified, and building departments may be certified to enforce the state residential building code, the nonresidential building code, or both types of codes. (R.C. 3781.10(E).)

**Transition for building departments that formerly were enforcing a local residential building code and that subsequently seek to enforce the state code.**

The act provides for "grandfathering" certain building departments that enforced a residential building code on or before the act's effective date. Such a building department that chooses to enforce the *state* residential building code may enforce the state code for no more than one year after that code becomes effective without being certified by the BBS. After that time, only a building department certified to enforce the state residential building code may enforce it. (Section 4.)

**Submission of plans for approval.** Continuing law requires an owner, before beginning construction of a nonresidential building, to submit plans, drawings, and other data to a certified municipal corporation, township, or county building department for approval (i.e., for a building permit). If no certified local building department has jurisdiction, the documentation must be submitted to the Superintendent of the Division of Industrial Compliance in the Department of Commerce. (R.C. 3791.04(A).)

Under the act, the approval procedure for residential buildings will differ from the continuing procedure for nonresidential buildings. The act requires an owner of a residential building to submit plans for approval only if there is a building department certified for state residential building code enforcement. If no such local building department exists, the owner is not required to submit plans for approval. The act also specifies that the seal of an architect or engineer that is required for nonresidential buildings under continuing law is not required for residential buildings. (R.C. 3791.04(A)(1) and (2).)

**Responsibility to build according to code.** The act prohibits any person from erecting, constructing, altering, repairing, or maintaining any residential building in the unincorporated portion of any county or in the unincorporated portion of a township in which a certified building department has jurisdiction to



enforce the state residential building code unless that person fully complies with the state code (R.C. 307.40(A)(2) and 505.77(A)(2)).

**Fees.** Continuing law allows a political subdivision associated with a municipal corporation, township, or county building department certified by the BBS to prescribe and collect fees from persons, political subdivisions, or any state department, agency, board, commission, or institution for acceptance and approval of plans and specifications and for making inspections related to the ongoing (nonresidential) OBC. And, under continuing law, if a political subdivision prescribes fees, it also must collect a fee *on behalf of the BBS* in an amount equal to 3% of those fees.

The act has the effect of extending the general fee prescription and collection provision to certified building departments for enforcement of the state residential building code. However, it adds *a fee of 1%* to be collected *on behalf of the BBS* in connection with residential buildings. (R.C. 3781.102(E) and (F).)

**Resolution of "conflicts" between local regulations and the state residential building code.** The act provides a procedure for resolving possible conflicts of local residential building regulations (discussed below) and the state residential building code. Unless the procedure is followed, the local regulations may not differ from the state code except to address subject matter not in the state code. (R.C. 307.37(B)(1), 505.75(A)(1), and 3781.01(B).)

The act specifies that the state residential building code does not prevent a "local governing authority" from adopting additional regulations governing residential structures *that do not conflict* with the state code if the act's procedure is followed. Under the act, a local governing authority (the legislative body of a county, township, or municipal corporation) must, and any person may, notify the BBS of any residential building regulation the local governing authority adopts and request the BBS to determine whether it conflicts with the state code. The BBS must determine whether the local regulation conflicts with the state code and inform the local governing authority and, if any, the person who submitted the request within 60 days after the request is received. (R.C. 3781.01(B), (C)(1) and (2), and (D).)

If the BBS determines that a conflict does not exist, the act does not require the BBS to take further action. If the BBS determines that a conflict exists and that the local regulation is not necessary to protect the health or safety of the persons within the jurisdiction, the local regulation is not valid or enforceable by the local governing authority. If the BBS determines that a conflict technically exists but that the regulation is necessary to protect the health or safety of the persons in the jurisdiction, the BBS must adopt a rule to incorporate the local regulation into the state code. Until the time the rule is part of the state code, the

BBS must grant a temporary variance to the local governing authority and to all similarly situated political subdivisions to which the BBS determines the variance should apply. (R.C. 3781.01(C)(2)(a) and (b).) See **COMMENT**.

**Penalties for violations.** The act adds two new penalties to the Ohio Building Standards Law that apply to any person who violates *any provision of the Law* or any rule adopted or order issued under it if the violation relates to the construction, alteration, or repair of a building--i.e., any residential or nonresidential building. If the violation is detrimental to the health, safety, or welfare of any person, the violation is classified as a *minor misdemeanor* (which may be punished by a fine up to \$150).<sup>3</sup> But, if the violation is not so detrimental, the violation is unclassified and a fine of not more than \$100 must be imposed. (R.C. 3781.99.)

The act adds equivalent penalties for a violation of the requirements related to the submission of plans for approval to the Superintendent of the Division of Industrial Compliance or a certified building department, as applicable, and for commencing construction without a "building permit" (R.C. 3791.99).

#### **Local residential building regulations**

Former law allowed counties and townships to establish building regulations governing single-, two-, and three-family dwellings. The act removes that authority but permits a county or township to adopt local residential building regulations governing "residential buildings" as defined by the act. The local residential building regulations may not differ from the state residential building code unless they address subject matter not addressed by the state code or are adopted pursuant to the act's procedure for "conflict" resolution discussed above. The act requires counties to assign the duties of administering the regulations to an officer or employee who is trained and qualified for those duties and to establish, by resolution, the minimum qualifications necessary to perform those duties. Townships may establish a building department and employ personnel necessary to administer and enforce the regulations, and may establish and fill the position of township building inspector or assign the duties to an existing township officer who is certified by the BBS. (R.C. 307.37(B)(1)(a) and (c) and 505.75(A)(1) and (C).)

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<sup>3</sup> See R.C. 2929.28(A)(2)(a). Also, if an "organization" is convicted of a minor misdemeanor, instead of the penalty mentioned above, the maximum fine is \$1,000 (R.C. 2929.31(A)(12) and related R.C. 2901.23).

### **Existing structures codes**

Under continuing law, townships have authority to adopt an existing structures code, but formerly counties had no such authority. The act adds authority for counties to adopt, administer, and enforce an existing structures code within their unincorporated areas. These township and county codes pertain to the repair and continued maintenance of structures and the premises of those structures. Under the act, neither codes may not address subject matter addressed by the state residential building code and may not conflict with that code. (R.C. 307.37(B)(1)(b) and 505.73(A).)

The act requires counties to assign the duties of administering and enforcing an existing structures code in the same manner as local residential building regulations, by assigning the duties to an officer or employee who is trained and qualified for those duties, and to establish, by resolution, the minimum qualifications necessary to perform those duties. Townships may continue to enforce an existing structures code by assigning the duties to a township officer or employee who is trained and qualified. (R.C. 307.37(B)(1)(c) and 505.73(B).)

### **Miscellaneous local matters**

**Conflict of county and township codes and regulations.** The act prohibits a township from adopting local residential building regulations or an existing structures code if a county has adopted such regulations or such a code. If a county adopts such regulations or such a code subsequent to a township's adoption of the same, the township legislation is not enforceable one year after the effective date of the county regulations or code. (R.C. 505.78.)

**Public hearings and associated notice.** Under former law, public hearings on proposed building regulations and codes had to be held during regular sessions of the board of township trustees or the board of county commissioners. The act permits the public hearings to be held at *special* sessions of the boards as well as their regular sessions. (R.C. 307.37(C) and 505.75(B).)

Former law required notice of the public hearings to be published twice in a specified newspaper. The act permits one newspaper publication of notice if (1) notice is also posted on the Internet site a board maintains and (2) the newspaper publication refers to the Internet site's posting. (R.C. 307.37(C) and 505.75(B).)

**Ability of county to contract for enforcement.** Under former law, a county could contract to enforce a building code only with municipal corporations within the county. The act permits a county to contract with any municipal corporation to enforce local building regulations, an existing structures code, or, if certified by

the BBS, the state residential building code or the nonresidential building code. (R.C. 307.38(B) and (C).)

**County building inspector.** Under former law, the county building inspector was in the competitive classified civil service. The act changes the designation of that officer to the unclassified civil service. (R.C. 307.38(A).)

### **Right to Cure**

#### **Definitions**

The act establishes a procedure for certain homeowners to follow before commencing arbitration proceedings or filing a "dwelling action" against a residential contractor to recover damages or indemnity for a construction defect. The requirements apply only to a homeowner and a residential contractor who enter into a contract for the construction or the substantial rehabilitation of a residential building (R.C. 1312.02). The act defines the following terms for these purposes (R.C. 1312.01):

- "Construction defect" means a deficiency that arises directly or indirectly out of the construction or the substantial rehabilitation of a residential building. Relatedly, a "substantial rehabilitation" includes the addition of a room and the removal or installation of a wall, partition, or portion of the structural design.
- "Dwelling action" means any civil action in contract or tort for damages or indemnity brought against a residential contractor for damages or the loss of use of real property caused by a construction defect.
- "Owner" means an owner or a prospective owner of a residential building or a dwelling unit in a residential building who enters into a contract with a residential contractor for the construction or substantial rehabilitation of that residential building or unit.
- "Residential building" means a structure that is a one-, two-, or three-family dwelling house or a dwelling unit within that house, any accessory structures incidental to that dwelling house, and a unit in a condominium development in which the owner holds title to that unit. "Residential building" includes any structure that is used as a model to promote the sale of a similar dwelling house.
- "Residential contractor" means a person or entity who, for pay, enters into a contract with an owner for the construction or the substantial rehabilitation of a residential building and who has primary

responsibility for the construction or substantial rehabilitation of the residential building.

- "Accessory structure" means a structure that is attached to a residential building and serves the principal use of the building, such as a garage, porch, or screened-in patio.

### **Initial procedures**

The act requires a *residential contractor*, upon entering into a contract for the construction or substantial rehabilitation of a residential building, to provide the owner with *notice of the contractor's right* to offer to resolve any alleged construction defect before the owner may commence a dwelling action or arbitration proceedings against the contractor. The contractor may include the notice in the contract or provide the notice as a separate document delivered at the time the owner signs the contract. The act requires the notice to be conspicuous and substantially in the form the act specifies. (R.C. 1312.03.)

The *owner*, at least 60 days before commencing arbitration proceedings or filing a dwelling action, is required to provide the residential contractor with written *notice of relevant construction defects*. The notice must be in writing and mailed or delivered as the act specifies. The notice must substantially comply with the act's requirements that include asserting a claim, attaching documentation, and providing the name, address, and telephone number of the owner and contractor and the address of the residential building. (R.C. 1312.04.)

The act specifies, however, that if a residential contractor files a mechanics lien or commences any type of arbitration proceedings or legal action against an owner, the owner may counterclaim, commence arbitration proceedings, or file a dwelling action at any time, *and the act's procedures do not apply*. Otherwise, after receiving a notice of construction defects, a contractor may request an owner to provide a description of the cause of the defects and the nature and extent of repairs necessary to remedy them. An owner may provide the information if the owner has knowledge of the cause or the repairs necessary. (R.C. 1312.04.)

### **Contractor response**

The act requires a residential contractor, following an owner's notice of construction defects, to provide the owner with a good faith written response within 21 days. The contractor must offer to take one of the following actions: (1) inspect the residential building, (2) compromise and settle the claim without an inspection, or (3) dispute the claim. If the *contractor fails to respond or disputes the claim*, an owner is deemed to have complied with the act's requirements and

may commence arbitration proceedings or file a dwelling action without further notice. (R.C. 1312.05.)

If an *owner rejects* a residential contractor's offer to inspect or to compromise and settle, the owner must notify the contractor within 14 days after receiving the contractor's offer. The rejection must be in writing and include a reason for the rejection. After providing a rejection notice, the owner has complied with the act's provisions and may commence arbitration proceedings or file a dwelling action without further notice. (R.C. 1312.05.)

If an *owner accepts* an offer to inspect, the owner must so notify the residential contractor within 14 days. After accepting the offer, the owner is required to allow the contractor reasonable access to the residential building during normal working hours. The contractor is required to inspect the building within 14 days after the owner's acceptance of the offer to inspect; the inspection must include taking reasonable measures to determine the defects' nature and cause, and may include testing. Within ten days after the inspection, the contractor must provide the owner with one of the following: (1) a written offer to remedy the construction defects at no cost to the owner, (2) a written offer to settle the claim, or (3) a written statement asserting that the contractor does not intend to remedy the defects. The act specifies that the owner has complied with the act's requirements if the residential contractor does not timely inspect the property, does not provide a written response following an inspection, responds that the contractor does not intend to remedy the construction defects, or fails to remedy the defects in the manner the contractor describes or within the timetable the contractor provides. (R.C. 1312.06.)

If a residential contractor makes or provides for repairs or replacements to remedy construction defects, the contractor may take reasonable steps to document the repairs or replacements and to inspect them or have them inspected (R.C. 1312.06).

### *Various effects*

The act tolls the applicable statutes of limitations or repose from the time an owner provides a notice of construction defects until the time the owner has fully complied with the act's requirements. And, it specifies an owner has so complied 60 days after providing a notice of construction defects if no other time of compliance applies. (R.C. 1312.07 and 1312.08.)

If an owner files a dwelling action or commences arbitration proceedings without having complied with the act's provisions, the act requires the court or arbitrator to dismiss the action or the proceedings without prejudice. And, if an owner accepts an offer that a residential contractor makes in compliance with the

act's provisions to compromise and settle the claim, to remedy the defects, or to settle the claim and the contractor fulfills that offer in compliance with the act's provisions, the owner is barred from bringing a dwelling action or commencing arbitration proceedings for the claim. (R.C. 1312.06 and 1312.08.)

The act's provisions do not apply to any civil action in tort alleging personal injury or wrongful death resulting from a construction defect (R.C. 1312.08).

### **Other provisions**

#### **Repeal of energy conservation rules for residential structures**

The act outright repeals several sections of law that relate to establishing energy conservation rules for one-, two-, and three-family structures, including the requirements that the BBS (1) adopt rules to establish standards relating to the conservation of energy for all newly constructed one-, two-, and three-family dwellings, (2) annually review the energy conservation rules to determine whether new technologies have made them obsolete or inadequate and accordingly amend them, and (3) make an annual report to the General Assembly concerning its review of the energy conservation rules and the current state of the art in energy conservation in buildings (R.C. 3781.181--outright repealed by Section 2 of the act). The act correspondingly repeals former law that subjected a person who constructed a new building in violation of the BBS energy conservation rules to a fine of not more than \$1,000 (R.C. 3781.182--outright repealed by Section 2 of the act).

The act also repeals former law that required the BBS to adopt thermal efficiency standards for one-, two-, and three-family dwellings and delegated the approval and implementation of the BBS thermal standards to the local authority responsible for approving residential dwellings (R.C. 3781.21--outright repealed by Section 2 of the act).

Finally, the act repeals the section of law that prohibited, prior to January 1, 1986, a natural gas company and a gas company from refusing to extend service to an otherwise eligible residential consumer whose residence did not previously receive natural gas service if (1) the residence met the BBS energy conservation standards and (2) the residence was equipped with a solar heating system (R.C. 4933.31--outright repealed by Section 2 of the act).<sup>4</sup>

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<sup>4</sup> *The act amends the following sections to reflect the outright repeals discussed in this portion of the analysis: R.C. 3722.02, 3722.041, 3781.183, 3791.04, 4703.18, 4733.18, 4740.01, 4929.03, 4929.04, and 4929.09.*

### **Impact of removing energy requirements**

Although the act repeals the specific requirements and penalties pertaining to the BBS *energy conservation rules* for residential dwellings, continuing law nevertheless will require that the state residential building code relate to energy conservation (R.C. 3781.10(A)). Therefore, it appears that the state residential building code that the BBS adopts under the act is subject to an energy conservation requirement.

### **Legislative intent statement**

The act states that its provisions are intended by the General Assembly to be "general laws created in the exercise of the state's police power, arising out of matters of statewide concern, and . . . designed for the health, safety, and welfare of contractors, their employees, and the public" (Section 5 of the act).

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## **COMMENT**

1. The act does not define a "conflict" for purposes of R.C. 3781.01's procedure, but allows the BBS, when an objection is raised to a local residential building regulation, to determine in its discretion if a conflict exists. When an objection is raised, the BBS may allow a technically conflicting provision of a local regulation if it finds a health or safety justification necessitating it in the *particular* local jurisdiction. The act states that, until the local regulation is adopted into the state residential building code by rule, it is to be treated as a temporary "variance" to the state code. Presumably, because the state code is to have "uniform" application throughout the state (see R.C. 3781.11(A)) *except* for any local jurisdiction that chooses to have *no* regulations, the new state code provision would apply to *all* jurisdictions with any residential building regulations.

2. "Conflict," "general law," "police power," and "statewide concern" are terms normally arising in the context of municipal corporation regulations derived from the home rule provisions of the Ohio Constitution. Because of its home rule authority, a municipal corporation can adopt local police regulations, such as building code regulations, as are not in conflict with general laws of the state. Courts, in construing the Ohio Constitution, have determined when a conflict exists employing the test set forth by the Ohio Supreme Court: whether the ordinance permits or licenses that which a statute forbids or prohibits, and vice versa. *Struthers v. Sokol* (1923), 108 Ohio St. 263.

Although Section 5 of the act states that its provisions are intended to be "general laws" designed for the health, safety, and welfare of contractors, their employees, and the public, it is not clear whether the option under the act for *no* regulation or enforcement in the discretion of a local jurisdiction will satisfy the

court-defined test for a "general law" as applied to municipal corporations. The Ohio Supreme Court, in *Village of West Jefferson v. Robinson* (1965), 1 Ohio St.2d 113, held that the words "general laws" in the home rule provision of the Ohio Constitution mean statutes setting forth police, sanitary, or similar regulations and not statutes which purport only to grant or to limit the legislative powers of a municipal corporation to adopt or enforce police, sanitary, or other similar regulations. The authority to have no regulations could be viewed as undermining the argument that the act establishes a comprehensive, uniform regulatory scheme that would preempt the exercise of municipal home rule authority.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced Reported, H. Homeland Security, Engineering, & Architectural Design	05-07-03	p. 460
Passed House (73-24)	05-26-04	p. 2003
Reported, S. State & Local Government & Veterans Affairs	05-26-04	pp. 2046-2048
Passed Senate (28-1)	11-23-04	p. 2310
House concurred in Senate amendments (76-12)	11-30-04	pp. 2334-2336
	12-01-04	pp. 2321-2322

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