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Bill Analysis
Legislative Service Commission

Sub. H.B. 181

125th General Assembly
(As Reported by H. State Government)

**Reps. Schaffer, McGregor, Willamowski, Allen, Flowers, Brinkman,
C. Evans, Setzer, Wolpert, Aslanides, G. Smith, Buehrer**

BILL SUMMARY

- Permits the Governor to suspend from office any elected local government official, other than a judge of a court of record, who is charged in a state or federal court with a felony related to the official's administration of, or conduct in the performance of the duties of, his or her office, in accordance with a specified procedure.
- Prohibits a person who is convicted of certain felony theft offenses, or any felony involving fraud, deceit, or theft, from holding a public office or position of public employment or serving in certain unpaid volunteer positions, if the office or position involves substantial management or control of certain public or private property.

CONTENT AND OPERATION

Suspension of elected local officials

Circumstances for suspension and initial action

The bill creates a process by which an elected officer of any political subdivision (other than a judge of a court of record) may be suspended from his or her office if the officer is charged with a felony in a state or federal court (sec. 3.16(B)(1)). (See **COMMENT 1**.) The term used in the bill for these elected officers is "public official" (sec. 3.16(A)(2)).

First, the Attorney General, if the Attorney General is prosecuting the case, or the prosecuting attorney with responsibility to prosecute the case must determine whether the felony charged relates to the public official's administration of, or conduct in the performance of the duties of, the official's public office. If the Attorney General or prosecuting attorney so determines, he or she must

transmit a copy of the charging document to the Governor with a request for the Governor to commence the bill's suspension procedures described below. (Sec. 3.16(A)(1) and (B)(1).)

Upon receipt of that request, the Governor must provide the public official with a written notice that the official has until 14 days after the notice's date to file a written statement with the Governor either (1) voluntarily authorizing the Governor to suspend the official from office or (2) setting forth the reasons why the official should not be suspended from office. If the public official voluntarily authorizes a suspension, the Governor must authorize it, but the special commission described below still must be established. (Sec. 3.16(B)(1).)

Special commission

Not sooner than 14 days after the Governor's receipt of the Attorney General's or prosecuting attorney's request to proceed with the suspension process, a special commission must be established. It generally must be composed of two retired justices or judges of an Ohio court of record who are appointed by the Chief Justice of the Ohio Supreme Court plus the Attorney General. But, if the Attorney General is prosecuting the case against the charged public official, the Chief Justice must appoint to the commission a third retired justice or judge of a court of record to serve in the place of the Attorney General. At least one commission member must be of the same political party as the charged public official. Members of the commission will not receive compensation for their services, but will be reimbursed for any expenses incurred in connection with commission functions from funds appropriated to the Governor's office. (Sec. 3.16(B)(2).)

Once established, the special commission must determine whether the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of that office and whether the rights and interests of the public are adversely affected thereby. The commission must file a written report of its determination, along with its findings, with the Governor within 14 days, unless the Governor grants a longer period of time for this action. The report must include a recommendation of suspension from office if the commission finds the described adverse effects. (Sec. 3.16(C).)

Meetings of the special commission must be closed to the public, and its records cannot be made available to the public for inspection or copying until the commission files its report with the Governor. These provisions of the bill apply notwithstanding any contrary provisions of the Sunshine Law and of the Public Records Law (secs. 121.22 and 149.43--not in the bill). (Sec. 3.16(C).)

Governor's subsequent action

The Governor must review the special commission's findings, determination, and recommendation and, only if the commission recommends suspension, may immediately suspend the charged public official from office, without need for any further action. That suspension continues until one of the following occurs (sec. 3.16(D)):

- The public official is reinstated to office after the special commission's reestablishment (see below), its review of the official's suspension, and its recommendation that the suspension be discontinued.
- All charges are disposed of by dismissal or by a finding or findings of not guilty.
- A successor is elected and qualified to serve the next succeeding term of the public official's office.

With respect to public officials who are voluntarily suspended from office under the bill's process, if the special commission does not recommend suspension of such an official, or if the Governor determines not to continue such an official's suspension, that voluntary suspension must immediately end upon the Governor's review of the recommendation or making of the determination (sec. 3.16(D)).

Suspended public official's petition

If the Governor suspends a public official from office or the official continues under voluntary suspension after the Governor's review of the special commission's report, the public official may petition the Governor to authorize reestablishment of the commission to review the official's suspension. In his or her discretion, the Governor may authorize reestablishment of the commission for this purpose. If the commission is reestablished, it must, within 14 days of the reestablishment, make a determination and file with the Governor a report including its recommendation about continuing or discontinuing the suspension. If it recommends that the suspension *not* be continued, the public official must be immediately reinstated to office. (Sec. 3.16(E).)

Effects of a suspension

Any public official who is suspended from office under the bill must not exercise any of the rights, powers, or responsibilities of the holder of the office during the period of suspension. The suspended public official, however, must *retain the title* of the holder of the office and continue to *receive the compensation* the official is entitled to receive for holding the office during the period of

suspension--until the official pleads guilty to or is found guilty of any felony with which the official is charged. The payment of this compensation is subject to its potential recovery by the political subdivision in the manner and under the circumstance described below. (Sec. 3.16(F).)

For the duration of the public official's suspension, a replacement official must be appointed or elected to perform the public official's duties of office in the manner provided by law for filling a vacancy in the office. The replacement official will have all of the rights, powers, and responsibilities of, and be entitled to the same rate of pay as, the suspended public official. (Sec. 3.16(F).)

The bill authorizes a political subdivision to file a civil action in the appropriate court to recover from any of its former public officials the amount of compensation paid to them in accordance with the bill from the date of their suspension to the date they plead guilty to or are found guilty of any felony with which they were charged (sec. 3.16(F)).

Prohibition against holding public office or employment or serving in a specified volunteer capacity

Current law

The Criminal Code contains provisions that make a person who is convicted of various offenses ineligible to hold a public office and/or public employment. For example, a person who is *convicted* of a felony under any state's law or under federal law generally is incompetent to hold an "office of honor, trust, or profit" in Ohio (sec. 2961.01--not in the bill). And, any public official or party official who is convicted of "theft in office," which is a felony of the third, fourth, or fifth degree depending on the circumstances, is "forever disqualified from holding any public office, employment, or position of trust" in Ohio (sec. 2921.41(C)(1)--not in the bill). The bill enacts another provision that prohibits a person from holding certain governmental and other offices or positions under certain circumstances.

Changes proposed by the bill

Incompetence generally. The bill generally declares any person who is convicted of a "disqualifying offense" described below to be incompetent (1) to hold a public office or position of public employment or (2) to serve as a volunteer, if holding the office or position, or serving as a volunteer, involves substantial management or control over the property of a state agency, political subdivision, or private entity. In this instance, a "private entity" includes an individual, corporation, limited liability company, business trust, estate, trust, partnership, or association that receives state or local public funds to perform an

activity for a state agency or political subdivision, and a "volunteer" is one who serves without compensation with a state agency, political subdivision, or private entity. Examples of volunteers listed in the bill are uncompensated auxiliary police officers, auxiliary deputy sheriffs, and volunteer firefighters. (Sec. 2961.02(A)(2), (3), (4), and (6) and (B).)

Disqualifying offenses. A "disqualifying offense" for which a person, upon his or her conviction, is incompetent to hold a public office or position of public employment or to serve as a volunteer is an offense that meets both of the following (sec. 2961.02(A)(1) and (5)):

- It is (1) a theft offense under Ohio law (see **COMMENT 2**) that is a felony or (2) any felony under Ohio, another state's, or federal law that is not covered by category (1) above and that involves fraud, deceit, or theft.
- It is an offense for which Ohio, another state's, or federal law does not otherwise provide for temporary or permanent disqualification from holding a public office or position of public employment, or from serving as an unpaid volunteer, as a result of conviction of the offense (for example, "theft in office" under current Ohio law).

If a conviction that disqualifies a person under this provision is later reversed, expunged, or annulled, or the person is granted a full pardon, the person will no longer be disqualified from holding a public office or position of public employment or from service as a volunteer (sec. 2961.02(C)).¹

COMMENT

1. 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 a method provided by the Constitution.

The Constitution also gives the General Assembly authority to exclude from eligibility for office any person who is *convicted* of a felony.² The General

¹ However, a full pardon of a person with a "disqualifying offense" conviction does not release the person from the costs of the conviction, unless it so specifies (sec. 2961.02(C)).

² Section 4 of Article V of the Ohio Constitution.

Assembly has enacted the provision discussed in the body of this analysis making any person who is convicted of a felony (whether federal or state) generally incompetent to hold office.³

It is unclear whether a gubernatorial *suspension* of an elected official upon the filing of an indictment, an information, or a complaint--a "charge," not a conviction--for a felony and after a review by a special commission as provided in the bill, would violate the above described constitutional provision that requires a complaint and hearing prior to *removal* from office.

2. A "theft offense" is defined as follows (sec. 2913.01(K)):

(a) Aggravated robbery, robbery, aggravated burglary, burglary, breaking and entering, safecracking, tampering with coin machines, petty theft, theft, grand theft, grand theft of a motor vehicle, aggravated theft, theft of drugs, theft from an elderly person or disabled adult, unauthorized use of a vehicle, unauthorized use of property, unauthorized use of computer, cable, or telecommunication property, possession of an unauthorized device, sale of an unauthorized device, telecommunications fraud, unlawful use of a telecommunications device, passing bad checks, misuse of credit cards, forgery, forging identification cards or selling or distributing forged identification cards, criminal simulation, making or using slugs, trademark counterfeiting, Medicaid fraud, tampering with records, securing writings by deception, personating an officer, defrauding creditors, insurance fraud, receiving stolen property, cheating, corrupting sports, theft in office, and the former offenses of insurance fraud and workers' compensation fraud;

(b) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States, substantially equivalent to any offense listed in (a) above or defrauding a livery or hostelry, denying access to a computer, or corrupting sports as those offenses existed prior to July 1, 1996;

(c) An offense under an existing or former municipal ordinance or law of Ohio, any other state, or the United States, involving robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit, or fraud;

(d) A conspiracy to commit, attempt to commit, or complicity in committing any offense identified in (a), (b), or (c) above.

The bill's "disqualifying offense" provisions incorporate this definition by cross-reference (sec. 2961.02(A)(1) and (5)). While most of the offenses listed

³ R.C. 2961.01.

above are or may be felonies to which those provisions would apply, some of the offenses are misdemeanors to which those provisions do not apply.

HISTORY

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