



Sub. H.B. 181*

125th General Assembly
(As Reported by S. Judiciary)

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BILL SUMMARY

- Permits a special commission of three retired justices or judges of a court of record appointed by the Chief Justice of the Supreme Court to suspend from office, in accordance with a specified procedure, 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, if the special commission determines that the official's administration of, or conduct in the performance of the duties of, his or her office as covered by the charges adversely affect the functioning of that office or adversely affects the rights and interests of the public.
- 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 with a state agency, political subdivision or private entity, if holding the office or position or serving as the volunteer involves substantial management or control over the property of such an agency, subdivision, or entity.
- Requires former state elected officers and staff members who filed or were required to file financial disclosure statements to continue for a 24-

** This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

month period to report specified information relating to certain income sources, gifts, and expenditures.

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CONTENT AND OPERATION

Suspension of elected local officials other than judges

Circumstances for suspension and initial action

The bill creates a mechanism by which an elected officer of any "political subdivision" (see **COMMENT 1**), 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 that relates to the office. (See **COMMENT 2**.) The term used in the bill for this category of elected officers is "public official."

Under the mechanism, if a public official is charged with a felony in a state or federal court and if the Attorney General (the AG), if he or she is prosecuting the case, or the prosecuting attorney with responsibility to prosecute the case (see **COMMENT 3**) determines that the felony relates to the public official's administration of, or conduct in the performance of the duties of, the official's public office, the AG or prosecuting attorney must transmit a copy of the charging document to the Chief Justice of the Ohio Supreme Court with a request that the Chief Justice proceed as provided in the bill's provisions described below in "**Special commission.**" If the AG or the prosecuting attorney transmits a copy of the charging document to the Chief Justice, a copy also must be sent to the AG if the prosecuting attorney transmits the copy to the Chief Justice or to the prosecuting attorney of the county in which the public official holds office if the AG transmits the copy to the Chief Justice. (R.C. 3.16(A) and (B)(1).)

Upon transmitting a copy of a charging document and a request to the Chief Justice under the provisions described in the preceding paragraph, the AG or prosecuting attorney must provide the public official with a written notice that, not later than 14 days after the notice's date, the public official may file a written statement with the AG or prosecuting attorney, whichever sent the notice, that either voluntarily authorizes the AG or prosecuting attorney to provisionally suspend the official from office or sets forth the reasons why the official should not be suspended from office. If the public official voluntarily authorizes the AG or prosecuting attorney to prepare a judgment entry for the judge presiding in the case to provisionally suspend the public official from office as described in this paragraph, all of the following apply: (1) the AG or prosecuting attorney must provisionally suspend the public official from office immediately upon receipt of the judgment entry and must notify the Chief Justice of the provisional suspension, (2) upon receipt of the judgment entry, the judge presiding in the case signs the judgment entry and files the signed judgment entry in the case, which action provisionally suspends the public official from office, (3) the AG's or prosecuting attorney's request to the Chief Justice that was made under the provisions described in the preceding paragraph remains applicable regarding the public official, and the Chief Justice must establish a special commission pursuant to the bill's provisions described below in "**Establishment**" under "**Special commission,**" (4) the provisional suspension imposed remains in effect until the special commission established by the Chief Justice enters its judgment under the bill's provisions described below in "**Issuance of report, and suspension**" under "**Special commission,**" (5) after the special commission so enters its judgment, the bill's provisions described below in "**Issuance of report, and suspension**" under "**Special commission**" and in "**Duration, and termination, of suspension**" govern the continuation of the suspension, and (6) the bill's provisions described below in "**Effect of a suspension**" apply to the provisional suspension imposed. If the public official files a written statement setting forth the reasons why the public

official should not be suspended from office, all of the following apply: (1) the public official cannot be provisionally suspended from office and the AG or prosecuting attorney, whichever sent the notice to the public official, must transmit a copy of the public official's written statement to the Chief Justice, and (2) the AG's or prosecuting attorney's request to the Chief Justice that was made under the provisions described in the preceding paragraph remains applicable regarding the public official, and the Chief Justice must establish a special commission pursuant to the bill's provisions described below in "Establishment" under "Special commission." (R.C. 3.16(B)(2).)

Special commission

Establishment. Not sooner than 14 days after the Chief Justice's receipt of the AG's or prosecuting attorney's request to proceed with the suspension process as described above, the Chief Justice must establish a special commission composed of three retired justices or judges of an Ohio court of record. A special commission so established is an "administrative agency." The Chief Justice must appoint the members of the special commission and must provide to the special commission all documents and materials pertaining to the matter that were received from the AG or prosecuting attorney under the bill's provisions described above in "Circumstances for suspension and initial action." At least one special commission member must be of the same political party as the charged public official. Members of the special commission will receive compensation for their services and will be reimbursed for any expenses incurred in connection with special commission functions, from funds appropriated to the AG's office. (R.C. 3.16(C)(1).)

Review of materials and facts, preliminary determination, right to contest preliminary determination, and final determination. Once established, the special commission must review the document that charges the public official with the felony, all other documents and materials pertaining to the matter that were provided by the Chief Justice as described in the preceding paragraph, and the facts and circumstances related to the offense charged. Within 14 days after it is established, the special commission must make a preliminary determination as to 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 or adversely affects the rights and interests of the public and, as a result, whether the public official should be suspended from office. Upon making the preliminary determination, the special commission immediately must provide the public official with notice of the preliminary determination. The notice may be in writing, by telephone, or in another manner. If the preliminary determination is that the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, does

not adversely affect the functioning of the office or adversely affect the rights and interests of the public, the preliminary determination automatically becomes the special commission's final determination for purposes of the provisions described below in "Issuance of report, and suspension" under "Special commission." If the preliminary determination is that 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 the office or adversely affects the rights and interests of the public and that the public official should be suspended from office, the notice must inform the public official that the public official may contest the preliminary determination by filing with the special commission and within 14 days after the date of the notice to the public official a notice contesting the determination.

If the public official files a notice contesting the preliminary determination within 14 days after the date of the notice to the public official, the public official may review the reasons and evidence for the determination and may appear at a meeting of the special commission to contest the determination and present the public official's position on the matter. The meeting of the special commission must be held not later than 14 days after the public official files the notice contesting the preliminary determination. The public official has a right to be accompanied by an attorney while appearing before the special commission, but the attorney is not entitled to act as counsel or advocate for the public official before the special commission or to present evidence or examine or cross-examine witnesses before the special commission. At the conclusion of the meeting, the special commission is required to make a final determination as to 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 the office or adversely affects the rights and interests of the public and, as a result, whether the public official should be suspended from office, and must proceed in accordance with the provisions described below in "Issuance of report, and suspension" under "Special commission."

If the public official does not file a notice contesting the determinations within 14 days after the date of the notice to the public official, the special commission's preliminary determination automatically becomes its final determination for purposes of the provisions described below in "Issuance of report, and suspension" under "Special commission." (R.C. 3.16(C)(2).)

Meetings are closed, and records are not public. All 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 special commission issues its report. These provisions of the bill apply notwithstanding any contrary

provisions of the existing Sunshine Law and of the existing Public Records Law (R.C. 121.22 and 149.43--not in the bill). (R.C. 3.16(C)(2).)

Upon making the final determination described above in "Review of materials and facts, preliminary determination, right to contest preliminary determination, and final determination" under "Special commission" regarding a public official who is charged with a felony, including, if applicable, conducting a meeting pursuant to those provisions for the public official to contest the preliminary determination, the special commission must issue a written report that sets forth its findings and final determination. The special commission must send the report by certified mail to the public official, the AG if the AG is prosecuting the case, the prosecuting attorney with responsibility to prosecute the case, whichever is applicable, and any other person that the special commission determines to be appropriate. (R.C. 3.16(C)(3).) Upon the issuance of the report, one of the following applies (R.C. 3.16(C)(3)):

(1) If the special commission in its final determination does not determine that 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 or adversely affects the rights and interests of the public, the special commission must include in the report a statement to that effect, and the public official cannot be suspended from office. If the public official was provisionally suspended from office under the bill's provisions described above in "Circumstances for suspension and initial action," the provisional suspension terminates immediately upon the issuance of the report.

(2) If the special commission in its final determination determines that 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 or adversely affects the rights and interests of the public, the special commission must include in the report a holding that the public official be suspended from office. The holding that the public official be suspended from office, and the suspension, take effect immediately upon the special commission's issuance of the report. If the public official was provisionally suspended from office under the bill's provisions described above in "Circumstances for suspension and initial action," the holding that the public official be suspended from office continues the suspension immediately upon the special commission's issuance of the report. The report and holding have the same force and effect as a judgment of a court of record.

Duration, and termination, of suspension

A suspension imposed or continued under the bill's provisions described above continues until one of the following occurs: (1) the public official is

reinstated to office by an appeal authorized under the bill (see below), (2) all charges are disposed of by dismissal or by a finding or findings of not guilty, or (3) a successor is elected and qualified to serve the next succeeding term of the public official's office (R.C. 3.16(C)(4)).

Suspended public official's appeal to Supreme Court

If a special commission issues a written report and holding pursuant to the bill's provisions described above in "**Issuance of report, and suspension**" under "**Special commission**" that suspends a public official from office or that continues a provisional suspension imposed under the bill's provisions described above in "**Circumstances for suspension and initial action**," the public official may appeal the report and holding to the Ohio Supreme Court (see COMMENT 4). The public official must take the appeal by filing within 30 days of the date on which the report is issued, by filing a notice of appeal with the Supreme Court and the special commission. Unless waived, notice of the appeal must be served upon all persons to whom the report was sent under the bill's provisions described above in "**Issuance of report, and suspension**" under "**Special commission**." The special commission, upon written demand filed by the public official, must file with the Supreme Court, within 30 days after the filing of the demand, a certified transcript of the proceedings of the special commission pertaining to the report and the evidence considered by the special commission in making its decision.

The Supreme Court must consider an appeal under this provision on an expedited basis. If the public official appeals the report and holding, the appeal itself does not stay the operation of the suspension imposed or continued under the report and holding. If, upon hearing and consideration of the record and evidence, the Supreme Court decides that the determinations and findings of the special commission are reasonable and lawful, the Court must affirm the special commission's report and holding and the suspension and must enter final judgment in accordance with its decision. If the public official subsequently pleads guilty to or is found guilty of any felony with which the public official was charged, the public official is liable for any amount of compensation paid to the official during the suspension, with the liability relating back to the date of the original suspension under the special commission's report and holding, and the amount of that liability may be recovered as provided in the bill's provision described below in "**Effect of a suspension**." If, upon hearing and consideration of the record and evidence, the Supreme Court decides that the determinations and findings of the special commission are unreasonable or unlawful, the court must reverse and vacate the special commission's report and holding and the suspension, reinstate the public official, and enter final judgment in accordance with its decision.

The Clerk of the Supreme Court must certify the Court's judgment to the special commission. Upon receipt of the judgment, the special commission must

certify the judgment to all persons to whom the special commission's report was certified under the bill's provisions described above in **'Issuance of report, and suspension'** under **"Special commission"** and must certify the judgment to all other public officials or take any other action in connection with the judgment as is required to give effect to it. (R.C. 3.16(D).)

Effects of a suspension

Any public official 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.

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.

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 the former official in accordance with the bill from the date of the former official's suspension to the date the former official pleads guilty to or is found guilty of any felony with which the official was charged (R.C. 3.16(E)).

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 any offense of a specified nature 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 is incompetent to hold an "office of honor, trust, or profit" in Ohio, unless the conviction is reversed or annulled or the person is granted a full pardon (R.C. 2961.01--not in the bill). And, any public official or party official who is convicted of or pleads guilty to the offense 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 (R.C. 2921.41(C)(1)--not in the bill). The bill enacts another provision that prohibits a person convicted of any of a list

of specified offenses from holding certain governmental and other offices or positions under certain circumstances.

Operation of the bill

Incompetence generally. The bill generally declares any person who is convicted of a "disqualifying offense" (see below) to be incompetent: (1) to hold a public office or position of public employment, or (2) to serve as a "volunteer" (see below) with a state agency, political subdivision, or "private entity" (see below), if holding the office or position, or serving as the 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 any funds from a state agency or political subdivision to perform an activity on behalf of the state agency or political subdivision, and a "volunteer" is a person who serves as a volunteer 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. As used in these provisions, "political subdivision" has the same meaning as in existing R.C. 2744.01 (see **COMMENT 1**), and "state agency" has the same meaning as in existing R.C. 1.60 (see **COMMENT 5**). (R.C. 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 under the bill 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 (R.C. 2961.02(A)(1) and (5)):

- It is a theft offense under Ohio law (see **COMMENT 6**) that is a felony or it is any felony under Ohio law, another state's law, or federal law that is not a felony theft offense and that involves fraud, deceit, or theft.
- It is an offense for which Ohio law, another state's law, or federal law does not otherwise contain a provision specifying permanent disqualification, or disqualification for a specified period, 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 (the bill cites as an example, "theft in office" under current Ohio law--but see a summary of the theft in office disqualification provision under "**Current law**," above).

Removal of disqualification. Under the bill, if a conviction of a disqualifying offense is later reversed, expunged, or annulled, the person is not disqualified from holding a public office or position of public employment or from service as a volunteer, and the full pardon of a person convicted of a disqualifying offense restores the privileges forfeited under the bill (i.e., the person no longer will be disqualified under the bill from holding a public office or position of public employment or from service as a volunteer). However, under the bill, a full pardon of the person with a "disqualifying offense" conviction does not release the person from the costs of the person's conviction in Ohio, unless it so specifies. (R.C. 2961.02(C).)

Reporting of certain information by certain former state elected officers or staff members

General filing requirement; types of information

The bill enacts a new provision that requires certain former "state elected officers or staff members" (see "**Definition of 'state elected officers or staff member'**," below) to report to the Joint Legislative Ethics Committee certain information for a 24-month period after leaving service or public employment. Under the bill, for the 24-month period immediately following the end of the former state elected officer's or staff member's service or public employment, except as described below in "**Filing and deadlines**" and "**Limited exception, if person becomes lobbyist**," each former state elected officer or staff member who filed or was required to file a disclosure statement under R.C. 102.02 must file, on or before the deadlines specified in the bill (see "**Filing and deadlines**," below), with the Joint Legislative Ethics Committee (JLEC) a statement that must include the information described in paragraphs (1), (2), (3), and (4), below, as applicable. The statement must be filed on a form and in the manner specified by JLEC. This provision does not apply to a state elected officer or staff member who filed or was required to file a disclosure statement under R.C. 102.02, who leaves service or public employment, and who takes another position as a state elected officer or staff member who files or is required to file a disclosure statement under that section. The bill prohibits a person from failing to file, on or before the deadlines specified in "**Filing and deadlines**," below, a statement that is required by this provision. The statement referred to above must include the following information (R.C. 102.201(A)):

(1) The statement must describe the source of all income received, in the former state elected officer's or staff member's own name or by any other person for the person's use or benefit, and briefly describe the nature of the services for which the income was received if the source of the income was any of the following: (a) an executive agency lobbyist or a legislative agent, (b) the employer of an executive agency lobbyist or legislative agent, except that this

division does not apply if the employer is any state agency or political subdivision of the state, or (c) any entity, association, or business that, at any time during the two immediately preceding calendar years, was awarded one or more contracts by one or more state agencies that in the aggregate had a value of \$100,000 or more, or bid on one or more contracts to be awarded by one or more state agencies that in the aggregate had a value of \$100,000 or more.

(2) If the former state elected officer or staff member received no income as described in (1), above, the statement referred to above must indicate that fact.

(3) If the former state elected officer or staff member directly or indirectly made, either separately or in combination with another, any expenditure or gift for transportation, lodging, or food or beverages to, at the request of, for the benefit of, or on behalf of any public officer or employee, and if the former state elected officer or staff member would be required to report the expenditure or gift in a statement under R.C. 101.70 to 101.79 or R.C. 121.60 to 121.69, whichever is applicable, if the former state elected officer or staff member was a legislative agent or executive agency lobbyist at the time the expenditure or gift was made, the statement referred to above must include all information relative to that gift or expenditure that would be required in a statement under R.C. 101.70 to 101.79 or R.C. 121.60 to 121.69 if the former state elected officer or staff member was a legislative agent or executive agency lobbyist at the time the expenditure or gift was made.

(4) If the former state elected officer or staff member made no expenditure or gift as described in (3), above, the statement referred to in division (A)(1) of this section shall indicate that fact.

Limited exception, if person becomes lobbyist

The bill provides that if, at any time during the 24-month period immediately following the end of the former state elected officer's or staff member's service or public employment, a former state elected officer or staff member who filed or was required to file a disclosure statement under R.C. 102.02 becomes a legislative agent or an executive agency lobbyist, the former state elected officer or staff member must comply with all registration and filing requirements set forth in R.C. 101.70 to 101.79 or R.C. 121.60 to 121.69, whichever is applicable, and, the former state elected officer or staff member also must file a statement under the provisions of the bill described above except that the statement filed under the provisions of the bill described above does not need to include information regarding any income source, expenditure, or gift to the extent that that information was included in any registration or statement filed under R.C. 101.70 to 101.79 or R.C. 121.60 to 121.69 (R.C. 102.021(B)).

Application to persons in practice of a profession

The bill provides that, except as otherwise described in this paragraph, the bill's provisions described above regarding the filing of statements apply to attorneys, physicians, and other persons who engage in the practice of a profession and who, pursuant to a section of the Revised Code, the common law of Ohio, a code of ethics applicable to the profession, or otherwise, generally are required not to reveal, disclose, or use confidences of clients, patients, or other recipients of professional services except under specified circumstances or generally are required to maintain those types of confidences as privileged communications except under specified circumstances. But the bill's provisions described above regarding the filing of statements do not require an attorney, physician, or other professional subject to a confidentiality requirement as described in this division to disclose the name, other identity, or address of a client, patient, or other recipient of professional services if the disclosure would threaten the client, patient, or other recipient of professional services, would reveal details of the subject matter for which legal, medical, or professional advice or other services were sought, or would reveal an otherwise privileged communication involving the client, patient, or other recipient of professional services. Also, the bill's provisions described above regarding the filing of statements do not require an attorney, physician, or other professional subject to a confidentiality requirement as described in this paragraph to disclose in the brief description of the nature of services required under the provision described above in paragraph (1) of "**General filing requirement; types of information**" any information pertaining to specific professional services rendered for a client, patient, or other recipient of professional services that would reveal details of the subject matter for which legal, medical, or professional advice was sought or would reveal an otherwise privileged communication involving the client, patient, or other recipient of professional services. (R.C. 102.021(C).)

Filing and deadlines

Filing of initial statement. The bill requires each state elected officer or staff member who filed or was required to file a disclosure statement under R.C. 102.02 and who leaves public service or public employment to file an initial statement under the provisions described above in "**General filing requirement; types of information**" not later than the day on which the former state elected officer or staff member leaves public service or public employment. The initial statement must specify whether the person will, or will not, receive any income from a source described above in paragraph (1) of "**General filing requirement; types of information.**"

If a person files an initial statement under this provision that states that the person will receive income from a source described above in paragraph (1) of

"General filing requirement; types of information," the person is required to file statements under the provisions described above in paragraphs (1), (2), (3), or (4) of that part of the analysis at the times specified below in **"Statements subsequent to the initial statement."**

If a person files an initial statement under this provision that states that the person will not receive income from a source described above in paragraph (1) of **"General filing requirement; types of information,"** except as otherwise described in this paragraph, the person is not required to file statements under the provisions described above in paragraphs (1), (3), or (4) of that part of the analysis or to file subsequent statements under the provisions described above in paragraph (2) of that part of the analysis. If a person files an initial statement under this division that states that the person will not receive income from any such source, and, subsequent to the filing of that initial statement, the person receives any income from such a source, the person within ten days must file a statement under the provision described above in paragraph (1) of **"General filing requirement; types of information"** that contains the information described in that division, and the person thereafter must file statements under the provisions described above in paragraphs (1), (2), (3), or (4) of that part of the analysis at the times specified below in **"Statements subsequent to the initial statement."** (R.C. 102.021(D)(1).)

"Statements subsequent to the initial statement." After the filing of the initial statement as described above, each person required to file a statement under the provisions described above in paragraph (1), (2), (3), or (4) of **"General filing requirement; types of information"** must file it on or before the last calendar day of January, May, and September. The statements described in paragraphs (1), (2), and (4) of that part of the analysis must relate to the sources of income the person received in the immediately preceding filing period from each source of income in each of the categories listed in paragraph (1) of that part of the analysis. The statement described in paragraph (3) of that part of the analysis must include any information required to be reported regarding expenditures and gifts of the type described in that paragraph occurring since the filing of the immediately preceding statement.

If, pursuant to this provision, a person files a statement under the provision described above in paragraph (1) of **"General filing requirement; types of information,"** the person must file statements under the provision described in paragraph (3) of that part of the analysis, and subsequent statements under the provisions described in paragraphs (1), (2), or (4) of that part, at the times specified in this paragraph. In addition, if, subsequent to the filing of the statement under the provision described above in paragraph (1) of **"General filing requirement; types of information,"** the person receives any income from a source described in that paragraph that was not listed on the statement so filed, the person

within ten days must file a statement under the provision described above in paragraph (1) of that part of the analysis that contains the information described in that division regarding the new income source.

If, pursuant to this provision, a person files a statement under the provision described above in paragraph (2) of "**General filing requirement; types of information**," except as otherwise provided in this paragraph, the person thereafter is not required to file statements under the provisions described in paragraphs (1), (3), or (4) of that part of the analysis, or to file subsequent statements under the provision described in paragraph (2) of that part. If, subsequent to the filing of the statement under paragraph (2) of that part of the analysis, the person receives any income from a source described above in paragraph (1) of "**General filing requirement; types of information**," the person within ten days must file a statement under the provision described in that paragraph that contains the information described in that paragraph regarding the new income source, and the person thereafter must file statements under the provision described in paragraph (3) of that part of the analysis, and subsequent statements under the provisions described in paragraphs (1) or (2) of that part of the analysis, at the times specified in this paragraph. (R.C. 102.021(D)(2).)

Filing fees

The bill provides that no fee may be required for filing an initial statement under the provisions described above in "**Filing of initial statement**." The person filing a statement under the provisions described above in "**Statements subsequent to the initial statement**" that is required to be filed on or before the last calendar day of January, May, and September must pay a \$10 filing fee with each such statement not to exceed \$30 in any calendar year. JLEC may charge late fees in the same manner as specified in R.C. 101.72(G). (R.C. 102.021(D)(3).)

Provisions of address and forms

Any state elected officer or staff member who filed or was required to file a disclosure statement under R.C. 102.02 and who leaves public service or public employment must provide a forwarding address to the officer's or staff member's last employer, and the employer must provide the person's name and address to JLEC. The former elected state officer or staff member must provide updated forwarding addresses as necessary to JLEC during the 24-month period during which the bill's filing requirements apply. The public agency or appointing authority that was the last employer of a person required to file a statement must furnish to the person a copy of the form needed to complete the initial statement required under the bill, as described above in "**Filing of initial statement**." (R.C. 102.021(E).)

Contingent compensation prohibition

The bill provides that, during the 24-month period immediately following the end of the former state elected officer's or staff member's service or public employment, no person required to file a statement under the provisions described above may receive from a source described above in paragraph (1) of **'General filing requirement; types of information,'** and no source described in that paragraph may pay to that person, any compensation that is contingent in any way upon the introduction, modification, passage, or defeat of any legislation or the outcome of any executive agency decision (R.C. 102.021(F)).

Penalty

A violation of any of the bill's provisions described above is a misdemeanor of the first degree (R.C. 102.99).

Definition of "state elected officers or staff member"

As used in the above-described provisions of the bill, "state elected officer or staff member" means any elected officer of this state, any staff, as defined in R.C. 101.70, or any staff, as defined in R.C. 121.60 (R.C. 102.021(G)).

Restriction on member of the General Assembly receiving expenses, gift, etc., from a person required to file under the bill

The bill prohibits any member of the General Assembly from knowingly accepting any of the following from a person required to file a statement under the provisions of the bill it enacts in R.C. 102.021, as described above (R.C. 102.031(C)):

(1) The payment of any expenses for travel or lodging except as otherwise authorized by R.C. 102.03(H);

(2) More than \$75 aggregated per calendar year as payment for meals and other food and beverages, other than for those meals and other food and beverages provided to the member at a meeting at which the member participates in a panel, seminar, or speaking engagement, at a meeting or convention of a national organization to which any state agency, including, but not limited to, any legislative agency or state institution of higher education as defined in R.C. 3345.011, pays membership dues, or at a dinner, party, or function to which all members of the General Assembly or all members of either house of the General Assembly are invited;

(3) A gift of any amount in the form of cash or the equivalent of cash, or a gift of any other thing of value whose value exceeds \$75. As used in this



provision, "gift" does not include any contribution or any gifts of meals and other food and beverages or the payment of expenses incurred for travel to destinations either inside or outside this state that is received by the member of the General Assembly and that is incurred in connection with the member's official duties.

Under R.C. 102.99(A), a violation of this prohibition is a misdemeanor of the fourth degree.

Conforming changes

The bill makes changes in a number of existing provisions to conform them to the provisions described above (R.C. 101.34, 102.01, 102.02, 102.031, and 102.06).

COMMENT

1. The bill defines "political subdivision," for purposes of the mechanism it enacts in R.C. 3.16 and the prohibition it enacts in R.C. 2961.02, as a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under R.C. 339.14, regional planning commission created pursuant to R.C. 713.21, county planning commission created pursuant to R.C. 713.22, joint planning council created pursuant to R.C. 713.231, interstate regional planning commission created pursuant to R.C. 713.30, port authority created pursuant to R.C. 4582.02 or 4582.26 or in existence on December 16, 1964, regional council established by political subdivisions pursuant to R.C. Chapter 167., emergency planning district and joint emergency planning district designated under R.C. 3750.03, joint emergency medical services district created pursuant to R.C. 307.052, fire and ambulance district created pursuant to R.C. 505.375, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under R.C. 343.01 or 343.012, and community school established under R.C. Chapter 3314. (R.C. 3.16(A)(2) and 2961.02(A)(2), by reference to existing 2744.01(F)--not in the bill).

2. Section 38, Article II, Ohio Constitution provides that "(l)aws shall be passed providing for the prompt removal from office, *upon complaint and hearing*, of all officers, including state officers, judges and members of the general assembly, for any misconduct involving moral turpitude or for other cause provided by law . . ." (emphasis added). The General Assembly has enacted a series of laws pursuant to this provision which, depending upon the type of officer involved, are set forth in R.C. 3.07 to 3.10, 124.34, and 2701.11 and 2701.12.



Section 38, Article II, Ohio Constitution also specifies that the method of removal described in the first sentence of this paragraph is in addition to impeachment or "other methods of removal" authorized by the Constitution (examples of "other methods of removal" are Sections 23 and 24, Article II, Ohio Constitution, which provides for the impeachment of the Governor, judges, and state officers, and Section 17, Article IV, Ohio Constitution, which provides for the removal from office of judges).

Section 4, Article V Ohio Constitution also gives the General Assembly authority to exclude from eligibility for office any person who is *convicted* of a felony. The General Assembly has enacted the provision discussed in the **CONTENT AND OPERATION** portion of this analysis, R.C. 2961.01, making any person who is convicted of a felony (whether federal or state) generally incompetent to hold office.

It is unclear whether a *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 and a possible appeal as provided in the bill, would satisfy the above described Constitutional provision that requires a complaint and hearing prior to *removal* from office.

3. The bill defines "prosecuting attorney" as the prosecuting attorney of the county in which the public official resides (R.C. 3.16(A)).

4. Section 2, Article IV, Ohio Constitution sets forth the jurisdiction of the Ohio Supreme Court. In relevant part, it provides that:

(B)(1) The supreme court shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination;



(g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(2) *The supreme court shall have appellate jurisdiction as follows:*

(a) In appeals from the courts of appeals as a matter of right in the following:

(i) Cases originating in the courts of appeals;

(ii) Cases involving questions arising under the constitution of the United States or of this state.

(b) In appeals from the courts of appeals in cases of felony on leave first obtained;

(c) In direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed;

(d) *Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;*

(e) In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals;

(f) The supreme court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article. (emphasis added.)

5. The bill defines "state agency," for purposes of the prohibition it enacts in R.C. 2961.02, as having the same meaning as in existing R.C. 1.60--not in the bill. Existing R.C. 1.60 states that, as used in R.C. Title I, "state agency," except as otherwise provided in that Title, means every organized body, office, or agency established by the laws of the state for the exercise of any function of state government. (R.C. 2961.02(A)(4), by reference to existing R.C. 1.60--not in the bill.)

6. A "theft offense" is defined as follows (R.C. 2961.02(A)(5), by reference to existing R.C. 2913.01(K)--not in the bill):

(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 (R.C. 2961.02(A)(1) and (5)). While most of the offenses listed 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

ACTION	DATE	JOURNAL ENTRY
Introduced	05-08-03	p. 469
Reported, H. State Gov't	01-07-04	pp. 1387-1388
Passed House (89-7)	01-21-04	pp. 1509; 1546-1548
Reported, S. Judiciary	---	---

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