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Bill Analysis

Legislative Service Commission

S.B. 271

125th General Assembly
(As Introduced)

**Sens. Jordan, Wachtmann, Jacobson, Austria, Goodman, Hottinger,
Mumper, Stivers**

BILL SUMMARY

- Permits a county to become a member of a multi-county board of mental retardation and developmental disabilities (county MR/DD board) instead of maintaining a separate county MR/DD board.
- Provides that a county may become a member of a multi-county MR/DD board either by creating a new multi-county MR/DD board with up to four other contiguous counties or by joining an existing multi-county MR/DD board with no more than four other contiguous counties.
- Permits a board of county commissioners to terminate the county's membership in a multi-county MR/DD board and either create a single county MR/DD board, co-create a new multi-county MR/DD board with other counties, or join a different multi-county MR/DD board.
- Eliminates a requirement that a county MR/DD board be operated as a separate administrative and service entity.
- Provides that an individual may not be appointed or reappointed to a county MR/DD board unless the individual first provides to the appointing authority a written declaration specifying (1) that no circumstance exists making the individual ineligible to serve and (2) whether the individual or an immediate family member has an ownership interest in or is under contract with an agency contracting with the board, and, if such an interest or contract exists, the agency's identity and the nature of the relationship to that agency.
- Provides that a member of a county MR/DD board is to be considered present at a meeting or in-service training session even though the

member is not physically present if the member is connected to the meeting or session through a system that enables communication between the member and other participants.

- Modifies the circumstances under which a county MR/DD board member must be removed from the board, including requiring removal for consistently poor performance on the board as demonstrated by documentation the board's superintendent provides to the appointing authority and the appointing authority determines is convincing evidence.
- Permits, under certain circumstances, the Director of Mental Retardation and Developmental Disabilities to waive a requirement that a member of a county MR/DD board be removed from the board for failure to meet attendance requirements.
- Provides that a hearing on the removal of a county MR/DD board member is not required if the member fails to make a timely request for the hearing and prohibits the appointing authority from removing the member before the conclusion of a hearing the member requested.
- Reduces to 30 the number of days of notice a county MR/DD board must give a superintendent it does not intend to re-employ.
- Prohibits, except under certain circumstances, a county MR/DD board from employing an individual who is also employed by, has an ownership interest in, or is a member of the governing board of an entity that provides specialized services to persons with mental retardation or a developmental disability.
- Provides that a county MR/DD board may employ an individual who is also an employee of an agency contracting with the board or an entity that provides specialized services to persons with mental retardation or a developmental disability if (1) the individual is employed by the agency or entity to serve in a direct services position and (2) the individual's employment by the agency or entity does not include any administrative duties that, in the opinion of the board, might conflict with the individual's employment by the board.
- Prohibits a county MR/DD board from paying to any one entity more than a total of \$25,000 in a calendar year for membership dues and

professional services without the approval of the board of county commissioners of each county the county MR/DD board serves.

TABLE OF CONTENTS

County boards of mental retardation and developmental disabilities	3
Becoming part of a multi-county MR/DD board	4
Terminating membership in a multi-county MR/DD board	4
Copies of resolutions to Director	5
County levy for multi-county MR/DD board	5
County MR/DD boards having separate function	5
References to county MR/DD boards in state law	5
Membership of county MR/DD boards	6
Number and appointment of members	6
Types of individuals to be included on a county MR/DD board	7
Declaration from individuals appointed to a county MR/DD board	8
Date of reappointments	9
Members' presence at county MR/DD board meetings	9
Removal of county MR/DD board members	9
Reasons for mandatory removal	9
Waiver of mandatory removal	10
Hearing	10
County MR/DD board superintendent	11
Restrictions on who a county MR/DD board may employ	11
Restriction on entering into direct services contract	12
Restriction on payments for membership dues and professional services	14

CONTENT AND OPERATION

County boards of mental retardation and developmental disabilities

(R.C. 5126.02 and 5126.0212)

Current law creates a county board of mental retardation and developmental disabilities (county MR/DD board) in each county. The bill provides instead that each county must either have its own county MR/DD board or be a member of a multi-county MR/DD board.

Becoming part of a multi-county MR/DD board

(R.C. 5126.021, 5126.022, and 5126.024)

Under the bill, a county may become a member of a multi-county MR/DD board by either creating a new multi-county MR/DD board with up to four other contiguous counties or joining an existing multi-county MR/DD board with no more than four other contiguous counties. No more than five counties may be members of the same multi-county MR/DD board and the counties must be contiguous.

To create a new multi-county MR/DD board, a majority of the members of each of the boards of county commissioners seeking to create the multi-county board must adopt an identical resolution within a 60-day period. To join an existing multi-county board, a majority of the members of the board of county commissioners of the county seeking to join the multi-county board and a majority of the members of each of the boards of county commissioners of the counties that are already members must adopt an identical resolution within a 60-day period.

Terminating membership in a multi-county MR/DD board

(R.C. 5126.023)

The bill permits a board of county commissioners, by adoption of a resolution by a majority of the commissioners, to terminate the county's membership in a multi-county MR/DD board. The resolution must specify the last day that the county will be a member of the multi-county board and provide for the county to create a single county MR/DD board, co-create a new multi-county MR/DD board with other counties, or join a different multi-county MR/DD board on the day immediately following the last day of the county's membership in the current multi-county board. The resolution must also include a plan for the equitable adjustment and division of all services, assets, property, debts, and obligations, if any, of the current multi-county board.

A county terminating its membership in a multi-county MR/DD board must continue to have levied against its tax list and duplicate any tax levied by the board of county commissioners for mental retardation and developmental disabilities during the period in which the county was a member of the multi-county board until the levy expires or is renewed or replaced.

Copies of resolutions to Director

(R.C. 5126.025)

The bill requires that a board of county commissioners provide the Director of Mental Retardation and Developmental Disabilities a copy of each resolution the board adopts to create a multi-county MR/DD board, join an existing multi-county MR/DD board, or terminate its membership in a multi-county MR/DD board.

County levy for multi-county MR/DD board

(R.C. 5705.191 and 5705.222)

The taxing authority of a political subdivision is permitted to declare that it is necessary to levy a tax to supplement the general funds for the purpose of making appropriations for one or more of certain purposes, including human or social services. The bill provides that "human or social services" includes a county's contributions to a multi-county MR/DD board.

In addition to that authority, a board of county commissioners is permitted to certify to the county board of elections that the amount of taxes that may be raised by levies on the current tax duplicate will be insufficient to provide the necessary requirements of the county MR/DD board and that it is necessary to levy a tax for county MR/DD board programs, services, and facilities. The bill specifies that a board of county commissioners may certify that the amount of taxes that may be so raised will be insufficient to provide the necessary requirements of the single county MR/DD board or the county's contribution to a multi-county MR/DD board.

County MR/DD boards having separate function

(R.C. 5126.02 and 5126.0212)

Current law requires that a county MR/DD board be operated as a separate administrative and service entity. The bill eliminates this requirement but maintains current law that provides a county MR/DD board's functions may not be combined with the functions of any other entity of county government.

References to county MR/DD boards in state law

(R.C. 5126.026)

The bill provides that a reference to a county MR/DD board in a law enacted by the General Assembly shall mean, in the case of a county with its own

county MR/DD board, a single county MR/DD board and, in the case of a county that is a member of a multi-county MR/DD board, a multi-county MR/DD board. Further, the bill provides that, unless the context provides otherwise, a law enacted by the General Assembly that refers to a county, or an entity or official of a county, that a county MR/DD board serves is to be deemed to refer to the following:

(1) In the case of a county with a single county MR/DD board, that county or the county entity or official specified in the law;

(2) In the case of a county that is a member of a multi-county MR/DD board, each of the counties that are members of the multi-county board or the specified entity or official of each of those counties.

Membership of county MR/DD boards

Number and appointment of members

(R.C. 5126.027 and 5126.0212)

Continuing law provides for a county MR/DD board to have seven members. The bill provides that this is to apply to both single county and multi-county boards. The bill maintains a requirement that the board of county commissioners appoint five of the members of a single county board and the county's probate judge is to appoint the other two members. In the case of a multi-county board, the bill provides for the following:

(1) If there are five member counties, the board of county commissioners of each of the member counties must each appoint one member and the probate judges of the member counties with the largest and second largest population must each appoint one member.

(2) If there are four member counties, the board of county commissioners of the member county with the largest population must appoint two members, the other three boards of county commissioners must each appoint one member, and the probate judges of the member counties with the largest and second largest population must each appoint one member.

(3) If there are three member counties, the boards of county commissioners of the member counties with the largest and second largest population must each appoint two members, the other board of county commissioners must appoint one member, and the probate judges of the member counties with the largest and second largest population must each appoint one member.

(4) If there are two member counties, the board of county commissioners with the larger population must appoint three members, the other board of county commissioners must appoint two members, and the probate judge of each county must each appoint one member.

Types of individuals to be included on a county MR/DD board

(R.C. 5126.01, 5126.028, and 5126.0212)

Current law requires that each member of a county MR/DD board be a resident of the county. The bill requires an appointing authority to appoint only individuals who are residents of the county the appointing authority serves.¹ Current law requires that the membership of a county board reflect, as nearly as possible, the composition of the population of the county. The bill requires that an appointing authority provide for a county board's membership to reflect, as nearly as possible, the composition of the county or counties the county board serves.

The bill maintains current requirements that members of a county MR/DD board be citizens of the United States, be interested and knowledgeable in the field of mental retardation and other allied fields, and, to the extent possible, have professional training and experience in business management, finance, law, health care practice, personnel administration, or government service. In addition, the bill maintains a requirement that, in the case of members appointed by a board of county commissioners, at least two be relatives of individuals eligible for services provided by the county MR/DD board and, whenever possible, that one of those two members be a relative of an individual eligible for adult services and the other be a relative of an individual eligible for early intervention services or services for preschool or school-age children.² The bill also maintains a requirement that, in the case of the members appointed by a probate judge, at least one be an individual who is a relative of an individual eligible for residential services or supported living.

¹ *The bill defines "appointing authority" as the following:*

(1) In the case of a member of a county MR/DD board appointed by, or to be appointed by, a board of county commissioners, the board of county commissioners;

(2) In the case of a member of a county MR/DD board appointed by, or to be appointed by, a probate judge, the probate judge.

² *Continuing law defines "relative" as a spouse, parent, parent-in-law, sibling, sibling-in-law, child, child-in-law, grandparent, aunt, or uncle.*

The appointing authorities of a multi-county MR/DD board are required by the bill to coordinate their appointments to the extent necessary to satisfy the requirements regarding the types of individuals to be included on the board. The bill specifies that the coordination may provide for one of the boards of county commissioners making one of the two required appointments of relatives of individuals eligible for county MR/DD services and another board of county commissioners making the other appointment. The coordination must ensure that at least one of the probate judges appoints a relative of an individual eligible for residential services or supported living.

Declaration from individuals appointed to a county MR/DD board

(R.C. 5126.029 and 5126.0210; Section 3)

Continuing law specifies that certain groups of individuals may not serve on a county MR/DD board. Ineligible individuals include elected public officials (other than township trustees, township clerks, presidential electors, delegates to a national convention, and precinct, ward, or district committee members), immediate family members of another county MR/DD board member, and employees and immediate family members of employees of a county MR/DD board.

The bill provides that an individual may not be appointed or reappointed to a county MR/DD board unless the individual first provides to the appointing authority a written declaration specifying that no circumstance exists making the individual ineligible under continuing law to serve on the county board. The written declaration must also specify whether the individual or an immediate family member of the individual has an ownership interest in or is under contract with an agency contracting with the county board, and, if such an ownership interest or contract exists, the identity of the agency and the nature of the relationship to that agency. On appointment or reappointment of an individual to the county board, the appointing authority is required to provide a copy of the individual's declaration to the county board's superintendent. The bill also requires each individual serving on a county MR/DD board on the effective date of this provision of the bill to provide such a written declaration to the board's superintendent not later than 30 days after that date.

The written declarations are a public record.

Date of reappointments

(R.C. 5126.0211 and 5126.0212)

Continuing law requires that appointments to a county MR/DD board, other than appointments to fill a vacancy, must be made no later than the last day of November. The bill requires that reappointments also be made no later than the last day of November.

Members' presence at county MR/DD board meetings

(R.C. 5126.0217)

The bill provides that a member of a county MR/DD board is to be considered present at a meeting or in-service training session even though the member is not physically present in the room in which the meeting or session is held if the member is connected to the meeting or session through a system that enables the member to communicate with the individual's participating in the meeting or session and those individuals to communicate with the member.

Removal of county MR/DD board members

Reasons for mandatory removal

(R.C. 5126.0215 and 5126.0219)

Current law requires an appointing authority to remove a member of a county MR/DD board for neglect of duty, misconduct, malfeasance, failure to attend at least one in service training session each year, ineligibility to serve on the board under continuing law governing who may not serve on a county MR/DD board, or on the member's absence within one year from either four regularly scheduled board meetings or from two regularly scheduled meetings if the member failed to give prior notice.³

The bill modifies the circumstances under which removal is mandatory for absences from regularly scheduled meetings by eliminating the condition that the absences occur within one year. This means that a member would have to be removed if the member missed four regularly scheduled meetings or, if no prior notice is given, two regularly scheduled meetings regardless of whether the absences occur within a one-year period.

³ *Removal for absences from meetings or training session is not required if the missed meetings were special meetings or work sessions.*

The bill also adds a new circumstance under which removal is mandatory. An appointing authority is required to remove a member if the member has a consistently poor performance on the county MR/DD board as demonstrated by documentation that the board's superintendent provides to the appointing authority and the appointing authority determines is convincing evidence.⁴

Waiver of mandatory removal

(R.C. 5126.0220)

The bill establishes a process under which a member of a county MR/DD board may remain on the board even though the member failed to attend at least one in-service training session each year, failed to attend four regularly scheduled board meetings, or failed to attend two regularly scheduled board meetings without prior notice. Under the process, the appointing authority is prohibited from removing the member if the Director of Mental Retardation and Developmental Disabilities waives the requirement that the member be removed. The Director is permitted to issue the waiver only if the appointing authority requests the waiver and provides the Director evidence the Director finds satisfactory showing that the member's absences are due to a serious health problem of the member or an immediate family member. The Director's decision on whether to issue the waiver is final and not subject to appeal.

The bill permits the county MR/DD board on which the member subject to removal serves to pass a resolution urging the appointing authority to request that the Director issue the waiver. The member subject to removal is not allowed to vote on the resolution. The appointing authority may request the waiver regardless of whether the county board adopts the resolution.

Hearing

(R.C. 5126.0221, 5126.0222, and 5126.0223)

Current law requires an appointing authority to afford a member subject to mandatory removal an opportunity for a hearing. The bill provides that the appointing authority is not required to afford the member a hearing if the appointing authority requested that the Director of Mental Retardation and Developmental Disabilities waive the mandatory removal and the Director refused to issue the waiver.⁵ The bill also conditions the holding of the hearing on the

⁴ *The bill does not indicate what is meant by "consistently poor performance."*

⁵ *If the appointing authority does not afford the member a hearing and the Director of Mental Retardation and Developmental Disabilities does not give the member an opportunity to challenge the removal as part of the Director's determination of whether*

member requesting the hearing not later than 30 days after the date that the county MR/DD board sends the member notice of the grounds for the member's mandatory removal. The appointing authority is prohibited by the bill from removing the member before the conclusion of the hearing if the member requests the hearing within the required time.

County MR/DD board superintendent

(R.C. 5126.0225)

Continuing law requires that each county MR/DD board either employ a superintendent or obtain the services of the superintendent of another county MR/DD board. Each county that employs its own superintendent must employ the superintendent under a contract.

Current law provides that, at the expiration of a superintendent's contracted term of employment, the superintendent must be re-employed for a term of one year at the same salary, plus any increments that may be authorized by the county MR/DD board, unless the board gives the superintendent written notice of its intention not to re-employ the superintendent. If the expiring contract was for initial employment for one year, the notice is due no less than 60 days before the contract's expiration. If the expiring contract was for initial employment for more than one year or the expiring contract was for re-employment, the notice is due no less than 90 days before the contract's expiration. The bill repeals these provisions and provides instead that a superintendent may be re-employed and, if the county board intends not to re-employ the superintendent, the board must give the superintendent written notice of its intention no less than 30 days before the contract's expiration regardless of the duration of the expiring contract and of whether it was for initial employment or re-employment.

Restrictions on who a county MR/DD board may employ

(R.C. 5126.029, 5126.0227, and 5126.0228)

Current law provides that certain individuals may not be employed by a county MR/DD board. This includes employees of an agency contracting with the county board. The bill adds a new group of individuals who may not be, except under certain circumstances, employed by a county board: individuals who are employed by, have an ownership interest in, or are members of the governing board of an entity that provides specialized services, regardless of whether the

to issue a waiver of the mandatory removal, there could be a denial of due process since the member will not have an opportunity to challenge the allegations on which the removal is based.

entity contracts with the county board to provide specialized services. "Specialized services" is defined as any program or service designed and operated to serve primarily individuals with mental retardation or a developmental disability, including a program or service provided by an entity licensed or certified by the Department of Mental Retardation and Developmental Disabilities.

The bill establishes an exception to the prohibition against a county MR/DD board employing an individual who is also an employee of an agency contracting with the county board or an entity that provides specialized services. An individual is permitted to be employed by a county board while also being employed by a private agency under contract with the county board or by a private entity that provides specialized services if (1) the individual is employed by the agency or entity to serve in a direct services position and (2) the individual's employment by the agency or entity does not include any administrative duties that, in the opinion of the county board, might conflict with the individual's employment by the county board. "Direct services position" is defined as an employment position in which the employee has physical contact with, the opportunity to be alone with, or exercises supervision or control over one or more individuals with mental retardation or a developmental disability.

Current law provides that an employee of a county MR/DD board may be a member of the governing board of a political subdivision or of an agency. The bill provides that the agency may not provide specialized services.

Restriction on entering into direct services contract

(R.C. 5126.033 and 5126.0334)

Current law prohibits a county MR/DD board from entering into a direct services contract⁶ for family support services or supported living under which an individual or entity will employ a management, professional, or service employee who is also an employee of the county board unless certain conditions are met.⁷ The following are the conditions:

⁶ A "direct services contract" is a legally enforceable agreement with an individual or entity that, pursuant to its terms or operation, may result in a payment from a county MR/DD board to an individual eligible to receive services from a county board or an entity under contract with a county board or to an immediate family member of such an individual. The payment is for services rendered to the individual eligible to receive services from a county MR/DD board or an entity under contract with a county board. (R.C. 5126.03.)

⁷ If the conditions are met, an employee of a county MR/DD board may also be employed by an individual or entity contracting with the board for family support services or

(1) The employee cannot be in a capacity to influence the award of the contract.

(2) The employee cannot attempt in any manner to secure the contract.

(3) The employee cannot be in management level two or three according to rules adopted by the Director of Mental Retardation and Developmental Disabilities.

(4) The employee cannot be employed, during the period when the contract is developed, by the county board as an administrator or supervisor responsible for approving or supervising services to be provided under the contract and must agree not to take such a position while the contract is in effect, regardless of whether the position is related to the services provided under the contract.

(5) The employee cannot take any action that creates the need for the services to be provided under the contract.

(6) Either (a) the individual or entity must seek the services of the employee because the employee is the only available individual with expertise and familiarity with the care and condition of one or more persons eligible for county board services or (b) a person eligible for county board services must request to have the services provided by that employee.

The bill repeals this law and provides instead that a county MR/DD board may not enter into a direct services contract under which an individual or entity will employ an individual who is also an employee of that county board unless the individual is employed by the county board in accordance with the provision of the bill specifying when a county board may employ an individual who is also employed by a private agency under contract with the county board. This means that the individual or entity seeking the contract must be a private agency and the county board employee must be employed by the individual or entity to serve in a direct services position and the employee's employment with the individual or entity cannot include any administrative duties that, in the opinion of the county board, might conflict with the employee's employment by the county board.

supported living despite the general prohibition against a county board employing an individual who is also employed by an agency contracting with the county board.



Restriction on payments for membership dues and professional services

(R.C. 5126.038)

The bill prohibits a county MR/DD board from paying to any one entity more than a total of \$25,000 in a calendar year for membership dues and professional services without the approval of the board of county commissioners of each county that the county MR/DD board serves. "Professional services" is defined as all of the following services provided on behalf of a county MR/DD board, employees of a county board, or both: (1) lobbying and other governmental affairs services, (2) legal services other than the legal services provided by a county prosecutor, (3) public relation services, (4) consulting services, and (5) personnel training services. "Professional services" does not mean services provided pursuant to a contract between a county board and a provider under which the provider is to provide services to an individual with mental retardation or a developmental disability.

The county MR/DD board is required to notify the county auditor of each county that the county board serves whenever the county board obtains such approval. The notice must name the entity that is to receive the payment.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-07-04	p. 2215

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