



Sub. H.B. 9*

126th General Assembly

(As Reported by S. Judiciary Civil Justice)

Reps. Oelslager, Flowers, Buehrer, White, Trakas, Aslanides, Beatty, Blessing, Book, Carano, Cassell, Chandler, Collier, DeBose, Domenick, C. Evans, D. Evans, Fende, Fessler, Garrison, Hagan, Hartnett, Harwood, Healy, Key, Law, Mason, R. McGregor, Otterman, T. Patton, Peterson, Redfern, Reidelbach, Sayre, Schneider, Seitz, Setzer, Skindell, Willamowski, Williams, Woodard, Yuko

BILL SUMMARY

- Requires the Attorney General to develop, provide, and certify, and requires all elected officials or their designees to attend, training programs and seminars about the Public Records Law.
- Requires the Attorney General to develop and provide to all public offices a model public records policy, and requires all public offices to adopt a public records policy, for responding to public records requests in compliance with the Public Records Law.
- Requires the State Auditor, in the course of the audit of a public office, to audit the public office for compliance with the bill's training and public records policy provisions.
- Requires a public office, when making a public record available that includes information exempt from public inspection or copying, to notify the person seeking to inspect or copy the record regarding any redaction or to make the redaction plainly visible and specifies that a redaction is a denial of a request to inspect or copy the redacted information except if federal or state law authorizes or requires the redaction.

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

- Provides that a public office may deny a request for public records when the requester makes an ambiguous or overly broad request or the public office cannot reasonably identify the public records being requested, but must provide the requester an opportunity to revise the request.
- If a request for public records is ultimately denied, requires a public office to provide the requester an explanation of the reasons for the denial, including legal authority.
- Generally precludes a public office from limiting or conditioning the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested record.
- Allows a public office to ask that a request be made in writing, ask for the requester's identity, and ask about the intended use of the requested information only if the public office discloses to the requester that compliance is not required and when a written request or disclosure of the identity or intended use would enhance the ability to comply with the request.
- Authorizes a public office to require advance payment of the cost of providing a copy of the requested public record in accordance with the requester's choice of the medium in which the copy is duplicated.
- Provides that the transmission of copies of requested public records may be by mail (existing law) or any other means of delivery or transmission.
- Provides that an aggrieved person who files a mandamus action against a public office may recover statutory damages and court costs, upon certain findings made by the court, for failure to comply with the Public Records Law.
- Specifies certain circumstances in which a court must award statutory damages or reasonable attorney's fees to the aggrieved person in a mandamus action, and certain circumstances in which a court may reduce or deny an award of statutory damages or attorney's fees to the aggrieved person.
- Extends the deadline for the report from the Local Government Public Notice Task Force to May 1, 2008.

- Makes other changes in the Public Records Law.
- Modifies the statutes governing county records commissions, municipal records commissions, school district and educational service center records commissions, and township records commissions generally to require the appropriate commission to send approved applications for one-time disposal of obsolete records or records retention and disposition schedules to the Ohio Historical Society for review and require the Society to forward the applications and schedules to the State Auditor for approval or disapproval.
- Creates library records commissions, special taxing district records commissions, and school district records commissions for each local and joint vocational school district and specifies their functions, including reviewing applications for one-time disposal of obsolete records or records retention and disposition schedules and sending approved applications or schedules to the Ohio Historical Society for review, and requires the Society to forward the applications and schedules to the State Auditor for approval or disapproval.
- Allows a journalist to submit to a sheriff a signed, written request to view the name, county of residence, and date of birth of each person to whom the sheriff has issued a license or replacement license to carry a concealed handgun, renewed a license to carry a concealed handgun, or issued a temporary emergency license or replacement temporary emergency license to carry a concealed handgun.
- Allows a journalist to submit to a sheriff a signed, written request to view the name, county of residence, and date of birth of each person for whom the sheriff has suspended or revoked a license to carry a concealed handgun or a temporary emergency license to carry a concealed handgun.
- Prohibits a journalist from copying the name, county of residence, or date of birth of each person to or for whom the sheriff has issued, suspended, or revoked a license as described above.
- Allows a county treasurer who participates in a training program or seminar regarding the Public Records Law to apply the three hours of training to the required 24 hours of continuing education that the county treasurer must complete in a biennial cycle.

TABLE OF CONTENTS

Overview of the Public Records Law	5
Training for public officials and employees regarding the Public Records Law	5
Duties and functions of Attorney General	6
Adoption of a public records policy by each public office	7
Audit for compliance.....	8
Definitions for purposes of training	8
Request for public records.....	8
Inspection and copying of public records; redaction.....	8
Organization and availability of public records; records retention schedule; ambiguous request.....	9
Explanation for denial of request	9
Requester's identity and intended use of requested records	10
Student directory information.....	10
Choice of duplicating medium.....	10
Transmission of copies	11
Mandamus action.....	12
Statutory damages	12
Court costs and attorney's fees to the relator	13
State archives administration	14
County records commission.....	15
Existing law.....	15
Operation of the bill	15
Municipal records commission.....	16
Existing law.....	16
Operation of the bill	17
School district records commission; educational service center records commission.....	18
Existing law.....	18
Operation of the bill	18
Township records commission	19
Existing law.....	19
Operation of the bill	19
Library records commission.....	20
Special taxing district records commission.....	21
Continuing education for county treasurers.....	22
Sheriff's concealed handgun licensure records--journalist access.....	22
General exemption from Public Records Law.....	22
Journalist access exception	22
Local Government Public Notice Task Force	23

CONTENT AND OPERATION

Overview of the Public Records Law

The Public Records Law (R.C. 149.43) generally requires every public office to prepare promptly all public records and make them available for inspection at all reasonable times during regular business hours. Upon request and within a reasonable period of time, a public office or person responsible for public records generally must make copies available at cost. (R.C. 149.43(B)(1).)

"Public office" includes any state agency,¹ public institution, political subdivision, or other organized body, office, agency, institution, or entity established by Ohio law for the exercise of any function of government. "Records" include any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in R.C. 1306.01, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office. (R.C. 149.011(A) and (G).)

Under current law, "public record" generally means records that are kept by any public office, including but not limited to, state, county, city, village, township, and school district units and records pertaining to the delivery of educational services by an alternative school in Ohio kept by a nonprofit or for-profit entity operating the alternative school pursuant to R.C. 3313.533. The Public Records Law contains a list of types of records that are not within the definition of "public records." (R.C. 149.43(A)(1).)

Training for public officials and employees regarding the Public Records Law

The bill provides that to ensure that all employees of public offices are appropriately educated about a public office's obligations to make public records available for public inspection and copying, all *elected officials* or their appropriate *designees* must attend training approved by the Attorney General (R.C. 149.43(E)(1)). (See "*Definitions for purposes of training*," below, for the definitions of the italicized terms.)

¹ "State agency" includes every department, bureau, board, commission, office, or other organized body established by the Constitution and laws of Ohio for the exercise of any function of state government, including any state-supported institution of higher education, the General Assembly, any legislative agency, any court or judicial agency, or any political subdivision or agency of a political subdivision (R.C. 149.011(B)).

Duties and functions of Attorney General

The bill requires the Attorney General (AG) to develop, provide, and certify training programs and seminars for all elected officials or their appropriate designees in order to enhance the officials' knowledge of the duty to provide access to public records as required by the Public Records Law. The training must be three hours for every term of office for which the elected official was appointed or elected to the public office involved. The training must provide elected officials or their appropriate designees with guidance in developing and updating their offices' policies as required by the bill (see "*Adoption of a public records policy by each public office*," below). The successful completion by an elected official or by an elected official's appropriate designee of the training requirements established by the AG will satisfy the education requirements that the bill imposes on elected officials or their appropriate designees. Prior to providing the training programs and seminars to satisfy those education requirements, the AG must ensure that the training programs and seminars are accredited by the Commission on Continuing Legal Education established by the Supreme Court.

The bill provides that the AG cannot charge any elected official or the appropriate designee of any elected official any fee for attending the training programs and seminars that the AG conducts. The AG may allow the attendance of any other interested persons at any of the training programs or seminars that the AG conducts and cannot charge the person any fee for attending the training program or seminar. (R.C. 109.43(C).)

In addition to requiring the AG to develop, provide, and certify training programs, the bill authorizes the AG to contract with one or more other state agencies, political subdivisions, or other public or private entities to conduct the training programs and seminars for elected officials or their appropriate designees. The contract may provide for the attendance of any other interested persons at any of the training programs or seminars conducted by the contracting state agency, political subdivision, or other public or private entity. The contracting state agency, political subdivision, or other public or private entity may charge an elected official, an elected official's appropriate designee, or an interested person a registration fee for attending the training program or seminar conducted by that contracting agency, political subdivision, or entity pursuant to a contract entered into under this provision. The AG must determine a reasonable amount for the registration fee based on the actual and necessary expenses associated with the training programs and seminars. If the contracting state agency, political subdivision, or other public or private entity charges an elected official or an elected official's appropriate designee a registration fee for attending the training program or seminar, the public office for which the elected official was appointed

or elected to represent may use the public office's own funds to pay for the cost of the registration fee. (R.C. 109.43(D).)

The AG may provide any other appropriate training or educational programs about Ohio's "Sunshine Laws," R.C. 121.22 and 149.43, as may be developed and offered by the AG or by the AG in collaboration with one or more other state agencies, political subdivisions, or other public or private entities (R.C. 109.43(F)).

Adoption of a public records policy by each public office

The bill requires the AG to develop and provide to all public offices a model public records policy for responding to public records requests in compliance with the Public Records Law in order to provide guidance to public offices in developing their own public record policies for responding to public records requests in compliance with that section (R.C. 109.43(E)).

The bill requires all public offices to adopt a public records policy in compliance with the Public Records Law for responding to public records requests. In adopting a public records policy, a public office may obtain guidance from the model public records policy developed and provided to the public office by the AG as described in the preceding paragraph. Except as otherwise provided in the Public Records Law, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours. (R.C. 149.43(E)(1).)

The public office must distribute the public records policy adopted by the public office to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office must require that employee to acknowledge receipt of the copy of the public records policy. The bill requires a public office to create a poster that describes its public records policy and post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the Internet web site of the public office if the public office maintains an Internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office must include the public records policy of the public office in the manual or handbook. (R.C. 149.43(E)(2).)

Audit for compliance

The bill requires the State Auditor, in the course of an annual or biennial audit of a public office pursuant to R.C. Chapter 117., to audit the public office for compliance with the bill's provisions regarding training and public records policy as described above (R.C. 109.43(G)).

Definitions for purposes of training

The bill defines the following terms for purposes of the training and public records policy provisions described above (R.C. 109.43(A) and 149.43(A)(12)):

"Elected official" means an official elected to a local or statewide office. "Elected official" does not include the Chief Justice or a justice of the Supreme Court, a judge of a court of appeals, court of common pleas, municipal court, or county court, or a clerk of any of those courts.

"Designee" means a designee of the elected official in the public office if that elected official is the only elected official in the public office involved or a designee of all of the elected officials in the public office if the public office involved includes more than one elected official.

The bill defines "public office" and "public record" in the same manner as in existing law (see "Overview of the Public Records Law," and "Definition of 'public record'," above).

Request for public records

Inspection and copying of public records; redaction

Current law generally requires that all public records be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Current law also generally requires that upon request, a public office or person responsible for public records must make copies available at cost, within a reasonable period of time. The bill generally requires that, *upon request*, all public records *responsive to the request* be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. The bill generally requires that upon request, a public office or person responsible for public records must make copies of the requested public record available at cost, within a reasonable period of time. (R.C. 149.43(B)(1).)

The bill provides that if a public record contains information that is exempt from the duty to permit public inspection or to copy the record, the public office or the person responsible for the public record must make available all of the information within the public record that is not exempt. When making that public

record available for public inspection or copying, the public office or the person responsible for the public record must notify the requester of any redaction or make the redaction plainly visible. A redaction is deemed a denial of a request to inspect or copy the redacted information except if federal or state law authorizes or requires a public office to make the redaction. (R.C. 149.43(B)(1).) The bill defines "redaction" to mean obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of "record" contained in the Public Records Law (R.C. 149.43(A)(11)).

Organization and availability of public records; records retention schedule; ambiguous request

Current law provides that in order to facilitate broader access to public records, public offices must maintain public records in a manner so that they can be made available for inspection under the Public Records Law (R.C. 149.43(B)(1)). The bill provides that to facilitate broader access to public records, a public office or the person responsible for public records must organize and maintain public records in a manner that they can be made available for inspection *or copying* in accordance with the Public Records Law. The bill further requires a public office also to have available a copy of its current records retention schedule at a location readily available to the public. Under the bill, if a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but must provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties. (R.C. 149.43(B)(2).)

Explanation for denial of request

The bill provides that if a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record must provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also must be provided to the requester in writing. The explanation does not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending a mandamus action commenced under current law to require inspection or copying of the records in question. (R.C. 149.43(B)(3).)

Requester's identity and intended use of requested records

The bill provides that unless specifically required or authorized by state or federal law or in accordance with the Public Records Law, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any such requirement constitutes a denial of the request. (R.C. 149.43(B)(4).)

On the other hand, the bill allows a public office or person responsible for public records to ask a requester to make the request in writing, to ask for the requester's identity, and to inquire about the intended use of the information requested, but only after disclosing to the requester that a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester. (R.C. 149.43(B)(5).)

Student directory information

Current School Law prohibits any person from releasing, or permitting access to, the names or other personally identifiable information concerning any students attending a public school to any person or group for use in a profit-making plan or activity. The bill prohibits any person from releasing, or permitting access to, the *directory information* (instead of *names or other personally identifiable information*) concerning any students attending a public school to any person or group for use in a profit-making plan or activity. It provides that notwithstanding the general prohibition in the Public Records Law, as modified by the bill, against requiring the disclosure of a requester's identity or the intended use of the requested public record (see first paragraph in "**Requester's identity and intended use of requested records**," above), a person may require disclosure of the requestor's identity or the intended use of the directory information concerning any students attending a public school to ascertain whether the directory information is for use in a profit-making plan or activity. (R.C. 3319.321(A).)

Choice of duplicating medium

Under existing law, if any person chooses to obtain a copy of a public record in accordance with the Public Records Law, the public office or person responsible for the public record must permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any

other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy. (Existing R.C. 149.43(B)(2).)

Under the bill, if any person chooses to obtain a copy of a public record in accordance with the Public Records Law, the public office or person responsible for the public record *may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person seeking the copy under existing law* as described in the preceding paragraph. The bill provides that nothing in the Public Records Law requires a public office or person responsible for the public records to allow the person seeking a copy of the public record to make the copies of the public record. (R.C. 149.43(B)(6).)

Transmission of copies

Existing law provides that upon a request made in accordance with the Public Records Law, a public office or person responsible for public records must transmit a copy of a public record to any person by United States mail within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage and other supplies used in the mailing. Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail. A public office that adopts such policy and procedures must comply with them in performing its duties under this provision. (Existing R.C. 149.43(B)(3).)

The bill provides that upon a request made in accordance with the Public Records Law *and subject to the provision described above in "**Choice of duplicating medium**,"* a public office or person responsible for public records must transmit a copy of a public record to any person by United States mail *or by any other means of delivery or transmission* within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage, *if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail,* and to pay in advance the costs incurred for other supplies used in the mailing, *delivery, or transmission.* Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request,

copies of public records by United States mail *or by any other means of delivery or transmission*. A public office that adopts such policy and procedures must comply with them in performing its duties under this provision. (R.C. 149.43(B)(7).)

Mandamus action

Under current law, if a person allegedly is aggrieved by the failure of a public office to promptly prepare a public record and to make it available to the person for inspection in accordance with the Public Records Law, or if a person who has requested a copy of a public record allegedly is aggrieved by the failure of a public office or the person responsible for the public record to make a copy available to the person allegedly aggrieved in accordance with that Law, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with the Public Records Law and that awards reasonable attorney's fees to the person that instituted the mandamus action. (R.C. 149.43(C).)

Under the bill, if a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with the Public Records Law, or by the *any other* failure of a public office *to comply with an obligation* in accordance with that Law, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with the Public Records Law, that awards *court costs and* reasonable attorney's fees to the person that instituted the mandamus action, *and, if applicable, that includes an order fixing statutory damages as described below*. (R.C. 149.43(C)(1).)

Statutory damages

The bill provides that if a requestor transmits a written request by hand delivery or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records requested, the requestor is entitled to recover the amount of statutory damages set forth below if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with the Public Records Law. (R.C. 149.43(C)(1).)

The amount of statutory damages must be fixed at \$100 for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with the Public Records Law, beginning with the day on which the requester files a mandamus action to

recover statutory damages, up to a maximum of \$1,000. The statutory damages are not to be construed as penalties, but as compensation for injury arising from lost use of the requested information; the existence of this injury is conclusively presumed. The award of statutory damages is in addition to all other remedies authorized by the Public Records Law. (R.C. 149.43(C)(1).)

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following (R.C. 149.43(C)(1)(a) and (b)):

(1) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with the Public Records Law and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute failure to comply with an obligation in accordance with Public Records Law;

(2) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

Court costs and attorney's fees to the relator

The bill provides that if the court issues a writ of mandamus that orders the public office or the person responsible for the public record to comply with the Public Records Law and determines that the circumstances described in paragraphs (1) and (2) under "**Statutory damages**," above, exist, the court must determine and award to the relator all court costs (R.C. 149.43(C)(2)(a)).

If the court renders a judgment that orders the public office or the person responsible for the public record to comply with the Public Records Law, the court may award reasonable attorney's fees subject to reduction as described below. The court must award reasonable attorney's fees, subject to reduction as described below, when either of the following applies (R.C. 149.43(C)(2)(b)):

(1) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under the Public Records Law.

(2) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

The bill provides that the awarded court costs and reasonable attorney's fees are to be construed as remedial and not punitive. Reasonable attorney's fees include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees. The court may reduce an award of attorney's fees to the relator or not award attorney's fees to the relator if it determines both of the following (R.C. 149.43(C)(2)(c)):

(1) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with the Public Records Law and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with that Law;

(2) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records as described in (1), above, would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

State archives administration

Under existing law, the Ohio Historical Society (hereafter, Society), in addition to its statutory functions, also functions as the state archives administration for the state of Ohio and its political subdivisions. It is the function of the state archives to preserve government archives, documents, and records of historical value that may come into its possession from public or private sources.

The archives administration is headed by a trained archivist designated by the Society and designated as "state archivist." The archives administration must make its services available to county, *city*, township, and school district records commissions upon request. (R.C. 149.31(A).)

The bill modifies existing law by providing that it is the function of the state archives *administration* (added by the bill) to preserve government archives, documents, and records of historical value that may come into its possession from

public or private sources. The archives administration must make its services available upon request to *library and special taxing district records commissions*, which the bill creates (see below). The bill replaces *city records commission* with *municipal records commission*. (R.C. 149.31(A).)

County records commission

Existing law

Under existing law, a county records commission is composed of the president of the board of county commissioners as chairperson, the prosecuting attorney, the auditor, the recorder, and the clerk of the court of common pleas. A county records commission in each county may employ an archivist to serve under its direction. The functions of the county records commission are to provide rules for retention and disposal of records of the county and to review applications for one-time records disposal and schedules of records retention and disposal submitted by county offices. Records may be disposed of by the commission pursuant to the procedure outlined below. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule subject to the commission's rules. (R.C. 149.38(A) and (B).)

When the county records commission has approved county records for disposal, a copy of a list of those records must be sent to the State Auditor. If the Auditor disapproves the action by the commission in whole or in part, the Auditor must so inform the commission within a period of 60 days, and those records must not be destroyed. Before public records are to be disposed of, the commission must inform the Ohio Historical Society and give the Society the opportunity for a period of 60 days to select for its custody such records as it considers to be of continuing historical value. When the Society is so informed that public records are to be disposed of, the county records commission also must notify the county historical society, and any public or quasi-public institutions, agencies, or corporations in the county that have provided the commission with their name and address for these notification purposes, that the Ohio Historical Society has been so informed and may select records of continuing historical value, including records that may be distributed to any of the notified entities under R.C. 149.31 (State Archives Administration Law). (R.C. 149.38(C).)

Operation of the bill

The bill removes the requirement that the president of the board of county commissioners serve as the chairperson of the county records commission and instead provides that *a member* of the board serve as chairperson. The bill also provides that a county records commission may employ an archivist *or records manager* to serve under its direction. It further modifies existing law in the

following manner (modified and new language are in italics). The functions of the county records commission are to provide rules for retention and disposal of records of the county and to review applications for one-time disposal of *obsolete records* and schedules of records retention and *disposition* submitted by county offices. The commission may dispose of records pursuant to the procedure outlined below. The commission, at any time, may review any schedule it has previously approved and, for good cause shown, may revise that schedule, subject to the commission's rules. (R.C. 149.38(A) and (B).)

When the county records commission has approved *any county application* for one-time disposal of *obsolete records or any schedule of records retention and disposition*, the commission must send that application or schedule to the Ohio Historical Society for its review. The Society must review the application or schedule within a period of not more than 60 days after its receipt of it. Upon completion of its review, the Society must forward the application for one-time disposal of *obsolete records or the schedule of records retention and disposition* to the State Auditor for the Auditor's approval or disapproval. The Auditor must approve or disapprove the application or schedule within a period of not more than 60 days after receipt of it. Before public records are to be disposed of, the commission must inform the Society of the disposal through the submission of a certificate of records disposal and must give the Society the opportunity for a period of 15 business days (instead of 60 days) to select for its custody those records that it considers to be of continuing historical value. Upon the expiration of the 15-business-day period, the county records commission also must notify the public libraries, county historical society, state universities, and other public or quasi-public institutions, agencies, or corporations in the county that have provided the commission with their name and address for these notification purposes, that the commission has informed the Ohio Historical Society of the records disposal and that the notified entities, upon written agreement with the Society pursuant to R.C. 149.31, may select records of continuing historical value, including records that may be distributed to any of the notified entities under R.C. 149.31. (R.C. 149.38(C).)

Municipal records commission

Existing law

Under existing law, a municipal records commission in each municipal corporation may employ an archivist to serve under its direction. The functions of the commission are to provide rules for retention and disposal of records of the municipal corporation and to review applications for one-time records disposal and schedules of records retention and disposition submitted by municipal offices. Records may be disposed of by the commission pursuant to the procedure outlined

below. The commission may at any time review any schedule it has previously approved, and for good cause shown may revise that schedule.

When municipal records have been approved for disposal, a list of such records must be sent to the State Auditor. If the Auditor disapproves of the action by the municipal commission, in whole or in part, the Auditor must so inform the commission within a period of 60 days and these records must not be destroyed. Before public records are disposed of, the Ohio Historical Society must be informed and given the opportunity for a period of 60 days to select for its custody such public records as it considers to be of continuing historical value. (R.C. 149.39.)

Operation of the bill

The bill provides that a municipal records commission may employ an archivist *or records manager* to serve under its direction. It further modifies existing law in the following manner (modified and new language are in italics). The functions of the municipal records commission are to provide rules for retention and disposal of records of the municipal corporation and to review applications for one-time *disposal of obsolete* records and schedules of records retention and disposition submitted by municipal offices. The commission *may dispose of records* pursuant to the procedure outlined below. The commission at any time may review any schedule it has previously approved and for good cause shown may revise that schedule.

When *the municipal records commission has approved any application for one-time disposal of obsolete records or any schedule of records retention and disposition, the commission must send that application or schedule to the Ohio Historical Society for its review. The Society must review the application or schedule within a period of not more than 60 days after its receipt of it. Upon completion of its review, the Society must forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition to the State Auditor for the Auditor's approval or disapproval. The Auditor must approve or disapprove the application or schedule within a period of not more than 60 days after receipt of it.* Before public records are *to be* disposed of, the *commission must inform the Ohio Historical Society of the disposal through the submission of a certificate of records disposal and must give the Society the opportunity for a period of 15 business days (instead of 60 days) to select for its custody those public records that it considers to be of continuing historical value.* (R.C. 149.39.)

School district records commission; educational service center records commission

Existing law

Under existing law, the function of the school district records commission in each city and exempted village school district and the function of an educational service center records commission in each educational service center are to review applications for one-time records disposal and schedules of records retention and disposition submitted by any employee of the school district or educational service center. Records may be disposed of by the commission pursuant to the procedure outlined below. The commission may at any time review any schedule it has previously approved, and for good cause shown may revise that schedule.

When school district or educational service center records have been approved for disposal, a list of such records must be sent to the State Auditor. If the Auditor disapproves the action by the commission, in whole or in part, the Auditor must so inform the commission within a period of 60 days and these records must not be destroyed. Before public records are disposed of, the Ohio Historical Society must be informed and given the opportunity for a period of 60 days to select for its custody such public records as it considers to be of continuing historical value. The Society may not review or select for its custody certain records containing personally identifiable information concerning any pupil attending a public school other than directory information, without the written consent of the parent, guardian, or custodian of each such pupil who is less than 18 years of age, or without the written consent of each such pupil who is 18 years of age or older, or records the release of which would, according to the "Family Educational Rights and Privacy Act of 1974," disqualify a school or other educational institution from receiving federal funds. (R.C. 149.41.)

Operation of the bill

The bill modifies existing law in the following manner (modified and new language are in italics). *The bill creates in each local and joint vocational school district a school district records commission.* The function of the school district records commission and the educational service center records commission are to review applications for one-time *disposal of obsolete* records and schedules of records retention and disposition submitted by any employee of the school district or educational service center. The commission *may dispose of records* pursuant to the procedure outlined below. The commission at any time may review any schedule it has previously approved and for good cause shown may revise that schedule.

When the school district *records commission* or the educational service center *records commission* has approved any application for one-time disposal of obsolete records or any schedule of records retention and disposition, the appropriate commission must send that application or schedule to the Ohio Historical Society for its review. The Society must review the application or schedule within a period of not more than 60 days after its receipt of it. Upon completion of its review, the Society must forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition to the State Auditor for the Auditor's approval or disapproval. The Auditor must approve or disapprove the application or schedule within a period of not more than 60 days after receipt of it. Before public records are to be disposed of, the appropriate commission must inform the Ohio Historical Society of the disposal through the submission of a certificate of records disposal and must give the Society the opportunity for a period of 15 business days (instead of 60 days) to select for its custody those public records that it considers to be of continuing historical value. The Society may not review or select for its custody the records described in "Existing law," above. (R.C. 149.41.)

Township records commission

Existing law

Under existing law, the function of the township records commission in each township is to review applications for one-time records disposal and schedules of records retention and disposition submitted by township offices. Records may be disposed of by the commission pursuant to the procedure outlined below. The commission may at any time review any schedule it has previously approved, and for good cause shown may revise that schedule.

When township records have been approved for disposal, a list of such records must be sent to the State Auditor. If the Auditor disapproves the action by the commission, in whole or in part, the Auditor must so inform the commission within a period of 60 days, and these records must not be destroyed. Before public records are disposed of, the Ohio Historical Society must be informed and given the opportunity for a period of 60 days to select for its custody such public records as it considers to be of continuing historical value. (R.C. 149.42.)

Operation of the bill

The bill modifies existing law in the following manner (modified and new language are in italics). The function of the township commission in each township is to review applications for one-time *disposal of obsolete* records and schedules of records retention and disposition submitted by township offices. The commission *may dispose of records* pursuant to the procedure outlined below.

The commission at any time may review any schedule it has previously approved and for good cause shown may revise that schedule.

When the township records commission has approved any township application for one-time disposal of obsolete records or any schedule of records retention and disposition, the commission must send that application or schedule to the Ohio Historical Society for its review. The Society must review the application or schedule within a period of not more than 60 days after its receipt of it. Upon completion of its review, the Society must forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition to the State Auditor for the Auditor's approval or disapproval. The Auditor must approve or disapprove the application or schedule within a period of not more than 60 days after receipt of it. Before public records are to be disposed of, the commission must inform the Society of the disposal through the submission of a certificate of records disposal and must give the Society the opportunity for a period of 15 business days (instead of 60 days) to select for its custody those public records that it considers to be of continuing historical value. (R.C. 149.42.)

Library records commission

The bill creates in each county free public library, municipal free public library, township free public library, county library district, and regional library district a library records commission composed of the members and the clerk of the board of library trustees of the appropriate public library or library district. The commission must meet at least once every 12 months.

The functions of the commission are to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by any employee of the library. The commission may dispose of records pursuant to the procedure outlined below. The commission at any time may review any schedule it has previously approved and for good cause shown may revise that schedule.

When the appropriate library records commission has approved any library application for one-time disposal of obsolete records or any schedule of records retention and disposition, the commission must send that application or schedule to the Ohio Historical Society for its review. The Society must review the application or schedule within a period of not more than 60 days after its receipt of it. Upon completion of its review, the Society must forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition to the State Auditor for the Auditor's approval or disapproval. The Auditor must approve or disapprove the application or schedule within a period of not more than 60 days after receipt of it. Before public records are to be disposed of, the commission must inform the Society of the disposal through the submission

of a certificate of records disposal and must give the Society the opportunity for a period of 15 business days to select for its custody those public records that it considers to be of continuing historical value. The Society may not review or select for its custody any records pursuant to R.C. 149.432 (confidentiality of library records and patron information) (R.C. 149.411).

Special taxing district records commission

The bill creates in each special taxing district that is a public office as defined in R.C. 149.011 (see "**Overview of the Public Records Law**," above) and that is not specifically designated in any of the above described provisions pertaining to a county records commission, municipal records commission, school district records commission or educational service center records commission, township records commission, or library records commission, a special taxing district records commission composed of, at a minimum, the chairperson, a fiscal representative, and a legal representative of the governing board of the special taxing district. The commission must meet at least once every 12 months and upon the call of the chairperson.

The functions of the commission are to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by any employee of the special taxing district. The commission may dispose of records pursuant to the procedure outlined below. The commission at any time may review any schedule it has previously approved and for good cause shown may revise that schedule.

When the special taxing district records commission has approved any special taxing district application for one-time disposal of obsolete records or any schedule of records retention and disposition, the commission must send that application or schedule to the Ohio Historical Society for its review. The Society must review the application or schedule within a period of not more than 60 days after its receipt of it. Upon completion of its review, the Society must forward the application for one-time disposal of obsolete records or the schedule of records retention and disposition to the State Auditor for the Auditor's approval or disapproval. The Auditor must approve or disapprove the application or schedule within a period of not more than 60 days after receipt of it. Before public records are to be disposed of, the commission must inform the Society of the disposal through the submission of a certificate of records disposal and must give the Society the opportunity for a period of 15 business days to select for its custody those public records that it considers to be of continuing historical value. (R.C. 149.412.)

Continuing education for county treasurers

Existing law requires the State Auditor and State Treasurer to conduct education programs for persons elected for the first time to the office of county treasurer and to hold biennial continuing education programs for persons who continue to hold the office of county treasurer (R.C. 321.46(A)). After completing one year in office, a county treasurer must take not less than 24 hours of continuing education during each biennial cycle. The bill provides that a county treasurer who participates in a training program or seminar regarding the Public Records Law may apply the three hours of training to the required 24 hours of continuing education training in a biennial cycle (R.C. 321.46(B)(3)(c)).

Sheriff's concealed handgun licensure records--journalist access

General exemption from Public Records Law

Under existing law, notwithstanding the Public Records Law, except as described below in "**Journalist access exception**," the records that a sheriff keeps relative to the issuance, renewal, suspension, or revocation of a standard license or the issuance, suspension, or revocation of a temporary emergency license to carry a concealed handgun, including, but not limited to, completed applications for the issuance or renewal of a standard license, completed affidavits submitted regarding an application for a temporary emergency license, reports of criminal records checks and incompetency checks, and applicants' Social Security numbers and fingerprints are confidential and are not public records. Existing law prohibits any person, except as described below in "**Journalist access exception**," from releasing or otherwise disseminating records that are confidential as described in this paragraph unless required to do so pursuant to a court order. A person who violates this prohibition is guilty of the offense of illegal release of confidential concealed handgun license records, a felony of the fifth degree. In addition to any penalties imposed for the violation under the Criminal Sentencing Law, if the offender is a sheriff, an employee of a sheriff, or any other public officer or employee, and if the violation was willful and deliberate, the offender is subject to a civil fine of \$1,000. Any person who is harmed by the violation has a private cause of action against the offender for any injury, death, or loss to person or property that is a proximate result of the violation and may recover court costs and attorney's fees related to the action. (R.C. 2923.129(B)(1) and (E).)

Journalist access exception

Under existing law, upon a written request made to a sheriff and signed by a "journalist" on or after April 8, 2004, the sheriff must disclose to the journalist the name, county of residence, and date of birth of each person to whom the sheriff has issued a standard license or replacement standard license to carry a

concealed handgun, renewed a standard license to carry a concealed handgun, or issued a temporary emergency license or replacement temporary emergency license to carry a concealed handgun. The request must include the journalist's name and title, include the name and address of the journalist's employer, and state that the disclosure of the information sought would be in the public interest. A person who violates this prohibition is guilty of the offense of illegal release of confidential concealed handgun license records, a felony of the fifth degree. In addition to any penalties imposed for the violation under the Criminal Sentencing Law, if the offender is a sheriff, an employee of a sheriff, or any other public officer or employee, and if the violation was willful and deliberate, the offender is subject to a civil fine of \$1,000. Any person who is harmed by the violation has a private cause of action against the offender for any injury, death, or loss to person or property that is a proximate result of the violation and may recover court costs and attorney's fees related to the action.

As used in this provision, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public. (R.C. 2923.129(B)(2) and (E).)

The bill modifies existing law by providing that a journalist, on or after April 8, 2004, *may submit to a sheriff a signed, written request to view* the name, county of residence, and date of birth of each person to whom the sheriff has issued a license or replacement license to carry a concealed handgun, renewed a license to carry a concealed handgun, or issued a temporary emergency license or replacement temporary emergency license to carry a concealed handgun, *or a signed, written request to view the name, county of residence, and date of birth of each person for whom the sheriff has suspended or revoked a license to carry a concealed handgun or a temporary emergency license to carry a concealed handgun* (R.C. 2923.129(B)(2)(a)). The bill also provides that if a journalist submits a signed, written request to the sheriff to view the information described above, the sheriff must grant the journalist's request. The journalist is prohibited from copying the name, county of residence, or date of birth of each person to or for whom the sheriff has issued, suspended, or revoked a license described above. (R.C. 2923.129(B)(2)(b).)

Local Government Public Notice Task Force

Sub. H.B. 101 of the 126th General Assembly created the Local Government Public Notice Task Force. The Task Force must prepare and submit a report of its findings and recommendations on whether or not to change local government public notice requirements to the Governor, the President and

Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives not later than one year after the effective date of Sub. H.B. 101. The bill extends this deadline to May 1, 2008.

HISTORY

ACTION	DATE
Introduced	01-24-05
Reported, H. Civil and Commercial Law	03-15-06
Passed House (93-1)	03-15-06
Reported, S. Judiciary Civil Justice	-----

H0009-rs-126.doc/nlr