



Bill Analysis

Wendy H. Gridley
William J. Heaphy, III

Legislative Service Commission

Sub. H.B. 385*

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(As Reported by S. State and Local Government and Veterans Affairs)

Reps. Brinkman, Seitz, Law, Schaffer, Webster, Wolpert, Domenick, Fende, Chandler, Daniels, J. McGregor, Combs, Barrett, Blessing, Calvert, Carano, Cassell, Coley, Collier, Distel, C. Evans, Flowers, Hartnett, Martin, R. McGregor, T. Patton, Perry, Raga, Reidelbach, Sayre, Taylor, Uecker, Wagner, Yuko

BILL SUMMARY

- Removes the limitation on the number of additional deferred compensation programs townships may offer to their officers and employees.
- Defines "board of township trustees" for the Limited Home Rule Township Law.
- Allows emergency resolutions to take immediate effect in limited home rule townships.
- Makes changes to the law authorizing a charge for certain multiple false fire alarms in townships.
- Establishes an alternative "direct" method for creating a fire and ambulance district.
- Increases to an amount not to exceed \$150 the maximum registration fee for transient vendors in townships.
- Expands the definition of a "transient vendor" for purposes of the township registration provisions to include persons who attempt to arrange an appointment for a future estimate or sales call.

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

- Increases the duration limitation on township lighting contracts from ten years to 20 years.
- Authorizes certain townships that have used tax increment financing to pay the proceeds from the sale of a permanent improvement into their general fund under certain circumstances.
- Requires a board of township trustees that has adopted noise control regulations for residential areas or D liquor permit premises to seek injunctions against violators.
- Authorizes the issuance of cease and desist orders by law enforcement officers against D liquor permit premises that violate township noise regulations.
- Permits townships to create additional reserve balance accounts for any purpose for which they may lawfully expend township money.
- Permits the presentation of the minutes from a board of county commissioners' previous day's meeting to be in written form, instead of being read aloud by the board's clerk.
- Removes a provision that exempts condominium developments from the Platting Law.

TABLE OF CONTENTS

Deferred compensation plans for certain public employees	3
Current law.....	3
Changes made by the bill	3
Limited home rule townships	4
Definition of "board of township trustees"	4
Emergency resolutions.....	4
False fire alarms in townships	4
Applicable false alarms	4
Lien procedure	5
Fire and ambulance districts.....	5
Current law.....	5
Changes made by the bill	6
Fees for transient vendors in townships	6
Background law and definitional expansion.....	6
Registration fee.....	7

Township lighting.....	7
Enforcement of township noise control regulations	7
Clarification of application	7
Enforcement mechanisms	8
Disposition of the proceeds from the sale of township permanent improvements.....	9
Overview.....	9
New exception	9
New township reserve balance accounts	10
County commissioners' board meeting minutes presentation.....	11
Condominium developments	12
Background.....	12
Changes made by the bill	12

CONTENT AND OPERATION

Deferred compensation plans for certain public employees

Current law

Current law creates a deferred compensation program for eligible public employees that is administered by the Ohio Public Employees Deferred Compensation (OPEDC) Board. That law permits municipal corporations, counties, townships, park districts, conservancy districts, sanitary districts, health districts, public library districts, county law libraries, public institutions of higher education, and school districts to provide separate authorized plans or programs for deferring compensation of their officers and employees in addition to the OPEDC Board's program; however, counties, *townships*, park districts, conservancy districts, sanitary districts, health districts, public library districts, and county law libraries are limited to no more than two additional deferred compensation programs. (R.C. 148.04 and 148.06.)

Changes made by the bill

The bill permits townships, like municipal corporations, public institutions of higher education, and school districts under current law, to provide additional authorized deferred compensation plans or programs *without any limitation* on the number that can be offered. But similar to current law applicable to municipal corporations, public institutions of higher education, and school districts, a township must offer additional plans or programs that include a reasonable number of options to its officers or employees for the investment of deferred compensation--including annuities, variable annuities, regulated investment trusts,

and other investments approved by the township--that will assure the desired tax treatment of their deferred compensation. (R.C. 148.04(E) and 148.06.)

Limited home rule townships

Definition of "board of township trustees"

The Limited Home Rule Township Law refers in several of its provisions to the governing body of such a township as the "board of township trustees," leading to confusion for some individuals as to whether a given reference in the Law is only to the board of township trustees of a limited home rule township or the board of township trustees of any township. To clarify these references in the Law, the bill provides a definition of "board of township trustees" for the Law, specifying that, except in those sections that provide for the *creation* of a limited home rule township (before the board could be one of such a township), a reference to a board of township trustees is to the board of township trustees of a limited home rule township. (R.C. 504.021.)

Emergency resolutions

Under the Limited Home Rule Township Law, an emergency resolution takes effect ten days after it is filed with the township fiscal officer, unless a later time is specified in the resolution. The bill eliminates this delay in effect and specifies instead that an emergency resolution takes effect immediately upon its passage. (R.C. 504.11(B).)

False fire alarms in townships

Applicable false alarms

Under current law, a board of township trustees may assess a charge for responding to a false fire alarm if (1) the fire department of the township, township fire district, or joint fire district, or a private fire company that contracts with any of those political subdivisions for fire protection, responds to a false alarm from an automatic fire alarm system at a commercial establishment or residential building and (2) the board of township trustees gives a written notice to the premises' owner and lessee (if any) by certified mail that it may assess a stated charge of \$300 or less for each subsequent false alarm by that system that occurs "within a period of 30 days after any false alarm by that system." After that notice, the township may charge for a false alarm without further notice. (R.C. 505.391.)

The bill changes the false alarms for which a township may charge after the provision of the written notice, to subsequent false alarms occurring after three false alarms by the system within the same calendar year (R.C. 505.391(A)).



Lien procedure

Current law provides that if a charge for a subsequent false alarm is not paid within 60 days after the owner or lessee receives by certified mail a written notice that the charge has been assessed, the charge must be entered upon the real property tax list, becomes a lien upon the property, and must be collected as taxes are collected. Collected charges (whether by normal payment or through the lien procedure) are deposited into the township general fund. (R.C. 505.391.)

The bill changes the procedure for unpaid false alarm charges by providing a 30-day notice before an unpaid charge becomes a lien. Under the bill, if payment of the bill assessing a charge is not received within 30 days, the township fiscal officer must send a notice by certified mail to the manager and the owner of the real estate of which the commercial establishment is a part, or to the occupant, lessee, agent, or tenant and the owner of the real estate of which the residential building is a part, indicating that failure (1) to pay the bill within 30 days or (2) to show just cause within 30 days why the bill should not be paid will result in the assessment of a lien on the real estate in the amount of the bill. If payment is not received or just cause for nonpayment is not shown within those 30 days, the amount of the bill must be entered upon the tax duplicate, is a lien upon the real estate upon that entry, and must be collected as other taxes. The bill requires charges so collected, instead of being deposited into the township general fund, to be earmarked in the township treasury for use for fire services.¹ (R.C. 505.391(B).)

Fire and ambulance districts

Current law

Under current law, in order to form a fire and ambulance district, the governing boards of a joint fire district and of a joint ambulance district may negotiate how to *combine* into a single "fire and ambulance" district that delivers both fire and ambulance services to the geographic area covered by those joint districts. That geographic area must be exactly the same in order for the joint districts to combine. The governing boards then must adopt a joint resolution

¹ *The bill repeals current law's general requirement that "charges collected" under R.C. 505.391 be deposited into the township general fund. It is not clear whether charges collected other than pursuant to the new lien procedure will continue to be deposited into the township general fund or also must be earmarked in the township treasury for use for fire services.*

ratifying the negotiated agreement and specifying when the new fire and ambulance district comes into being. (R.C. 505.375.)²

Changes made by the bill

The bill establishes an additional way to form a fire and ambulance district. Under the bill, the boards of township trustees of one or more townships and the legislative authorities of one or more municipal corporations, or the legislative authorities of two or more municipal corporations, or the boards of township trustees of two or more townships, are permitted to negotiate an agreement to form a fire and ambulance district. The agreement must be ratified by the adoption of a joint resolution by a majority of the members of each board of township trustees and/or of each municipal corporation legislative authority involved. The joint resolution must specify a date on which the district will come into being. (R.C. 505.375(A)(1)(a).)

If a joint fire district or a joint ambulance district is dissolved to facilitate creating a fire and ambulance district via this additional method, the negotiating townships and/or municipal corporations forming the new district may transfer to the new district for its use any of the funds on hand, moneys and taxes in the process of collection, credits, and real and personal property apportioned to them from the dissolved joint district (R.C. 505.375(A)(1)(b)).

Fees for transient vendors in townships

Background law and definitional expansion

Current law provides that a board of township trustees may require the registration of all transient vendors within the unincorporated territory of the township and regulate the time, place, and manner in which they may sell, offer for sale, or solicit orders for future delivery of goods. "Transient vendors" are persons who open a temporary place of business for the sale of goods or who, on the streets or while traveling about the township, either sell or offer for sale goods, or solicit orders for future delivery of goods where payment is required before the delivery of the goods. "Transient vendors" do not include (1) persons who represent any of certain Ohio tax-exempted entities that notify a board of township trustees that its representatives are present in the township for the purpose of either selling or offering for sale goods, or soliciting orders for future delivery of goods, or (2) licensed auctioneers. (R.C. 505.94(A) and (B)(2).)

² *This method of creating a fire and ambulance district continues to be available under the bill. It is relocated to division (A)(2) of R.C. 505.375.*

The bill expands the definition of a "transient vendor" to include any person who, on the streets or while traveling about a township, attempts to arrange an appointment for a future estimate or sales call. It correspondingly amends the exception to the definition to include any person who represents an Ohio tax-exempt entity that notifies the board of township trustees that its representatives are present in the township for the purpose of attempting to make those arrangements. (R.C. 505.94(B)(2).)

Registration fee

Under current law, when registration is required of all transient vendors, a reasonable registration fee not to exceed \$75 may be charged for the registration period. The registration must be valid for at least a 90-day period. The bill increases the permissible fee to one "not to exceed \$150" for such a registration period. (R.C. 505.94(A).)

Township lighting

Under current law, a board of township trustees, upon making certain determinations, may provide artificial lights for any road, highway, public place, or building under its control or for any of the unincorporated territory of the township. If the township procures lighting under a contract (rather than installing a lighting system itself) and if the total estimated cost of the contract exceeds \$25,000, the board must competitively bid the contract. A lighting contract cannot exceed a ten-year period. (R.C. 515.01.)

The bill increases the contract duration limitation from a ten-year to a 20-year period (R.C. 515.01).

Enforcement of township noise control regulations

Clarification of application

Under current law, a board of township trustees may adopt regulations and orders that are necessary to control noise within the township's unincorporated territory that is generated at any premises to which a D liquor permit has been issued or that is generated within any areas zoned for residential use. Currently, persons engaging in certain agricultural activities, persons engaging in coal mining and reclamation operations, persons engaging in surface mining, and persons engaging in certain crude oil or natural gas well, pipeline, and other activities are *exempt from* township noise control regulations and orders. And, with the exception of businesses operating at D liquor permit premises, those regulations or orders *generally* do not apply to businesses or industries in existence and operating on October 20, 1999 (the effective date of the last amendment to the law); they do

apply to those entities if any new operation or expansion results in substantially increased noise levels from those generated on that date.

The bill clarifies that a township noise regulation or order applies to any *premises to which a D liquor permit* has been issued by the Division of Liquor Control--regardless of whether the premises was in existence and operating on the effective date of the last amendment to the law (October 20, 1999) or whether it came into existence and operation after that date. It also specifies that a township noise control regulation or order applies to any other business or industry *in existence and operating on that date*--except those exempt under current law (see above). (R.C. 505.172(B), (C), and (D).)

Enforcement mechanisms

Current law also provides that *any person allegedly aggrieved* by a violation of a township noise regulation or order may seek in court a declaratory judgment, an injunction, or other appropriate relief against the violator. The court may award reasonable attorney's fees to the prevailing party for work reasonably performed.

The bill continues the latter enforcement authority but also requires a *board of township trustees* that adopts a noise regulation or order to seek an injunction against each person that commits an act or practice that violates the regulation or order. In this injunction action, the court also may award the prevailing party reasonable attorney's fees for work reasonably performed. (R.C. 505.172(F).)

In addition, the bill authorizes a law enforcement officer with jurisdiction in a township having a noise regulation or order to issue a *cease and desist order* to a D liquor permit premises when the officer has reasonable cause to believe that the premises has violated the regulation or order and, as a result of the violation, has caused, is causing, or is about to cause substantial and material harm.³ The cease and desist order would require the premises to cease and desist from the activity violating the regulation or order and must be served personally upon the owner, operator, manager, or other person in charge of the premises immediately after its issuance by the officer. Thereafter, the township may publicize or otherwise make known to all interested persons that the cease and desist order has been issued. (R.C. 505.172(G).)

³ *The bill defines a "law enforcement officer" as a sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, or municipal police officer (R.C. 505.172(A)).*

The bill provides that such a cease and desist order must specify the particular conduct that is subject to it and inform the person upon whom it is served that the premises will be granted a hearing in the municipal or county court with jurisdiction over the premises regarding the order's operation and the possible issuance of an injunction or other appropriate relief (see below). The premises must comply with the order immediately upon its receipt. (R.C. 505.172(G).)

Upon service of the order, the township's law director or, if the township does not have a law director, the prosecuting attorney must file a civil action in the municipal or county court mentioned above seeking *to confirm* the cease and desist order and seeking an injunction or other appropriate relief against the premises. The premises' owner, operator, manager, or other person in charge may file a motion in that civil action for *a stay* of the cease and desist order for good cause shown, pending the court's rendering its decision in the action. The municipal or county court must set a date for a hearing, hold the hearing, and render a decision in the action not more than ten days after the order's date--otherwise, the order is terminated. (R.C. 505.172(G).)

Disposition of the proceeds from the sale of township permanent improvements

Overview

The Tax Levy Law provides that, if a political subdivision sells permanent improvements, other than utilities, the amount received from the sale must be paid into the sinking fund, the bond retirement fund, or a special fund for the construction or acquisition of permanent improvements. The bill creates an exception to this provision for certain townships. (R.C. 5705.10.)

New exception

Under the bill, a township that has a population greater than 15,000 according to the most recent federal decennial census and that has used township tax increment financing for real property in the township may pay proceeds from the sale of a permanent improvement of the township *into its general fund* if both of the following conditions are satisfied (R.C. 5705.10(F) and (G)):

(1) The township fiscal officer determines that all foreseeable "public infrastructure improvements" to be made in the township in the ten years immediately following the date the permanent improvement is sold will have been financed through township tax increment financing on or before the date of the

sale.⁴ Written certification of this determination must be made part of the township's records.

(2) The permanent improvement being sold was financed entirely from moneys in the township's general fund.

New township reserve balance accounts

Under current law, townships, like other taxing authorities, may establish by resolution reserve balance accounts to accumulate currently available resources for the following purposes: (1) to stabilize budgets against cyclical changes in revenues and expenditures, (2) to provide for the payment of claims under a self-insurance program, or (3) to provide for the payment of claims under a retrospective ratings plan for workers' compensation. For purposes (2) and (3) above, only one reserve account may be established for each purpose. Money in a reserve balance account created under current law is not considered as an unencumbered balance or revenue of the township for purposes of annual budget reviews by the county budget commission. (R.C. 5705.13(A)--not in the bill.)

The bill permits a township to establish by resolution reserve balance accounts, in addition to those described above, to accumulate currently available resources for *any purpose for which the board of township trustees may lawfully expend township money* other than the three purposes listed above.⁵ Money may

⁴ *The bill's references to the township having "declared one or more improvements . . . to be a public purpose under section 5709.73" and to financing of permanent improvements "through resolutions adopted under section 5709.73" are to provisions of the Township Tax Increment Financing Law. Under that Law, by cross-reference to the Municipal Tax Increment Financing Law, a "public infrastructure improvement" is defined to include, but is not limited to, public roads and highways; water and sewer lines; environmental remediation; land acquisition, including acquisition in aid of industry, commerce, distribution, or research; demolition, including demolition on private property when determined to be necessary for economic development purposes; stormwater and flood remediation projects, including those projects on private property when determined to be necessary for public health, safety, and welfare; the provision of gas, electric, and communications service facilities; and the enhancement of public waterways through improvements that allow for greater public access (R.C. 5709.40(A)(7) and 5709.73(A)(5)--not in the bill).*

⁵ *The resolution must state the specific purpose for which a reserve balance account is established, the fund within which it is established, the fund or account from which money will be transferred to it, the number of years it will exist, the maximum total amount of money that may be credited to it during its existence, and the maximum amount of money to be credited to it each fiscal year it exists.*

be transferred to these new reserve balance accounts from another township fund or account only if money in that fund or account may lawfully be expended for the purpose for which the new reserve balance account is created. (R.C. 5705.132.)

A reserve balance account created under the bill's provisions may exist for not more than five fiscal years beginning with the first fiscal year in which money is credited to the account. But, more than one reserve balance account may be established under the bill's provisions. The total amount of money credited to *all* of the reserve balance accounts established under the bill cannot exceed at any time in any fiscal year 5% of the total of the township's revenue from all sources for the preceding fiscal year and any unencumbered balances carried over to the current fiscal year from the preceding fiscal year. And, money in such an account can be expended only for the purpose for which the account is established. (R.C. 5705.132.)

The board of township trustees may rescind the resolution establishing a reserve balance account before the account's expiration. It also may extend the life of a reserve balance account, subject to the five-fiscal year ceiling mentioned above. Upon the expiration or rescission of a reserve balance account created under the bill, any unexpended balance in it must be transferred to the fund or account from which money in the account was originally transferred. If money was transferred from multiple funds or accounts, a pro rata share of the unexpended balance must be transferred to each of them proportionate to the amount originally transferred from that fund or account. (R.C. 5705.132.)

Like reserve balance accounts created under current law, money in a reserve balance account created under the bill is not considered as an unencumbered balance or revenue of the township for purposes of annual budget reviews by the county budget commission. It also is not considered as an unencumbered balance or revenue for purposes of apportioning the county's undivided local government fund and the undivided local government revenue assistance fund. (R.C. 5705.132, 5705.35(A), 5705.36(A)(1)(c), 5747.51(E), and 5747.62(E).)

County commissioners' board meeting minutes presentation

Under current law, immediately upon the opening of each day's session of the board of county commissioners, the record of the proceedings of the previous day's session *must be read* by the board's clerk. Then, if it is correct, the board members must approve and sign the record. (R.C. 305.11.)

The bill permits each county commissioner to be provided with a *written form* of the record in lieu of having the clerk read it, and then, if it is correct, the commissioners would approve and sign the record. (R.C. 305.11.)



Condominium developments

Background

The Platting Law permits local governments to adopt subdivision regulations to provide for the coordination of the streets within a subdivision with existing streets and roads or with public plans adopted for the area, for the proper amount of open spaces for traffic, utilities, access of firefighting apparatus, recreation, light, and air, and for the avoidance of future congestion of population detrimental to the public health, safety, or welfare (R.C. 711.05, 711.09, and 711.10--not in the bill). Municipal corporations and counties may adopt general rules setting standards and requiring the construction of improvements shown on plats, including specifications for the construction of streets, curbs, gutters, sidewalks, street lights, water mains, and storm and sanitary sewers (R.C. 711.101--not in the bill). These regulations apply only to specifically defined *subdivisions*, which by definition include the division of certain parcels of land for transfer of ownership and also the improvement of one or more parcels of land for residential, commercial, or industrial structures involving the division or allocation of land for the opening, widening, or extension of generally any public or private street or involving the division or allocation of land as open spaces for common use by owners, occupants, or leaseholders or as easements for the extension and maintenance of public or private sewer, water, storm drainage, or other similar facilities (R.C. 711.001--not in the bill).

Changes made by the bill

As the construction of a condominium development usually involves improving a parcel of land for residential structures, public or private streets, and open spaces for common use, it would seem to be potentially subject to subdivision regulations. But, the Ohio Condominium Law currently states:

Neither the submission of property to the provisions of . . . [the Ohio Condominium Law], nor the conveyance or transfer of a condominium ownership interest constitutes a subdivision within the meaning of, or is subject to, . . . [the Platting Law].

The bill removes the quoted language from the Condominium Law, and, thus, apparently subjects condominium property to the Platting Law.

HISTORY

ACTION	DATE
Introduced	10-18-05
Reported, H. Local & Municipal Gov't & Urban Revitalization	02-21-06
Passed House (94-0)	03-01-06
Reported, S. State & Local Gov't & Veterans Affairs	---

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