



H.B. 428

126th General Assembly
(As Introduced)

Reps. Strahorn, Brown, Distel, Fende, J. McGregor

BILL SUMMARY

- Authorizes a board of township trustees to require, by resolution, an individual intending to conduct a public dance to have a permit issued by the township.
- Prescribes the process for applying for a public dance permit, including satisfaction of applicant age and other personal qualifications and satisfaction of code compliance, written security plan, bond, and payment of requisite fee qualifications.
- Enacts prohibitions and/or requirements applicable to public dance permit holders or those in control of public dance permit premises.
- Prescribes hearing procedures for the denial or revocation of a public dance permit.
- Enacts miscellaneous provisions related to public dance permits.

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CONTENT AND OPERATION

Township resolution

The bill permits a board of township trustees, by resolution, to require an individual intending to conduct a "public dance" (see below) to have a permit issued by the township in accordance with the bill's procedures (R.C. 503.70(B)). A "public dance" is defined as any dance to which the general public may obtain admission, with or without the payment of a fee or cover charge; an example is any dance conducted or permitted in connection with the operation of a restaurant, hotel, or other place where food or drinks are sold for consumption on the premises. Excluded from that definition are the following (R.C. 503.70(A)(2)):

- A dance held on property owned by the state, the township, or any other political subdivision of the state;
- A dance conducted by an organization that is exempt from federal income taxation under subsection 501(c)(3) of the Internal Revenue Code;
- A dance held on the permit premises of a liquor permit holder if the total dance floor area is less than 100 square feet and the premises is open to the public only during the hours when beer or intoxicating liquor may lawfully be served.

The resolution may provide for a permit to be issued for each dance, on an annual basis for all dances during the year, or on both bases. But, it must require an applicant for a permit to apply to the chief of police of the township police department or, if the township has no police department, to the sheriff and must establish a "public dance permit review board" to conduct the subsequently described (1) denial or revocation of permit hearing or (2) receipt of notice of costs associated with a public dance hearing. That board must consist of township officers and other citizens who represent township planning, building code, parks, recreation, public works, and fire services. The person representing township fire services is required to serve as the board's chair. (R.C. 503.70(B).)

Application process

Filing and review in general

An application for a public dance permit must be filed with the chief of police of the township police department or, if there is no township police department, with the sheriff, on a form provided by that individual. Those applying for a permit must qualify as an "applicant," meet certain other qualifications (see below), and must identify in their application (1) the days and hours of operation of the proposed public dance or dances, (2) the location and owner of the premises where each dance will take place, and (3) the location and owner of any premises to be used for parking or other purposes related to each dance. (R.C. 503.71(A).)

The chief of police or sheriff must review the application for a public dance permit. And, after conducting an investigation to ensure that the qualifications of an "applicant" and the other qualifications discussed below have been met, the chief of police or sheriff must issue the requested permit if all of the qualifications are met and the proper fees have been paid. The review must be conducted and the permit must be awarded or denied within 30 days after the chief of police's or sheriff's receipt of the application. (R.C. 503.71(A).)

Qualifications for a permit

Meaning of "applicant." First, those applying for a public dance permit must satisfy the qualifications of an applicant (R.C. 503.70(A)(1)):

- Be an individual who is at least 21 years of age;
- Not been convicted of a felony within the ten-year period before the filing of the application;
- Not been convicted of a misdemeanor involving moral turpitude within the five-year period before the filing of the application;
- Not had a liquor permit revoked or not renewed within the five-year period before the filing of the application;
- Not had a public dance permit revoked within the one-year period before the filing of the application.

Code compliance, written security plan, bond, and fee qualifications. In addition to satisfying the qualifications of an "applicant," all of the following qualifications must be met in order to receive a public dance permit (R.C. 503.71(B)):



- Code compliance. The premises specified in the application must be found to comply with all applicable building, fire, zoning, and health code requirements.
- Written security plan. The applicant must submit a written plan sufficient (1) to convince the chief of police or sheriff that the applicant will provide security during and immediately after the dance sufficient to prevent or peacefully stop unlawful conduct, such as assaults, thefts, vandalism, disorderly conduct, public intoxication, sale or possession of unlawful substances, trespass, littering, or loitering, and (2) to assure the chief of police or sheriff that the issuance of the permit will not substantially compromise public decency, morals, or good order, or result in the disturbance of the peace and quiet of the surrounding neighborhood.
- Bond. A bond in favor of the township must be provided in the amount of \$1,000 per dance or \$10,000 per year, whichever is less, to cover the costs that may be incurred in responding to any public disturbance or unlawful conduct occurring (1) on the premises where a public dance takes place or (2) on the premises used for parking or other purposes related to the dance, either during or immediately after the dance.
- Application and permit fees. The following non-refundable fees generally must accompany the application or be provided upon approval of the *single* public dance permit or *annual* public dance permit:

| TYPE OF PERMIT | APPLICATION FEE | PERMIT FEE (upon permit's approval) |
|----------------------------|-----------------|--|
| Single public dance permit | \$15 | \$50 |
| Annual public dance permit | \$15 | (a) \$360 per year or \$30 per month for a dance floor of 1,000 square feet or less, (b) \$720 per year or \$60 per month for a dance floor of more than 1,000 but not more than 2,000 square feet, (c) \$1,080 per year or \$90 per month for a dance floor of more than 2,000 but not more than 3,000 square feet, (d) \$1,440 per year or \$120 per |

| TYPE OF PERMIT | APPLICATION FEE | PERMIT FEE (upon permit's approval) |
|----------------|-----------------|---|
| | | month for a dance floor of more than 3,000 but not more than 4,000 square feet, (e) \$1,800 per year or \$150 per month for a dance floor of more than 4,000 but not more than 5,000 square feet, (f) \$2,160 per year or \$180 per month for a dance floor of more than 5,000 but not more than 6,000 square feet, or (g) \$2,520 per year or \$210 per month for a dance floor of more than 6,000 square feet. ¹ |

Permit characteristics

An *annual* public dance permit must expire on December 31 of the year of its issuance. All public dance permits issued under the bill are non-transferable. (R.C. 503.71(C) and (D).)

Conduct of a public dance without a permit

Any person who is required to have a public dance permit pursuant to a resolution adopted under the bill but who fails to obtain the permit before conducting a public dance is guilty of a misdemeanor of the fourth degree (an initial conviction) or a misdemeanor of the first degree (each subsequent conviction) (R.C. 503.99(B)).

Prohibitions for permit holders and those in control of permit premises

The bill enacts prohibitions for persons to whom a public dance permit is issued and for persons in control of public dance permit *premises*. Failure to comply with the prohibitions results in specified criminal penalties.

First, a person issued a public dance permit is prohibited from recklessly allowing a minor who is unaccompanied by a parent or legal guardian to attend or

¹ In computing floor space for fee purposes, only that portion of the permit premises' floor actually used for dancing may be considered (R.C. 503.71(B)). Also, a township must pro-rate the requisite permit fee on a monthly basis when an annual public dance permit is issued after the 30th day of April (R.C. 503.71(C)).

remain at a public dance between the hours of midnight and five a.m. (R.C. 503.72(A)). Second, a person in control of a public dance permit premises must not do any of the following (R.C. 503.72(B)):

(1) Recklessly allow any person, other than an employee or agent of the permit holder, to remain within any building or other structure of the premises or on exterior property of the premises more than 30 minutes after a public dance ends;

(2) Knowingly allow any person under the influence of beer or intoxicating liquor to enter or remain on the premises during or immediately after a public dance;

(3) Knowingly allow any disorderly or riotous conduct or illegal activity of any kind on the premises by employees or agents of the permit holder, customers, or other persons in attendance or present on the premises during or immediately after a public dance.

A violation of any of the prohibitions mentioned above is a misdemeanor of the fourth degree (initial conviction) or a misdemeanor of the first degree (subsequent conviction) (R.C. 503.99(C)).

Requirements for permit holder

The bill imposes upon a person issued a public dance permit several responsibilities, for which the failure to perform results in criminal penalties. The permit holder must (1) post the permit in a conspicuous place on the permit premises and (2) illuminate the permit premises with fully functional lighting during all hours of operation after dusk and before dawn. Those illuminated areas specifically must include the premises' common areas, parking lots, sidewalks, and areas of ingress and egress. (R.C. 503.73.) A failure to satisfy either of these responsibilities is a misdemeanor of the fourth degree (initial conviction) or a misdemeanor of the first degree (subsequent conviction) (R.C. 503.99(C)).

A permit holder also must submit to the applicable official (township chief of police or county sheriff) an amended application form within 30 days of any change in the information contained in the application form submitted for the public dance permit, including any change in name and address (R.C. 503.74(B)). The bill does not impose any criminal penalty for a failure to comply with this requirement, but a revocation of permit hearing (see below) or civil remedy (e.g., an injunction action) might be available for enforcement purposes.

Further, the permit holder has a responsibility to allow access to the permit premises. Specifically, under the bill, the chief of police of the township police

department, or sheriff, whichever official is applicable, and relevant peace officers, fire department inspectors, and building inspectors must have access at all times to any premises for which a public dance permit has been issued. (R.C. 503.74(A).) The bill does not impose any criminal penalty for a failure to comply with this responsibility, but a revocation of permit hearing (see below) or a civil remedy or criminal penalty under other statutory or common law might be available for enforcement purposes.

Closing down a public dance

Under the bill, upon the order of the chief of police of the township police department or sheriff, whichever official is applicable, or the chief of police's or sheriff's authorized designee, a peace officer is permitted to close down a public dance and to require all persons to vacate the premises where it is taking place, when necessary to disperse a riotous crowd or prevent serious bodily harm to persons present on the premises (R.C. 503.76).

Denial or revocation of a public dance permit hearing and receipt of notice of costs associated with a public dance hearing

Revoking a permit in general

The chief of police of the township police department or sheriff, whichever official is applicable, is authorized by the bill to revoke a public dance permit for good cause shown--but only after a public hearing (see below). For these purposes, "good cause" includes, but is not limited to, the following (R.C. 503.75):

- A violation of any federal, state, or local law, rule, or regulation applicable to the business or premises where a public dance takes place;
- Failure of the permit holder to prevent or peacefully stop, on more than one occasion, a public disturbance or unlawful conduct on the premises where a public dance takes place, or on the premises used for parking or other purposes in conjunction with a public dance, by one or more employees or agents of the permit holder, customers, or other persons attending the public dance or present on the premises, during or immediately after the dance.

Conduct of the hearing

As previously mentioned, the "public dance permit review board" created in the township's resolution regulating public dances must conduct a denial of a

public dance permit hearing, a revocation of a public dance permit hearing, or a receipt of notice of costs associated with a public dance hearing (R.C. 503.70(B)).

The following may appeal the applicable determination in the manner described below: (1) any individual who is denied a public dance permit, (2) any individual who has a public dance permit revoked, and (3) any individual whose bond for a public dance permit is charged with costs incurred by the township in responding to any public disturbance or unlawful conduct occurring on the premises where the public dance took place, or on the premises used for parking or other purposes related to the dance, either during or immediately after the dance. Such an appeal would be made by filing a written request for a hearing with the chief of police of the township police department or sheriff, whichever official is applicable, within 15 days after the date of the denial, revocation, or receipt of notice of the costs charged. (R.C. 503.77(A).)

Upon receipt of such a request, the official must set a time and place for a hearing before the public dance permit review board, notify the board of this hearing, and, at least ten calendar days before the date set for the hearing, send written notice of its time and place by regular mail to the appellant. At the hearing, the official and the appellant may present written and oral evidence and witnesses. The bill deems a failure of the appellant or the appellant's representative to appear at the hearing to have the same effect as if no appeal had been filed. (R.C. 503.77(A) and (B).)

An appeal will not automatically operate as a stay of a denial or revocation of a public dance permit or of an action against the appellant's bond. If an appellant desires any such stay pending the outcome of the hearing, the appellant must separately apply in writing for that stay to the public dance permit review board and include in that application the reasons for the requested stay. Then, within five business days after receipt of the request for the stay, the review board must determine if it finds sufficient cause for the stay and issue a decision on the request. (R.C. 503.77(C).)

Finally, within 15 business days after the hearing's conclusion, the review board, in writing, must sustain, modify, or reverse the decision from which the appeal was taken. This review board determination must be considered a *final decision* for purposes of an appeal to the court of common pleas for a judicial review of the administrative determination. (R.C. 503.77(D).)²

² Under R.C. 2506.04, an administrative decision would be reviewable to determine whether it is "unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record."

HISTORY

ACTION

DATE

Introduced

11-17-05

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