



# Ohio Legislative Service Commission

## Bill Analysis

Aida S. Montano

### Sub. H.B. 338

128th General Assembly

(As Reported by H. Civil and Commercial Law)

**Reps.** Book and Uecker, Evans, Domenick, Harwood, Okey, Bolon, Oelslager, Huffman, Mecklenborg, Coley, Stebelton

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## BILL SUMMARY

### Court jurisdiction regarding driver's licenses

- Confers on any court whose jurisdiction is invoked regarding a driver's license matter, other than a matter involving a commercial driver's license, concurrent jurisdiction to adjudicate all issues and appeals regarding that driver's license matter and specifies the procedure for a holder of a driver's license to invoke the court's jurisdiction.
- Provides that if another court has obtained jurisdiction over the driver's license suspension involving the same driver's license holder, that jurisdiction may not be divested by an action filed under the bill unless that court transfers its jurisdiction.
- Grants the court whose jurisdiction is invoked discretionary authority to issue a stay of any suspension pending resolution of the matters before the court and to order the Bureau of Motor Vehicles to renew the holder's driver's license pending resolution of the matters or in its final judgment if the license is not more than six months expired prior to the date of the renewal application.
- Generally provides that if jurisdiction is invoked in a court of common pleas or county court, the county prosecuting attorney must represent the Registrar in the case, and that if jurisdiction is invoked in a municipal court, the Registrar generally must be represented by the city director of law, village solicitor, or similar chief legal officer.
- Declares that the intent of the provisions in the bill is described in the preceding dot point is to allow all issues concerning driver's licenses to be litigated in a single forum, not to eliminate any forum venue in existence on the bill's effective date.

## **Putnam County Municipal Court**

- Effective January 1, 2011, abolishes the Putnam County County Court and its two part-time judgeships and creates in Ottawa the Putnam County Municipal Court with one full-time judge and with jurisdiction within Putnam County.
- Specifies that the judge of the Putnam County Municipal Court will be elected in 2011 and nominated only by petition and provides that the part-time judge of the Putnam County County Court, whose term commenced on January 1, 2007, serves as the full-time judge of the Putnam County Municipal Court until December 31, 2011.
- Provides that the Clerk of Courts of Putnam County will be the Clerk of the Putnam County Municipal Court.
- Provides that in addition to the police officers of municipal corporations and police constables of townships within the territory of the Putnam County Municipal Court who serve as ex officio deputy bailiffs, deputy sheriffs of Putnam County also will serve as deputy bailiffs of the Putnam County Municipal Court.
- Requires the Putnam County Prosecuting Attorney to prosecute in the Putnam County Municipal Court all violations of state law arising in Putnam County and authorizes the Prosecuting Attorney to enter into an agreement with any municipal corporation in Putnam County pursuant to which the Prosecuting Attorney prosecutes all cases brought before the Putnam County Municipal Court for violations of the ordinances of the municipal corporation or for criminal offenses other than violations of state law occurring within the municipal corporation.
- Includes transition provisions upon the abolition of the Putnam County County Court and the establishment of the Putnam County Municipal Court.

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## **CONTENT AND OPERATION**

### **Court jurisdiction to adjudicate all issues and appeals involving driver's license matter**

The bill provides that, notwithstanding any provision of the Revised Code to the contrary, any court whose jurisdiction has been invoked under R.C. Chapter 4510. (Driver's License Suspension, Cancellation, and Revocation Law) or any other chapter of the Revised Code regarding a driver's license matter, other than a matter involving a commercial driver's license, is conferred concurrent jurisdiction to adjudicate all issues and appeals regarding that driver's license matter, including issues of validity, suspension, and, with regard to any suspension imposed by the Bureau of Motor

Vehicles, driving privileges. Nothing in the bill's provisions may be construed as applying to any issue involving a commercial driver's license, except that a court may adjudicate an issue that does not relate to a commercial driver's license but involves a holder of a commercial driver's license so long as the court does not alter the status of that holder's commercial driver's license. In the event that another court has obtained jurisdiction over one or more driver's license suspensions imposed by the Bureau involving the same driver's license holder, that jurisdiction may not be divested by an action filed under the bill's provisions unless that court transfers its jurisdiction over that holder's driver's license issue by issuance of a court order.

The court's jurisdiction over a particular driver's license issue may be invoked by a motion, appeal, or petition filed by a holder of a driver's license. Any such motion, appeal, or petition must state the issue with respect to which the court's jurisdiction is invoked. When a court's jurisdiction over a driver's license issue is properly invoked, that court must adjudicate all issues and appeals brought before the court regarding that issue, unless the motion, appeal, or petition is withdrawn. (R.C. 4510.73(B) and (C).)

### **Court's discretionary authority**

The bill provides that any court whose jurisdiction is invoked under its provisions has the discretionary authority to issue a stay of any suspension pending resolution of the matters before the court. This provision does not alter or eliminate any automatic stay provision provided for elsewhere in the Revised Code.

Any court whose jurisdiction is invoked under the bill, in its discretion, may order the Bureau to renew the holder's driver's license pending resolution of the matters before the court, provided that the license is not more than six months expired prior to the date of application for renewal. The court, in its discretion, also may order the Bureau to renew the holder's driver's license in its final judgment, provided that the license is not more than six months expired prior to the date of application for renewal. (R.C. 4510.73(D) and (E).)

### **Representation of BMV Registrar**

Under the bill, if jurisdiction is invoked in a court of common pleas or county court, the prosecuting attorney of the county in which the case is pending must represent the Registrar in the proceedings; provided, that if the driver's license holder resides in a municipal corporation that lies within the jurisdiction of a county court, the city director of law, village solicitor, or similar chief legal officer of the municipal corporation must represent the Registrar in the proceedings. In a municipal court, the Registrar must be represented in the resulting proceedings as provided in R.C. 1901.34

(see **COMMENT 1**). At the election of the Registrar, the Attorney General may enter the proceedings at any time and henceforth represent the Registrar in the case. (R.C. 4510.73(F).)

### **Appeal of judgment**

The bill provides that either party may appeal the final judgment of the court. Any such appeal must be taken as provided in R.C. 1901.30 or 1907.30 (see **COMMENT 2**) and must conform with R.C. Chapter 2505. (Appeals Law) (R.C. 4510.73(G)).

### **Intent clause**

The bill provides that it is the intent of R.C. 4510.73 to allow all issues concerning driver's licenses to be litigated in a single forum, not to eliminate any forum venue in existence on the effective date of the section (R.C. 4510.73(A)).

### **Putnam County Municipal Court**

Under the existing County Courts Law, the Putnam County County Court has two part-time judges (R.C. 1907.11(A)).

The bill abolishes the Putnam County County Court and creates the Putnam County Municipal Court to be established in Ottawa effective January 1, 2011. In the Putnam County Municipal Court, one full-time judge will be elected in 2011. Beginning January 1, 2011, the part-time judge of the Putnam County County Court that existed prior to that date whose term commenced on January 1, 2007, will serve as the full-time judge of the Putnam County Municipal Court until December 31, 2011. (R.C. 1907.11(A), 1901.01(A), 1901.02(A)(28), and 1901.08.)

The Putnam County Municipal Court has jurisdiction within Putnam County and is within the definition of "county-operated municipal court." In the Putnam County Municipal Court, the judge will be nominated only by petition, which must be signed by at least 50 electors of the territory of the court and conform to the provisions of law pertaining to the nomination of municipal court judges. (R.C. 1901.02(B), 1901.03(F), and 1901.07(C)(6).)

### **Clerk of court and assistant clerks**

The Clerk of Courts of Putnam County will be the Clerk of the Putnam County Municipal Court and may appoint a chief deputy clerk for each branch office that is established pursuant to R.C. 1901.311, and assistant clerks as the judge of the Court determines are necessary, all of whom will receive the compensation that the legislative authority prescribes. The Clerk of Courts of Putnam County, acting as the Clerk of the Putnam County Municipal Court and assuming the duties of that office, receives

compensation payable from the Putnam County Treasury in semimonthly installments at  $\frac{1}{4}$  the rate that is prescribed for the clerks of courts of common pleas as determined in accordance with the population of the county and the rates set forth in R.C. 325.08 (salary schedules for clerks of courts of common pleas) and 325.18 (salary increases for county elected officials). (R.C. 1901.31(A)(2)(c).) The bill provides that the current law on group health care coverage for clerks and deputy clerks does not apply to the Clerk of the Putnam County Municipal Court if health care coverage is provided to the Clerk by virtue of the Clerk's employment as the Clerk of the Court of Common Pleas of Putnam County (R.C. 1901.312(D)).

### **Bailiff and deputy bailiffs**

Generally, a municipal court appoints a bailiff who receives the annual compensation that the court prescribes payable in either biweekly or semimonthly installments as determined by the payroll administrator. This provision in current law will apply to the Putnam County Municipal Court. (R.C. 1901.32(A)(1).) Under current law, every police officer of any municipal corporation and police constable of a township within the territory of the municipal court is ex officio a deputy bailiff of the court in and for the municipal corporation or township in which commissioned as a police officer or police constable and must perform any duties in respect to cases within the officer's or constable's jurisdiction that are required by a judge of the court, or by the clerk or a bailiff or deputy bailiff of the court, without additional compensation (R.C. 1901.32(A)(5)). The bill provides that in Putnam County, in addition to the persons who are ex officio deputy bailiffs under the preceding provision, every deputy sheriff of Putnam County is ex officio a deputy bailiff of the Putnam County Municipal Court and must perform without additional compensation any duties in respect to cases within the deputy sheriff's jurisdiction that are required by a judge of the Court, by the Clerk of the Court, or by a bailiff or deputy bailiff of the Court (R.C. 1901.32(A)(6)).

### **Criminal prosecutions**

Under the bill, the Putnam County Prosecuting Attorney must prosecute in the Putnam County Municipal Court all violations of state law arising in Putnam County. The Prosecuting Attorney of Putnam County may enter into an agreement with any municipal corporation in the County pursuant to which the Prosecuting Attorney prosecutes all cases brought before the Putnam County Municipal Court for violations of the ordinances of the municipal corporation or for criminal offenses other than violations of state law occurring within the municipal corporation. For prosecuting these cases, the Prosecuting Attorney and the municipal corporation may agree upon a fee to be paid by the municipal corporation, which fee must be paid into the Putnam County Treasury, to be used to cover expenses of the Office of the Prosecuting Attorney. (R.C. 1901.34(B) and (D).)

## **Transition provisions and effective date**

The bill provides that effective January 1, 2011, the Putnam County County Court is abolished. All causes, executions, and other proceedings pending in the Putnam County County Court at the close of business on December 31, 2010, must be transferred to and proceed in the Putnam County Municipal Court on January 1, 2011, as if originally instituted in the Putnam County Municipal Court. Parties to those causes, judgments, executions, and proceedings may make any amendments to their pleadings that are required to conform them to the rules of the Putnam County Municipal Court. The Clerk of the Putnam County County Court or other custodian must transfer to the Putnam County Municipal Court all pleadings, orders, entries, dockets, bonds, papers, records, books, exhibits, files, moneys, property, and persons that belong to, are in the possession of, or are subject to the jurisdiction of the Putnam County County Court, or any officer of that Court, at the close of business on December 31, 2010, and that pertain to those causes, judgments, executions, and proceedings. All employees of the Putnam County County Court must be transferred to and become employees of the Putnam County Municipal Court on January 1, 2011. Effective January 1, 2011, the part-time judgeship in the Putnam County County Court is abolished. (Section 3.)

The bill provides that the Revised Code sections amended by the bill and pertaining to the Putnam County Municipal Court as described above take effect January 1, 2011 (Section 4).

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## **COMMENT**

1. R.C. 1901.34(A), not in the bill, provides that, except as described in the following two paragraphs, the village solicitor, city director of law, or similar chief legal officer for each municipal corporation within the territory of a municipal court must prosecute all cases brought before the municipal court for criminal offenses occurring within the municipal corporation for which that person is the solicitor, director of law, or similar chief legal officer. Except as described in the following paragraph, the village solicitor, city director of law, or similar chief legal officer of the municipal corporation in which a municipal court is located must prosecute all criminal cases brought before the court arising in the unincorporated areas within the territory of the municipal court.

The Auglaize County, Brown County, Clermont County, Hocking County, Holmes County, Jackson County, Morrow County, Ottawa County, and Portage County prosecuting attorneys must prosecute in municipal court all violations of state law arising in their respective counties. The Carroll County, Crawford County, Hamilton County, Madison County, and Wayne County prosecuting attorneys and beginning January 1, 2008, the Erie County prosecuting attorney must prosecute all violations of

state law arising within the unincorporated areas of their respective counties. The Columbiana County prosecuting attorney must prosecute in the Columbiana County Municipal Court all violations of state law arising in the county, except for violations arising in the municipal corporation of East Liverpool, Liverpool Township, or St. Clair Township. The Darke County prosecuting attorney must prosecute in the Darke County Municipal Court all violations of state law arising in the county, except for violations of state law arising in the municipal corporation of Greenville and violations of state law arising in the village of Versailles. The Greene County Board of County Commissioners may provide for the prosecution of all violations of state law arising within the territorial jurisdiction of any municipal court located in Greene County.

The prosecuting attorney of any county, other than Auglaize, Brown, Clermont, Hocking, Holmes, Jackson, Morrow, Ottawa, or Portage County, may enter into an agreement with any municipal corporation in the county in which the prosecuting attorney serves pursuant to which the prosecuting attorney prosecutes all criminal cases brought before the municipal court that has territorial jurisdiction over that municipal corporation for criminal offenses occurring within the municipal corporation. The prosecuting attorney of Auglaize, Brown, Clermont, Hocking, Holmes, Jackson, Morrow, Ottawa, or Portage County may enter into an agreement with any municipal corporation in the county in which the prosecuting attorney serves pursuant to which the respective prosecuting attorney prosecutes all cases brought before the Auglaize County, Brown County, Clermont County, Hocking County, Holmes County, Jackson County, Morrow County, Ottawa County, or Portage County Municipal Court for violations of the ordinances of the municipal corporation or for criminal offenses other than violations of state law occurring within the municipal corporation. (R.C. 1901.34(B) and (D), not in the bill.)

2. R.C. 1901.30, not in the bill, provides that appeals from the municipal court may be taken to the court of appeals in accordance with the Rules of Appellate Procedure and any relevant sections of the Revised Code, including, but not limited to, R.C. Chapter 2505. to the extent it is not in conflict with those rules. When an appeal is taken from the municipal court, the clerk of the municipal court must transmit, pursuant to the Rules of Appellate Procedure, the record on appeal to the clerk of the appellate court to be filed. In all appeal proceedings relating to judgments or orders of a municipal court, the reviewing courts must take judicial notice of all rules relating to pleadings, practice, or procedure of the municipal court.

R.C. 1907.30, not in the bill, provides that appeals from the final judgments of a county court may be taken to the court of appeals for the county in which the judgment was rendered.

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## HISTORY

### ACTION

### DATE

Introduced  
Reported, H. Civil & Commercial Law

10-28-09  
03-03-10

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