



# Ohio Legislative Service Commission

## Bill Analysis

Wendy H. Gridley

### **S.B. 128**

128th General Assembly  
(As Introduced)

**Sens.** Strahorn, Turner, Smith, Wagoner

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### **BILL SUMMARY**

- Authorizes a board of township trustees to require, by resolution, an individual intending to conduct a public dance to obtain a permit from 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 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 authorizes a board of township trustees to require, by resolution, an individual intending to conduct a "public dance" to obtain a permit from the township in accordance with the bill's procedures (R.C. 503.71). A "public dance" is any dance to which the general public may obtain admission, with the payment of a fee or cover charge, including, but not limited to, 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(B)):

- 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 (i.e., a charitable organization);
- 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 are open to the public only during the hours when beer or intoxicating liquor may lawfully be served.

The resolution must specify whether a permit must be obtained for each dance or on an annual basis for all dances during the year, or whether both options are offered. The resolution must require an applicant for a permit to apply to the board of township trustees and must establish a "public dance permit review board." The board must consist of a representative from the board of township trustees; a representative from the township or county zoning department, whichever is applicable; a representative from the township fire department or the department with which the township contracts to provide fire service; a representative from the county building department; a representative from the county board of health; and two township residents. The person representing the board of township trustees serves as the public dance permit review board's chair. (R.C. 503.71.)

## **Application process**

### **Filing and review in general**

An application for a public dance permit must be filed with the board of township trustees on a form provided by the board. An individual applying for a permit must qualify as an "applicant," must meet certain other qualifications (see below), and must identify in the application the days and hours of operation of the proposed public dance or dances, the location and owner of the premises where each dance will take place, and the location and owner of any premises to be used for parking or other purposes related to each dance. (R.C. 503.72(A).)

The board must review the application for a public dance permit and can, when appropriate, delegate the review to a township employee or to the chief of police of the township police department or, if there is not a township police department, to the sheriff. After conducting an investigation to ensure that the qualifications of an "applicant" and the other qualifications discussed below have been met, the board 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 board receives the application. (R.C. 503.72(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)):

- 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 also must be met in order to receive a public dance permit (R.C. 503.72(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 board that the applicant will provide security during and immediately after the dance sufficient to prevent or peacefully stop unlawful conduct, including, but not limited to, assaults, thefts, vandalism, disorderly conduct, public intoxication, sale or possession of unlawful substances, trespass, littering, or loitering, and (2) to assure the board 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 nonrefundable 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	\$1,000

The fee for an annual public dance permit is prorated on a monthly basis if the permit is issued after April 30 (R.C. 503.72(C)).

### 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. 503.72(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 on an initial conviction or a misdemeanor of the first degree on each subsequent conviction (R.C. 503.99(A)).

### Prohibitions for permit holders and those in control of permit premises

The bill applies prohibitions to a person to whom a public dance permit is issued and to a person in control of public dance permit premises. Failure to comply with the prohibitions results in specified criminal penalties. First, a person who has been issued a public dance permit is prohibited from recklessly allowing a minor who is unaccompanied by a parent or legal guardian to attend or remain at a public dance between the hours of midnight and five a.m. (R.C. 503.73(A)). Second, a person in

control of a public dance permit premises must not do any of the following (R.C. 503.73(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 on an initial conviction or a misdemeanor of the first degree on a subsequent conviction (R.C. 503.99(B)).

### **Requirements for permit holder**

The bill imposes upon a person who has been issued a public dance permit several responsibilities; failure to perform the responsibilities 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. The illuminated areas specifically must include the premises' common areas, parking lots, sidewalks, and areas of ingress and egress. (R.C. 503.74.) A failure to satisfy either of these responsibilities is a misdemeanor of the fourth degree on an initial conviction or a misdemeanor of the first degree on each subsequent conviction (R.C. 503.99(B)).

A permit holder also must submit to the board of township trustees an amended application form within 30 days after any change in the information contained in the original application, including any change in name or address (R.C. 503.75(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) presumably is 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 other appropriate policing authority, as the case may be, and relevant peace officers, fire department inspectors, and building inspectors are entitled to have access at all times to any premises for which a public dance permit has been issued.

(R.C. 503.75(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 presumably is 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 other appropriate policing authority, as the case may be, or the chief of police's or policing authority'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 to prevent serious bodily harm to persons present on the premises (R.C. 503.77).

### **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 board is authorized to revoke a public dance permit for good cause shown--but only after a public hearing (see below). For this purpose, "good cause" includes, but is not limited to, the following (R.C. 503.76):

- A violation of any federal, state, or local law, rule, or regulation applicable to the business or premises where a public dance takes place; and
- 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**

Any individual who is denied a public dance permit, any individual who has a public dance permit revoked, and 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, is entitled to appeal the denial, revocation, or charge. The appeal is made by filing a written request for a hearing with the board of township

trustees within 15 days after the date of the denial, revocation, or receipt of notice of the costs charged. (R.C. 503.78(A).)

Upon receipt of a request, the board must set a time and place for a hearing before the public dance permit review board, notify the public dance review 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 board of township trustees 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 an appeal had not been filed. (R.C. 503.78(A) and (B).)

An appeal does 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. Within five business days after receiving a request for a stay, the review board must determine if it finds sufficient cause for the stay and issue a decision on the request. (R.C. 503.78(C).)

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 is to be considered a final decision for purposes of an appeal to the court of common pleas for a judicial review of the review board's determination. (R.C. 503.78(D).)<sup>1</sup>

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## HISTORY

ACTION	DATE
Introduced	05-21-09

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<sup>1</sup> Under R.C. 2506.04, not in the bill, a decision of the review board 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."