



Ohio Legislative Service Commission

Bill Analysis

Wendy H. Gridley

S.B. 253

128th General Assembly
(As Introduced)

Sen. Kearney

BILL SUMMARY

- Allows cities and villages to retain their status as a city or village for a period of up to two years, despite a change in population that otherwise determines that status under the Ohio Constitution.

CONTENT AND OPERATION

Constitutional classification of municipal corporations on the basis of population

Section 1 of Article XVIII of the Ohio Constitution classifies municipal corporations on the basis of population. All municipal corporations having a population of 5,000 or over are cities; all others are villages.¹ The method of transition from one class to the other must be regulated by law.

Statutory classification

R.C. 703.01 generally mirrors the classification based on population established by the Constitution. However, it provides that college or university student populations and detention facility populations are not to be counted if the residential addresses of those persons are not within the municipal corporation when the students are not in attendance at the institution or when the persons are not detained in the detention facility.

¹ Because the Constitution has classified municipal corporations on the basis of population, there can be no further classification by the legislature than what is set forth in section 1 of Article XVIII of the Ohio Constitution. *Elyria v. Vandemark*, 100 Ohio St. 365 (1919).

Current law provides that when the result of any federal census or an enumeration under state law² is officially made known to the Secretary of State, the Secretary of State issues a proclamation, stating the names of all municipal corporations having a population of 5,000 or more (cities), and the names of all municipal corporations having a population of less than 5,000 (villages), together with the population of all such municipal corporations. A copy of the proclamation is sent to each mayor for transmittal to the legislative authority, and is made a part of the records of the municipal corporation. Thirty days after the issuance of the proclamation, each municipal corporation is a city or a village, as the case may be. (R.C. 703.06.)

Current law also provides that villages, which at the most recent general election had more than 5,000 resident electors registered with the board of elections of the county in which the village is situated, or, when more than 5,000 resident electors voted, become cities. In such a case, the board of elections must certify to the Secretary of State the number of resident electors registered or voting within the village and the Secretary of State then issues a proclamation stating that there are more than 5,000 registered electors. The village becomes a city 30 days after a copy of the proclamation is sent to the mayor of the village and transmitted to the legislative authority of the village. (R.C. 703.011.)

Procedure to petition for transition to new status

The bill provides a procedure that will allow municipal corporations to create an exception to the statutory classification in R.C. 703.01 by adopting a resolution to petition the Secretary of State for an extension of up to two years to transition³ to the new status of city or village despite a change in population.

Under the bill, the legislative authority of a municipal corporation anticipating a status change on the basis of a federal census or an enumeration under state law (see footnote 2) can adopt a resolution to petition the Secretary of State for a grant of an extension to transition to the new status of city or village, thereby retaining the previous

² When the preliminary census report of a city indicates the city will return to the status of a village, the legislative authority may by resolution direct the city auditor to make an enumeration (census) of the population to be taken and reported back to the legislative authority and the Secretary of State. (R.C. 703.02 to 703.05.)

³ The Constitution provides that the method of "transition" from one class to the other is to be regulated by law; it is unknown whether a court would find an extension of up to two years (allowing retention of previous status) to be a transition. See *State ex rel. Brubaker v. Brown*, 163 Ohio St. 220 (1915), which holds that ambiguities in statutes regulating transition must be resolved in favor of expediting rather than delaying a transition so as not to defeat the expressed primary intent [of the Constitution] that the population classifies the status of a municipal corporation as either a city or village.

status despite a change in population, until the termination of the extension period or until the completion of an enumeration as authorized by the bill. The petition must be presented to the Secretary of State before the expiration of the 30-day period following the Secretary of State's issuance of the proclamation at which time the status change normally occurs. The petition must specify the amount of time requested for the extension, up to, but not exceeding, a period of two years. The Secretary of State is required to issue a proclamation within 30 days after receipt of the petition granting an extension to transition to the new status, for the amount of time requested, to the petitioning municipal corporation. Upon issuance of the proclamation granting the extension, the municipal corporation retains its previous status as either a city or a village for the duration of the extension period or until the completion of an enumeration authorized by the bill. The extension begins on the date of the adoption of the resolution to petition for an extension and ends on the date specified in the proclamation granting the extension, but in no case can the extension exceed a period of two years. (R.C. 703.01(A)(1) and (2).)

Enumeration under the bill

The bill provides that once during an extension period, a city may by resolution direct the city auditor to make an enumeration of the population of the city to be taken and report the results to the legislative authority and to the Secretary of State. The requirements of current law concerning the appointment and compensation of enumerators and the return of books and certification of accuracy (see **COMMENT**) apply to the enumeration, except that the enumeration must be completed within 30 days instead of ten days after the appointment of enumerators. When the results of an enumeration under the bill are officially made known to the Secretary of State, the Secretary of State must issue a proclamation, stating whether the city has a population of 5,000 or more and is therefore a city, or whether it has a population of less than 5,000 and is therefore a village. Upon the issuance of the proclamation, the extension ceases and the city continues as a city or 30 days thereafter becomes a village. This status continues until a change in population is determined by the next federal decennial census or, if either of the following occurs before that time, until either of the following occurs: (1) a proclamation of change of status from village to city is issued resulting from action of the board of elections under current law explained above (R.C. 703.011), or (2) a city is reduced to a village in the manner provided by current law because of the detachment of territory and surrender of corporate rights (R.C. 703.09 to 703.13--not in the bill). (R.C. 703.06(B).)

Presumed effect of the bill

Presumably, the effect of the bill, although not expressly stated, is to retain the status of city or village, despite a change in population differing from the constitutional

and statutory classifications, for purposes of any statutes or constitutional provisions⁴ that apply expressly to a "city" or to a "village" but not to both (i.e., statutes that use the term "municipal corporations" or "municipalities").

One statute that currently does not apply to villages, R.C. 4117.01 in the Public Employees Collective Bargaining Law, would apparently apply to a "village" with a population over 5,000 that is in a transition period under the bill (although it would not apply to a village under the current classification and population of less than 5,000) because of the terminology used in that section of law. The definition of "public employer" under R.C. 4117.01(B) includes "any municipal corporation with a population of at least five thousand according to the most recent federal decennial census." Because the definition does not use "city" or a cross reference to R.C. 703.01 and is tied instead to a population of 5,000 based on the most recent federal decennial census, it appears that this section of law will continue to operate to exclude any territory having a population of less than 5,000 as long as it is based on the most recent federal decennial census. So a "village" in transition under the bill with a population of more than 5,000 according to the most recent federal decennial census would meet the definition of a public employer under the Public Employees Collective Bargaining Law. Likewise, a "city" in transition under the bill with a population of less than 5,000 according to the most recent federal decennial census would not meet the definition of a "public employer" under the Public Employees Collective Bargaining Law and would not be subject to the Public Employees Collective Bargaining Law unless that law were to be amended to use the term "city" in its definition or a cross reference to R.C. 703.01.

The bill also appears to presume the continuity in office of officials during the transition period. See R.C. 703.07--not in the bill.⁵ So, for example, village officers of a village retaining that status under the bill despite having the population to otherwise classify as a city, presumably would continue in office until the post-transition regular municipal election; similarly, city officers retaining that status under the bill despite a reduction in population to that of a village presumably would continue in office until the post-transition regular municipal election.

⁴ See, for example, Section 10, Art. XV, requiring civil service in cities.

⁵ R.C. 703.07 provides that "[o]fficers of a village advanced to a city, or of a city reduced to a village, shall continue in office until succeeded by the proper officers of the new municipal corporation at the regular municipal election, and the ordinances thereof not inconsistent with the laws relating to the new municipal corporation shall continue in force until changed or repealed."

COMMENT

R.C. 703.04 requires the city auditor to appoint five persons as enumerators within five days from the time the city auditor is directed to cause an enumeration to be taken. The enumerators may be paid an amount necessary to assure competent personnel, but not more than \$10 per day. Each person appointed as an enumerator must take an oath or affirmation to make the enumeration accurately and truly to the best of the enumerator's skill and ability. Each enumerator must be provided with a book in which the enumerator is to record correctly the name of each resident of the city with the name of the street and number of the house in which the resident lives.

R.C. 703.05 requires completion of the enumeration within ten days (the bill allows 30 days for completion) and return of the books to the city auditor along with a certification of the affidavit of accuracy to the best of the enumerator's knowledge and belief.

HISTORY

| ACTION | DATE |
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| Introduced | 05-04-10 |

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