



# Ohio Legislative Service Commission

## Bill Analysis

Wendy H. Gridley

### Sub. H.B. 509\*

129th General Assembly

(As Reported by S. State & Local Gov't & Veterans Affairs)

**Reps.** Blair, Schuring, Amstutz, Anielski, Antonio, Baker, Beck, Blessing, Boose, Brenner, Combs, Conditt, Derickson, Garland, Grossman, Hackett, C. Hagan, Hill, Mallory, McClain, Newbold, Pelanda, Ruhl, Sears, Thompson, Uecker, Young, Batchelder

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## BILL SUMMARY

### Subdivision spending

- Increases the competitive bidding thresholds for villages, city directors of public service or of public safety, specified boards, and sanitary districts.
- Raises the county and county contracting authority competitive bidding threshold from \$25,000 to \$50,000.
- Increases from \$10,000 to \$50,000 the county competitive bidding threshold when renewing a lease for electronic data processing equipment, services, or systems, or a radio communications system.
- Makes the submission by a county or county contracting authority of a bond, certified check, cashier's check, or money order with bids for certain contracts permissive for bids in excess of \$50,000.
- Expands for a county or county contracting authority the threshold for exempting a bid from certain bid guaranty requirements, from \$25,000 or less, to \$100,000 or less.
- Increases to \$50,000 the competitive bidding thresholds for township park districts and metropolitan park districts.

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\* 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, from \$25,000 to \$50,000, the competitive bidding threshold for the purchase of supplies or materials, or for labor, for a regional water and sewer district.
- Revises the competitive bidding procedure for regional airport authorities, and increases the threshold at which competitive bidding is required, from \$15,000 to \$50,000.
- Exempts the board of trustees of a regional airport authority from all competitive bidding requirements for specific types of purchase contracts, or under certain emergency circumstances.
- Requires the effective period of a county quarterly spending plan for a county office to expire the earlier of two fiscal years or until the elected official administering the office is no longer the administrator of the office.

### **Local boards of health**

- Clarifies that local boards of health may contract with each other for the provision of either some or all public health services, rather than only for all services.
- Specifies that the effectiveness of a contract in which one local board of health agrees to provide some, but not all, public health services on behalf of another local board of health is not dependent on a determination by the Director of Health that the board is organized and equipped to provide services or approval by certain local government officials.
- Specifies that local boards of health are bodies corporate and politic and have all rights and responsibilities inherent with this designation.
- Authorizes the board of county commissioners, at any time, to provide office space and utilities for the board of health free of charge.

### **General health districts**

- Exempts a general health district from certain requirements governing the submission of an appropriation measure and revenue estimate for a fiscal year if the district will not receive an appropriation for that fiscal year from the municipal corporations or townships that comprise the district.
- Provides that, for the purpose of calculating the amount to be appropriated to a general health district, the district's revenue for an upcoming year includes any money in the District Health Fund carried forward from the previous appropriation,

"after considering and allowing for funds needed to fund ongoing operations in the ensuing fiscal year."

### **Political subdivision officers, employees, and departments**

- Specifies that the joint county department of job and family services formed under a pilot project is a public office, and therefore is subject to audit by the Auditor of State.
- Eliminates provisions prohibiting boards of county commissioners and boards of township trustees from contracting for or purchasing group health insurance, coverage, or benefits once the Department of Administrative Services implements for counties and townships best practices health care insurance plans that include or address those benefits.
- Authorizes a county auditor, if authorized by a resolution of the board of county commissioners, to serve as the fiscal officer of any department, office, or agency of the county, but not without the written agreement of a county elected officer or agency governed by an appointed board or commission.
- Authorizes individual or joint self-insurance program contracts awarded to a nonprofit corporation or a regional council of governments also to cover the employees of other nonprofit corporations that employ 50 or fewer employees and that have been organized for the primary purpose of representing the interests of political subdivisions.
- Authorizes a member of a board of township trustees to be elected or appointed to serve on the governing body of any district that is organized or created by the board of township trustees.
- Authorizes the board of trustees of a regional water and sewer district to include one or more elected officials from any political subdivision that is signatory to the district's petition for organization.
- Includes a regional water and sewer district among the entities authorized to hold and acquire conservation easements.
- Eliminates the requirement that county commissioners adopt resolutions to sell personal property by Internet auction.
- Eliminates the requirement that county commissioners annually adopt resolutions to exempt county purchases of \$1,000 or less from a specific certificate attachment requirement.

- Increases from age 30 to age 40 the maximum age an individual may receive an original appointment as a firefighter in a fire department that is subject to the state civil service laws.
- Requires county auditors to report to the Auditor of State, by November 1, 2012, their formula for allocating the county undivided local government fund and the dollar amount distributed in 2012.

### **Miscellaneous provisions**

- Requires a county, township, municipal corporation, or school district under a fiscal watch or fiscal emergency to identify in its financial plan the actions to be taken to enter into shared services agreements with other political subdivisions, if they are so authorized by statute.
- Requires notification be sent to the Office of Budget and Management by the Financial Planning and Supervision Commission in order to withhold state funding when a county, township, or municipal corporation under fiscal watch fails to submit a financial plan as required under current law or fails to substantially comply with a submitted plan.
- Requires the arresting authorities or a court, upon the request of the prosecutor or victim, to cause a defendant charged with specified sexual offenses to undergo an existing procedure testing for sexually transmitted diseases within 48 hours after the date on which the complaint, information, or indictment in the case is filed against or served upon the accused.
- Specifies the source of data that identifies the number of indigent residents in a county and that is to be used for allocating financial assistance to legal aid societies from the Ohio Legal Aid Fund.
- Exempts specified entities (a county or independent agricultural society or the Ohio Expositions Commission) that operate a fair and hold a license under the Vehicle Parks Law from complying with the license requirements during the time period when the preparation for, operation of, and dismantling of the fair occurs.
- Permits the legislative body of any county, district, district activity, or institution to engage in cost allocation for Workers' Compensation Program payments to the Public Insurance Fund that are required by a rating plan.
- Permits cost allocation of direct administrative costs and certain indirect costs incurred under the Workers' Compensation Program, but not for county boards of

developmental disabilities, boards of mental health services, or boards of alcohol, drug addiction, and mental health services.

- Requires that when a village is dissolved, all resolutions of the township in which the village was located apply to the territory that was once the village.
- Specifies that the legal action required to dissolve a municipal corporation or township under fiscal emergency and meeting certain conditions must be filed in the court of common pleas and the court must hold a hearing within 90 days after the date the Attorney General files the action; specifies the entities to receive notice of the hearing.
- Specifies that, for property valuation and other property tax complaints filed by mail or certified mail, county auditors must treat the date of the United States postmark as the date of filing.
- Adds a signature requirement for the written application (complaint) to the county board of revision that a person must submit when seeking a decrease in property valuation.
- Authorizes a property owner to refile a complaint with the Board of Revision within the same interim period if the owner voluntarily withdrew the complaint before the complaint was heard by the board.
- Modifies the distribution of the money in the Indigent Defense Support Fund by reducing to at least 88% the amount of the Fund that must be used to reimburse counties for providing counsel for indigent defendants.
- Increases to not more than 12% the amount of the Fund that may be used for other specified, existing purposes and for providing training, developing and implementing electronic forms, or establishing and maintaining an information technology system.
- Allows the State Public Defender to use some of the 88% amount in the Fund for the purpose of operating its system under which the State Public Defender provides legal representation to indigent persons by contract with a county public defender commission, joint county public defender commission, or board of county commissioners.
- Creates the Statewide Emergency Services Internet Protocol Network Steering Committee to advise the state on the implementation, operation, and maintenance of a statewide emergency services internet protocol network to support state and local government next-generation 9-1-1 and the dispatch of emergency service providers.

- Repeals an obsolete law regarding fiscal records to be incorporated by a township fiscal officer into the board of township trustee's minutes.
- Changes the current deadline (the 70th day before the general election) for certifying presidential and vice-presidential names on the official ballots for the 2012 general election; declares an emergency because Ohio's deadline for certification occurs before the date of the national conventions of the major political parties.
- Requires the major political parties to certify to the Secretary of State the names of candidates for president and vice-president nominated at their national conventions as soon as possible, but no later than 4 p.m. on the 60th day before the 2012 general election.

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## CONTENT AND OPERATION

### SUBDIVISION SPENDING

#### Competitive bidding thresholds

##### For villages, boards of park commissioners, and sanitary districts

The bill increases the competitive bidding thresholds for statutory villages and city directors of public service or of public safety from \$25,000 to \$50,000.<sup>1</sup> The bill also increases from \$10,000 to \$50,000, the competitive bidding threshold for a board of hospital trustees of a municipal hospital having control of donated property or funds.<sup>2</sup> Similarly, the bill increases from \$10,000 to \$50,000, the competitive bidding threshold for a joint board having management control over (1) a workhouse erected for the joint use of a city and a county or (2) real estate held for the purpose of erecting and maintaining a workhouse thereon.<sup>3</sup> Lastly, the bill increases the bidding thresholds for sanitary districts, from \$10,000 to \$50,000.<sup>4</sup> Costs or contracts in amounts that meet or are below the thresholds do not require competitive bidding; costs or contracts in

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<sup>1</sup> R.C. 731.141, 735.05, and 737.03.

<sup>2</sup> R.C. 749.26, 749.28, and 749.31.

<sup>3</sup> R.C. 753.15.

<sup>4</sup> R.C. 6115.20.



amounts that exceed the threshold must meet continuing statutory requirements for competitive bidding.

### **For counties and contracting authorities**

Counties and boards, departments, commissions, authorities, trustees, officials, administrators, agents, or individuals that have authority to contract for or on behalf of counties, or any agency, department, authority, commission, office, or board of a county (collectively referred to as "contracting authorities") are required to use competitive bidding when obtaining certain items at a cost that exceeds a threshold established by law. The bill increases the threshold from \$25,000 to \$50,000 so that competitive bidding must be used to obtain anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser, when the cost is in excess of \$50,000.<sup>5</sup>

The bill also increases from \$10,000 to \$50,000 the competitive bidding threshold for counties or contracting authorities of counties when renewing a lease for electronic data processing equipment, services, or systems, or a radio communications system, at a cost that exceeds \$50,000.<sup>6</sup>

### **County procurement practices**

Competitive bids must be submitted in the format prescribed by a contracting authority and must meet certain filing requirements. Among those requirements is that a bond or certified check, cashier's check, or money order in an amount not to exceed 5% of the bid be submitted with the contract, other than a contract for the construction, demolition, alteration, repair, or reconstruction of an improvement. The bill makes submission of a bond or certified check, cashier's check, or money order permissive.<sup>7</sup>

A board of county commissioners may permit a county contracting authority to exempt a bid from any or all of existing law's bid guaranty requirements<sup>8</sup> if the estimated cost is \$25,000 or less. The bill increases this level to \$100,000.<sup>9</sup>

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<sup>5</sup> R.C. 307.86(A) and 307.88(A).

<sup>6</sup> R.C. 307.861.

<sup>7</sup> R.C. 307.88(A).

<sup>8</sup> R.C. 153.54, not in the bill.

### **For parks**

The bill increases to \$50,000 the competitive bidding thresholds for the procuring of goods and services and awarding of contracts for township park districts, and for the procuring of goods by metropolitan park districts. Current law sets the threshold at the same level as county competitive bidding thresholds, which generally are \$25,000.<sup>10</sup>

The bill increases from \$25,000 to \$50,000, the competitive bidding threshold for a board of park commissioners having control of parks and park facilities that is contracting for the performance of any work, the cost of which exceeds that amount, and changes the threshold from \$10,000 to \$50,000 for any contract for work or supplies.<sup>11</sup>

### **For regional water and sewer districts**

The bill increases, from \$25,000 to \$50,000, the competitive bidding threshold for the purchase of supplies or materials or for labor, for a regional water and sewer district. Thus, if an expenditure exceeds \$50,000, the board of trustees of the regional water and sewer district must call for bids. In addition, the threshold is increased from \$25,000 to \$50,000 for improvements made by the district by force account or direct labor.<sup>12</sup>

### **For regional airport authorities**

Current law requires that a board of trustees of a regional airport authority competitively bid any contract for the purchase of supplies or material, or for labor. The bill revises the competitive bidding procedure for regional airport authorities by increasing the threshold at which competitive bidding is required, from \$15,000 to \$50,000, and applies the procedure not only to a purchase contract, but also to a lease, lease with option or agreement to purchase, or construction contract. The bill eliminates the requirement that the board solicit informal estimates from no fewer than three potential suppliers before awarding a purchase contract in the amount of \$1,000 to \$15,000.<sup>13</sup>

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<sup>9</sup> R.C. 307.88(B).

<sup>10</sup> R.C. 511.23 and 1545.07.

<sup>11</sup> R.C. 755.29 and 755.30.

<sup>12</sup> R.C. 6119.10.

<sup>13</sup> R.C. 308.13.

The bill also exempts the board of trustees from all competitive bidding requirements in *any* of the following circumstances:

(1) The board of trustees, by a majority vote of its members present at any meeting, determines that a real and present emergency exists that affects safety, welfare, or the ability to deliver services, arises out of an interruption of contracts essential to the provision of daily air services and other services related to the airport, or involves actual physical damage to structures, supplies, equipment, or property requiring immediate repair or replacement, and the board enters its determination and the reasons for the determination in its proceedings.

(2) The purchase consists of goods or services, or any combination thereof, and after reasonable inquiry, the board or any officer or designee of the board finds that only one source of supply is reasonably available.

(3) The expenditure is for a renewal or renegotiation of a lease or license for telecommunications or informational technology equipment, services, or systems, or for their upgrade or maintenance, as supplied by the original source or its successors or assigns.

(4) The purchase of goods or services is made from another political subdivision, public agency, public transit system, regional transit authority, the state, or the federal government, or as a third-party beneficiary under a state or federal procurement contract, or as a participant in a Department of Administrative Services contract for the purchase of supplies and services under continuing law,<sup>14</sup> or under an approved purchasing plan of the state.

(5) The purchase substantially involves services of a personal, professional, highly technical, or scientific nature, including the services of an attorney, physician, engineer, architect, surveyor, appraiser, investigator, adjuster, advertising consultant, or licensed broker, or involves special skills or proprietary knowledge required for the operation of the airport owned by the regional airport authority.

(6) Services or supplies are available from a qualified nonprofit agency pursuant to the program whereby products and services provided by persons with severe disabilities may be purchased.<sup>15</sup>

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<sup>14</sup> R.C. 125.04, not in the bill.

<sup>15</sup> R.C. 4115.31 to 4115.35, not in the bill.

(7) The purchase consists of the product or services of a public utility.<sup>16</sup>

The bill also reduces from three to two the number of consecutive weeks bid notices must be published in the newspaper. The bill authorizes the regional airport authority to insert the bid notice in trade papers or other publications or to distribute it by electronic means, including posting the notice on the Internet web site of the regional airport authority. If the notice is posted on that web site, the requirement that a second notice be published in a newspaper of general circulation within the territorial boundaries of the regional airport authority does not apply, provided the first notice published in the newspaper is published at least two weeks before the day of the opening of the bids, includes a statement that the notice is posted on the regional airport authority's Internet web site, includes the Internet address of the regional airport authority's web site, and includes instructions describing how the notice may be accessed on the web site.<sup>17</sup>

### **Effective period of quarterly county spending plans**

Under continuing law, a board of county commissioners may adopt a quarterly spending plan setting forth a quarterly schedule of expenditures for any county office, department, or division that, during the previous fiscal year, spent 110% or more of the total amount appropriated for personal services. Current law requires this plan or amended plan to remain in effect for two fiscal years or, if later, until the county officer of the office for which the plan was adopted is no longer in office, including terms of office to which the county officer is re-elected.

The bill limits the effective period of a spending plan to no longer than two fiscal years, but the plan would expire in any of those fiscal years in which the particular elected official who administered the office at the time the office became subject to the plan is no longer the administrator of that office.<sup>18</sup>

## **BOARDS OF HEALTH**

### **Inter-board contracts to perform services**

The bill clarifies that local boards of health may contract with each other for the provision of either some or all public health services, rather than only for all services, as

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<sup>16</sup> R.C. 308.13(B).

<sup>17</sup> R.C. 308.13(A).

<sup>18</sup> R.C. 5705.392.

has been interpreted by some under current law.<sup>19</sup> The contracts generally are not effective until both of the following requirements are met:<sup>20</sup>

**(1) Determination by the Director of Health** – The Director determines that the board of health or authority having the duties of a board of health that is to provide the services is organized and equipped to provide the services. (Current law does not acknowledge that authorities having the duties of a board of health may similarly enter into such contracts. Also, under current law, the Department of Health – rather than the Director of Health – determines whether the board of health is organized and equipped to provide services.)

**(2) Government approval** – One of the following, as applicable, is the case:

(a) If the contract is with a city constituting a city health district, the chief executive of that city, with the approval of the majority of the members of the legislative authority of that city, approves the contract. This is not a change from current law.

(b) If the contract is with the board of health of a general health district (which consists of all areas of a county that are not city health districts), the chairperson of the district advisory council of the general health district, with the approval of a majority of the members of the council, approves the contract. This is not a change from current law.

(c) If the contract is with an authority having the duties of a board of health under a city charter, the majority of the members of the authority's governing body approves the contract. Current law does not address this situation.

One exception to this general rule applies: if a contract is for not all but for only some public health services provided by a board of health or authority having the duties of a board of health, it does not need to meet either requirement to be effective.<sup>21</sup>

The bill repeals a law regarding contracts of general health districts because those contractual requirements are addressed by the changes made by the bill.<sup>22</sup>

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<sup>19</sup> Telephone interview with representatives of the Association of Ohio Health Commissioners (Feb. 23, 2012).

<sup>20</sup> R.C. 3709.08(C).

<sup>21</sup> R.C. 3709.08(D).

<sup>22</sup> R.C. 3709.08; repeal of R.C. 3709.081.

## **Boards as bodies corporate and politic**

The bill specifies that a local board of health is, for the purpose of providing public health services, a "body politic and corporate." As such, it is capable of suing and being sued; contracting and being contracted with; acquiring, holding, possessing, and disposing of real and personal property; and taking and holding in trust for the use and benefit of the relevant city or general health district or authority any grant or devise of land and any domain or bequest of money or other personal property.<sup>23</sup> In 1989, the Ohio Attorney General issued an opinion consistent with this provision.<sup>24</sup>

## **GENERAL HEALTH DISTRICTS**

### **Appropriation measures and revenue estimate requirements**

Current law requires a general health district, for the ensuing fiscal year, to adopt an itemized appropriation measure that shows the amounts the district wishes to appropriate for expenses and a revenue estimate listing the district's expected sources of revenue for that year, including amounts the district expects to receive from the state, or to collect in fees. The bill provides an exception to this requirement for general health districts that will not receive appropriations from the subdivisions that comprise the district for the upcoming year. Under the bill, such districts may alternatively adopt an appropriation measure for the ensuing fiscal year similar to that required for other political subdivisions. The bill additionally specifies that the revenue estimate must include any amounts that the district will receive from taxes levied on its behalf.<sup>25</sup>

### **Appropriation procedures**

A general health district must certify its appropriation measure and revenue estimate to the county auditor, who submits the information to the county budget commission. The commission reviews the information and fixes an aggregate appropriation amount for the district. The district's expected revenue and any estimated balance carried forward from the previous appropriation is then subtracted from the aggregate appropriation amount. The resulting amount (the net appropriation needed by the district for the upcoming year) is apportioned among the municipal corporations and townships that comprise the district according to the proportion of the subdivision's taxable property located in the district. The bill modifies the calculation of a district's net appropriation to instead require that the district's expected revenue and any money in the District Health Fund from the preceding year are to be subtracted

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<sup>23</sup> R.C. 3709.36.

<sup>24</sup> See 1989 Op. Att'y Gen. No. 89-032.

<sup>25</sup> R.C. 3709.28(A) and (B).

before the remaining amount is apportioned among the townships and municipal corporations. The amount to be subtracted as a carryover from the preceding year is to be determined "after considering and allowing for funds needed to fund ongoing operations" in the upcoming year.<sup>26</sup>

### **Appropriation measure alternative**

Under the bill, if a general health district will not receive appropriations from the municipal corporations or townships that comprise the district in an upcoming year, the district may choose to submit an appropriation measure as required under current law or, alternatively, to comply with other state law governing the submission of appropriation measures by subdivisions. If the district chooses the latter, the district must submit an appropriation measure that shows the amount to be appropriated to each office, department, or division within the district and, within those appropriations, the amount dedicated to personal services. The total amount appropriated under the measure cannot exceed the amount of estimated revenue certified for the district for the upcoming year by the county budget commission.<sup>27</sup>

### **Revenue**

Current law requires all of a general health district's revenue to be deposited into a District Health Fund. The bill modifies this requirement to clarify that all revenue must be so deposited unless a statute or rule requires otherwise. The bill also specifies that all revenue in the District Health Fund must be used and maintained in accordance with the purpose for which the revenue was received.<sup>28</sup>

## **POLITICAL SUBDIVISION OFFICERS, EMPLOYEES, AND DEPARTMENTS**

### **Joint county department of job and family services subject to audit**

Currently, the boards of county commissioners of Hocking, Ross, and Vinton counties, by entering into a written agreement, may form a county department of job and family services (CDJFS) as a joint CDJFS. The formation of this joint CDJFS is a pilot project, without a specified ending date, as authorized under Sub. H.B. 225 of the 129th General Assembly.

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<sup>26</sup> R.C. 3709.28(C).

<sup>27</sup> R.C. 3709.28(A) and 5705.38, 5705.39, and 5705.40, not in the bill.

<sup>28</sup> R.C. 3709.28(C).

Under the bill, the joint CDJFS is a "public office," thereby making the joint CDJFS subject to audit by the Auditor of State under continuing law (Chapter 117).<sup>29</sup>

### **Health insurance coverage for county and township officers and employees**

The bill eliminates provisions in current law that prohibit boards of county commissioners and boards of township trustees from contracting for or purchasing group health insurance, policies, or benefits under their general authority to do so,<sup>30</sup> once the Department of Administrative Services implements for counties and townships health care insurance plans that include or address those benefits and that contain best practices.<sup>31</sup> The bill also reinstates the general authority of a township to reimburse township officers and employees for the payment of out-of-pocket insurance premiums or to offer benefits through a cafeteria plan, even if DAS implements those health care plans.<sup>32</sup>

### **County auditor serving as fiscal officer**

The bill authorizes a county auditor, if authorized by a resolution of the board of county commissioners, to serve as the fiscal officer of any department, office, or agency of the county, except that the county auditor may not serve as the fiscal officer for the office of any county elected officer or any agency governed by an appointed board or commission without the written agreement of that elected officer or agency.<sup>33</sup>

### **Provision of political subdivision employee insurance coverage**

The bill provides that contracts for an individual or joint self-insurance program that are awarded to a nonprofit corporation or a regional council of governments may also cover the employees of other nonprofit corporations that employ 50 or fewer employees and that have been organized for the primary purpose of representing the interests of political subdivisions.<sup>34</sup> Continuing law defines a "political subdivision" as a municipal corporation, township, county, school district, or other body corporate and

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<sup>29</sup> R.C. 329.40(E).

<sup>30</sup> R.C. 305.171 and 505.60.

<sup>31</sup> Under R.C. 9.901, as amended by the biennial operating budget, Am. Sub. H.B. 153 of the 129th General Assembly.

<sup>32</sup> R.C. 505.601 and 505.603.

<sup>33</sup> R.C. 319.09.

<sup>34</sup> R.C. 9.833.

politic responsible for governmental activities in a geographic area smaller than that of the state, and thus includes numerous other entities.<sup>35</sup>

### **Township trustees serve on other governing bodies of districts**

The bill authorizes a member of a board of township trustees to be elected or appointed to serve on the governing body of any district that is organized or created by the board of township trustees, including one of the following districts organized or created under existing laws: waste disposal districts, fire districts, joint fire districts, joint fire and ambulance districts, joint police districts, joint ambulance districts, township park districts, and regional water and sewer districts.<sup>36</sup> See **COMMENT 1**.

### **Regional water and sewer districts include elected officials**

The bill authorizes the board of trustees of a regional water and sewer district to include one or more elected officials from any political subdivision (appointing authority) that is signatory to the district's petition for organization. The bill allows the original or properly amended petition to prohibit elected officials from serving on the board of trustees. But elected officials from the same political subdivision cannot comprise a majority of the members of the board of trustees. Notwithstanding this prohibition, a board appointed before the bill's effective date may continue as prescribed in the petition and rules of the district that were in effect before the bill's effective date, and, if not prohibited in the petition or rules, the board may include elected officials. The bill defines "elected official" as an official elected to a municipal, township, or county government office, or a person appointed to fill a vacancy in such an office.<sup>37</sup> See **COMMENT 2**.

### **Conservation easement authority for regional water and sewer districts**

The bill adds regional water and sewer districts to the entities authorized under current law to acquire a conservation easement from a landowner.<sup>38</sup>

The bill requires not later than November 1, 2012, that the county auditor of each county provide the Auditor of State a statement showing both of the following:

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<sup>35</sup> R.C. 2744.01 and 3905.36, not in the bill.

<sup>36</sup> R.C. 505.012.

<sup>37</sup> R.C. 6119.02.

<sup>38</sup> R.C. 5301.68 and 5301.69.

(A) The formula used in that county for allocating the county undivided local government fund under section 5747.53 of the Revised Code if the fund is allocated by an alternative formula under that section. If the fund is allocated by the statutory formula under section 5747.51 of the Revised Code, the statement shall so indicate.

(B) The dollar amount distributed in 2012 to each subdivision in that county that received a distribution from the county undivided local government fund.

### **Adoption of resolutions**

A board of county commissioners may sell by Internet auction personal property that is not needed for public use, is obsolete, or is unfit for the use for which it was acquired, if the board adopts a resolution expressing its intent to sell property in that manner. The bill eliminates the requirement that the board adopt the resolution "during each calendar year" and requires only that the resolution be adopted once. The bill also eliminates the phrase "throughout the calendar year" in the requirement that a notice of intent to sell personal property by Internet auction be posted continually in the county auditor's and board of county commissioners' offices, and on the county's web site, if the county maintains one.<sup>39</sup>

A board of county commissioners annually may adopt a resolution exempting county purchases of \$1,000 or less from the requirement that the county auditor attach a certificate to a contract or order involving the expenditure of money indicating that the amount required to meet an obligation has been lawfully appropriated for the purpose. The bill eliminates the requirement that this resolution be adopted annually.<sup>40</sup>

### **Civil service firefighters – maximum age for appointment**

The bill increases to 40 the maximum age an individual may receive an original appointment as a firefighter in a fire department that is subject to the state civil service laws. Under current law, the maximum age is 30.<sup>41</sup>

## **MISCELLANEOUS PROVISIONS**

### **Fiscal distress financial plan requirements**

The Auditor of State may place a county, township, municipal corporation, or school district under a fiscal watch when certain conditions exist, such as when

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<sup>39</sup> R.C. 307.12(E).

<sup>40</sup> R.C. 5705.41(D).

<sup>41</sup> R.C. 124.42.

accounts are unpaid or overdue, or there are operating deficits. If more dire circumstances exist, such as defaults on debt obligations, the Auditor of State may determine that a fiscal emergency exists. In either case, the county, township, municipal corporation, or school district must submit a financial plan to the Auditor of State. The financial plan must identify actions to be taken to eliminate the fiscal watch or fiscal emergency conditions.

The bill requires a county, township, municipal corporation, or school district under a fiscal watch or fiscal emergency, when identifying in its financial plan actions to be taken, to evaluate the feasibility of entering into shared services agreements with other political subdivisions, if so authorized by statute, for the joint exercise of any power, performance of any function, or rendering of any service. Continuing law allows some political subdivisions, when authorized by their respective legislative authorities, to enter into agreements with other political subdivisions for the performance of services. One example of this is found in R.C. 9.482, which allows a contracting political subdivision, under an agreement, to exercise any power, perform any function, or render any service for another contracting recipient political subdivision.<sup>42</sup> See **COMMENT 3**.

### **Notice to the Office of Budget and Management to withhold funds**

Under current law local governments in fiscal watch are required to submit a financial recovery plan to the financial supervisor and the financial planning and supervision commission. Failure to do so, or failure to substantially comply with an approved plan results in the withholding of state funds until a feasible plan is submitted and approved or substantial compliance with an approved plan is achieved. The bill requires the commission to notify the Office of Budget and Management (OBM) when withholding is required and also to notify OBM in a subsequent notice when it should release all funds withheld from the political subdivision.<sup>43</sup>

### **STD testing for a person charged with a sexual offense**

Under existing law, if a person is charged with rape, sexual battery, unlawful sexual conduct with a minor, soliciting, loitering to engage in solicitation, or prostitution, or a substantially equivalent municipal ordinance, the arresting authorities or a court, upon the request of the victim or the prosecutor, must cause the accused person to submit to one or more tests to determine if the accused is suffering from a venereal disease. The bill requires the arresting authorities or a court, upon such a

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<sup>42</sup> R.C. 118.023, 118.06, 3316.04, and 3316.06.

<sup>43</sup> R.C. 118.06.

request, to cause the accused in any such case to submit to testing for human immunodeficiency virus (HIV) not later than 48 hours after the date on which the complaint, information, or indictment is filed against or served upon the accused.<sup>44</sup>

### **Allocation of funds from the Legal Aid Fund**

The bill amends current law that governs the Ohio Legal Assistance Foundation's allocation of financial assistance from the Ohio Legal Aid Fund to legal aid societies. Under continuing law, the part of the money that is apportioned among counties served by eligible legal aid societies that have applied for financial assistance and that is allocated to those eligible legal aid societies that have applied for financial assistance is based on the ratio of the number of indigents who reside in a county to the total number of indigents who reside in all counties served by eligible legal aid societies that have applied for financial assistance. The bill amends the source of data used to identify the number of indigent persons who reside in a county. Under current law, the source of data is the most recent decennial census figures from the United States Department of Commerce, Division of Census Bureau. The bill instead requires the Ohio Legal Assistance Foundation to select the source of data from the best available figures maintained by the United States Census Bureau.<sup>45</sup>

### **Exemption from Vehicle Parks Law requirements during fair time**

The bill exempts each of the following entities that operate a fair and hold a license issued under the Vehicle Parks Law (R.C. Chapter 3729.) from complying with the requirements of that law during the time that preparation for, operation of, and dismantling of the fair occurs: (1) a county agricultural society, (2) an independent agricultural society, and (3) the Ohio Expositions Commission.<sup>46</sup> As a result, the bill extends to these three entities, which are licensed, an exemption that currently applies to certain other persons and independent agricultural societies that operate fairs but are not required to be licensed.

### **Background – camping at fairgrounds**

The Vehicle Parks Law governs recreational vehicle parks and campgrounds referred to as "recreation camps," "combined park-camps," and "temporary park-camps" (see "**Definitions**," below). Because many fairgrounds in Ohio host events at which camping is permitted, a particular fairgrounds operator is generally required to obtain

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<sup>44</sup> R.C. 2907.27.

<sup>45</sup> R.C. 120.53.

<sup>46</sup> R.C. 3729.05(E).

the license that is appropriate for the type of campground that is operated.<sup>47</sup> Licenses are issued by the board of health of a city or general health district, the authority having the duties of a board of health in a city, or, when a board of health is not eligible to administer and enforce the Vehicle Parks Law, the Director of Health.<sup>48</sup>

There are persons and independent agricultural societies that operate fairs and do not obtain licenses under the Vehicle Parks Law. That is because current law exempts from licensure requirements a person who operates a county or state fair or an independent agricultural society that operates a fair if (1) recreational vehicles, portable camping units, or any combination of them are parked at the site of the fair only during the time of preparation for, operation of, and dismantling of the fair, and (2) the recreational vehicles, portable camping units, or any combination of them belong to participants in the fair.<sup>49</sup> The purpose of the exemption, according to the Department of Health, is to permit fair participants to be present on the fairgrounds without requiring them to hold a license.<sup>50</sup>

Because these persons and agricultural societies are exempt from licensure, they are not subject to an initial or annual inspection<sup>51</sup> or the requirements applicable to licensees adopted by the Public Health Council in rules. These requirements include standards pertaining to site location and layout, density, water supply, drainage, sewage facilities, toilet facilities, handwashing and shower facilities, dump stations, electrical service, lighting, and general maintenance, including rodent control.<sup>52</sup>

## Definitions

"Recreational vehicle park" means any tract of land used for parking five or more self-contained recreational vehicles and includes any roadway, building, structure, vehicle, or enclosure used or intended for use as part of the park facilities and any tract of land that is subdivided for lease or other contract of the individual lots for the express or implied purpose of placing self-contained recreational vehicles for recreation, vacation, or business purposes. "Recreational vehicle park" does not include any tract

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<sup>47</sup> R.C. 3729.05(A)(3); memorandum regarding "camping at fairgrounds" from W. Gene Phillips, MPH, RS, Chief, Bureau of Environmental Health, Ohio Department of Health, to Health Commissioners and Directors of Environmental Health (July 1, 2009).

<sup>48</sup> R.C. 3729.01(I) and 3729.06(B).

<sup>49</sup> R.C. 3729.05(D).

<sup>50</sup> Memorandum, *supra* note 2.

<sup>51</sup> R.C. 3729.05(B).

<sup>52</sup> Ohio Administrative Code Chapter 3701-26.

of land used solely for the storage or display for sale of self-contained recreational vehicles, solely as a temporary park-camp, or solely as a manufactured home park.

"Recreation camp" means any tract of land upon which five or more portable camping units are placed and includes any roadway, building, structure, vehicle, or enclosure used or intended for use as a part of the facilities of the camp. A tract of land that is subdivided for lease or other contract of the individual lots is a recreation camp if five or more portable camping units are placed on it for recreation, vacation, or business purposes. "Recreation camp" does not include any tract of land used solely for the storage or display for sale of dependent recreational vehicles, solely as a temporary park-camp, or solely as a manufactured home park.

"Combined park-camp" means any tract of land upon which a combination of five or more self-contained recreational vehicles or portable camping units are placed and includes any roadway, building, structure, vehicle, or enclosure used or intended for use as part of the park facilities. A tract of land that is subdivided for lease or other contract of the individual lots is a combined park-camp if a combination of five or more recreational vehicles or portable camping units are placed on it for recreation, vacation, or business purposes. "Combined park-camp" does not include any tract of land used solely as a temporary park-camp or solely as a manufactured home park.

"Temporary park-camp" means any tract of land used for a period not to exceed a total of 21 days per calendar year for the purpose of parking five or more recreational vehicles, dependent recreational vehicles, or portable camping units, or any combination thereof, for one or more periods of time that do not exceed seven consecutive days or parts thereof.<sup>53</sup>

### **County payments to the Workers' Compensation Public Insurance Fund**

The bill permits the legislative body of any county, district, district activity, or institution to engage in cost allocation for all payments to the Public Insurance Fund required by any Bureau of Workers' Compensation rating plan (premium contributions).

The Workers' Compensation Program payments of any county, district, district activity, or institution, except for a county board of developmental disabilities, a board of alcohol, drug addiction, and mental health services, a board of mental health services, and a board of alcohol and drug addiction services, also may include:

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<sup>53</sup> R.C. 3729.01.

- Direct administrative costs incurred in the management of the county, district, district activity, or institution's Workers' Compensation Program;
- Indirect costs that are necessary and reasonable for the proper and efficient administration of the Workers' Compensation Program as documented in a cost allocation plan.

The required cost allocation plan for indirect costs must conform to the document entitled "*Cost Principles for State and Local Governments*," which is a publication of the United States Office of Management and Budget (Budget Circular A-87). The plan cannot authorize payment from the Public Insurance Fund of any general government expense not associated with the administration of workers' compensation.

Under current law, the legislative body of a county, district, district activity, or institution could only cost allocate for premium contributions to the Public Insurance Fund.<sup>54</sup>

### **Township law applies after dissolution of village**

Continuing law establishes two procedures under which a village may be dissolved: (1) the village surrenders its corporate powers and dissolves by affirmative vote of the electors, or (2) the Auditor of State, by requesting that the Attorney General file suit, may force the dissolution of a village that meets at least two fiscal conditions for surrendering corporate powers that the Auditor discovers while auditing the village. The bill requires that if a village is dissolved, all resolutions of the township or townships into which the village's territory is dissolved apply throughout the township's newly included territory.<sup>55</sup>

### **Court hearing and notice of dissolution proceeding**

Current law provides for the dissolution of municipal corporations and townships with a population of less than 5,000 that have been under fiscal emergency for at least four consecutive years with no reasonable expectation of recovery within five years. The Attorney General brings the court action. The bill provides that the legal action must be brought in the court of common pleas. The bill requires that court to hold a hearing within 90 days after the Attorney General files the action. The bill requires that the notice of the hearing be filed with the Attorney General, the clerk of the village or the fiscal officer of the township that is the subject of the action, and each

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<sup>54</sup> R.C. 4123.41.

<sup>55</sup> R.C. 703.21.

fiscal officer of a township located wholly or partly within the village subject to dissolution.<sup>56</sup>

### **Filing date for property valuation complaints**

The bill specifies that, for real property valuation and other property tax complaints filed by mail or certified mail, county auditors must treat the date of the United States postmark placed on the envelope or sender's receipt by the Postal Service as the date of filing. Under continuing law, a complaint against determinations listed in continuing law, for example, the total valuation or assessment of a parcel that appears on the tax list, must be filed with the county auditor on or before March 31 of the ensuing tax year or the date of closing of the collection for the first half of real and public utility property taxes for the current tax year, whichever is later.<sup>57</sup>

### **County Board of Revision complaints**

Current law prohibits the board of revision from decreasing any valuation unless a party affected or who is authorized to file a complaint makes and files with the board a written application (presumably, the complaint), verified by oath. The bill additionally requires a signature on the complaint.

Current law specifies that no person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a similar complaint for that parcel for any prior tax year in the same interim period unless certain allegations are made concerning specified circumstances that occurred after the tax lien date for the tax year for which the prior complaint was filed and the circumstances were not taken into consideration for the prior complaint. For example, the property lost value due to some casualty or a substantial improvement was added to the property, among others. The bill provides that notwithstanding the general prohibition and the circumstances that excuse a deviation from that prohibition, a person, board, or officer may file a complaint against the valuation or assessment of any parcel that appears on the tax list if it filed a complaint against the valuation or assessment of that parcel for any prior tax year in the same interim period if the person, board, or officer withdrew the complaint before the complaint was heard by the board.<sup>58</sup>

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<sup>56</sup> R.C. 118.06 and 118.31.

<sup>57</sup> R.C. 5719.19.

<sup>58</sup> R.C. 5705.19(A)(2)(e).

The bill clarifies that a private meter postmark on the envelope is not a valid postmark for purposes of establishing the date of filing of a complaint.<sup>59</sup>

### **Indigent Defense Support Fund**

Under existing law, the State Public Defender must use at least 90% of the money in the Indigent Defense Support Fund for the purpose of reimbursing county governments for expenses incurred in providing counsel for indigent defendants. The State Public Defender may not use more than 10% of the money in the fund for the purposes of appointing assistant state public defenders or for providing other personnel, equipment, and facilities necessary for the operation of the State Public Defender office.

The bill reduces to at least 88% the amount of the money in the fund that the State Public Defender must use for the purpose of reimbursing county governments for expenses incurred. The bill allows the State Public Defender to also use that money for the purpose of operating its system pursuant to which the State Public Defender provides legal representation to indigent persons pursuant to a contract between a county public defender commission, joint county public defender commission, or board of county commissioners and the State Public Defender. The bill increases to not more than 12% the amount of money in the fund that the State Public Defender may use for the purposes of appointing assistant state public defenders or for providing other personnel, equipment, and facilities necessary for the operation of the State Public Defender office. It also permits the State Public Defender to use that 12% for providing training, developing and implementing electronic forms, or establishing and maintaining an information technology system used for the uniform operation of the law regarding public defenders.<sup>60</sup>

### **Statewide Emergency Services Internet Protocol Network Steering Committee**

#### **Duties of the Committee**

The bill creates the Statewide Emergency Services Internet Protocol Network Steering Committee. The Committee is required to advise the state on the implementation, operation, and maintenance of a statewide emergency services internet protocol network that would support state and local government next-generation 9-1-1 and the dispatch of "emergency service providers," defined by the bill as the State Highway Patrol and an emergency service department or unit of a subdivision or one

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<sup>59</sup> R.C. 5705.19(A)(1)(f).

<sup>60</sup> R.C. 120.08.

that provides emergency services to a subdivision under contract with it.<sup>61</sup> The bill requires that the Committee do all of the following:

(1) On or before November 15, 2012, deliver an initial report to the Speaker of the House of Representatives, the President of the Senate, and the Governor providing recommendations to address the development of a statewide emergency services internet protocol network, including a review of the current funding model for Ohio's 9-1-1 systems<sup>62</sup> (under which individuals request emergency service);

(2) Examine the readiness of the state's current technology infrastructure for a statewide emergency services internet protocol network;

(3) Research legislative authority with regard to governance and funding of a statewide emergency services internet protocol network, and provide recommendations on best practices to limit duplicative efforts to ensure an effective transition to next-generation 9-1-1;

(4) Make recommendations for consolidation of public-safety-answering-point operations in Ohio, to accommodate next-generation 9-1-1 technology and to facilitate a more efficient and effective emergency services system. (A public safety answering point is a facility to which 9-1-1 system calls for a specific territory are initially routed for response and where personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider, or transferring the call to the appropriate provider.)

(5) Recommend policies, procedures, and statutory or regulatory authority to effectively govern a statewide emergency services internet protocol network;

(6) Designate a next-generation 9-1-1 statewide coordinator to serve as the primary point of contact for federal initiatives;

(7) Coordinate with statewide initiatives and associations, such as the State Interoperable Executive Committee, the Ohio Geographically Referenced Information Program Council, the Ohio Multi-Agency Radio Communications System Steering Committee, and other interested parties.<sup>63</sup>

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<sup>61</sup> R.C. 125.183(G).

<sup>62</sup> R.C. 125.183(G) and 4931.40, not in the bill.

<sup>63</sup> R.C. 125.183(C).

The bill provides that the Committee is not an agency with an assigned expiration date for purposes of the Sunset Review Law.<sup>64</sup>

### **Members of the Committee; appointments**

The Statewide Emergency Services Internet Protocol Network Steering Committee is to consist of the following ten members:

- ◆ The State Chief Information Officer or the officer's designee.
- ◆ Two members of the House of Representatives appointed by the Speaker, one from the majority party and one from the minority party.
- ◆ Two members of the Senate appointed by the President, one from the majority party and one from the minority party.
- ◆ Five members appointed by the Governor.

In appointing the five members required by the bill, the Governor must appoint two representatives of the County Commissioners' Association of Ohio (CCAO), two representatives of the Ohio Municipal League (OML), and one representative of the Ohio Township Association (OTA) (or of their successor organizations). For each of these appointments, the Governor must consider a nominee proposed by the association or successor organization. The Governor may reject any of the nominees and may request that a nominating entity submit alternative nominees. Initial appointments are to be made not later than ten days after the bill's effective date.

The State Chief Information Officer or the officer's designee must serve as the chairperson of the Committee and is a nonvoting member. All other members are voting members.<sup>65</sup>

### **Terms of Committee membership**

A member of the Committee appointed from the membership of the Senate or the House of Representatives serves during the member's term as a member of the General Assembly and until a successor is appointed and qualified, notwithstanding adjournment of the General Assembly or the expiration of the member's term as a member of the General Assembly.

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<sup>64</sup> R.C. 125.183(F).

<sup>65</sup> R.C. 125.183.

The initial terms of one of the representatives of the CCAO, one of the representatives of the OML, and the representative of the OTA expire on December 31, 2016. The initial terms of the other representatives of CCAO and the OML expire on December 31, 2014. Thereafter, terms of the members appointed by the Governor are for four years, with each term ending on the same day of the same month as the term it succeeds. Each member appointed by the Governor must hold office from the date of the member's appointment until the end of the term for which the member was appointed, may be reappointed, serve without compensation, and are prohibited from being reimbursed for expenses. A member appointed by the Governor continues in office after the expiration date of the member's term until the member's successor takes office or until a period of 60 days has elapsed, whichever occurs first.

A vacancy in the position of any member of the Committee must be filled for the unexpired term in the same manner as the original appointment.<sup>66</sup>

### **Meetings; permanent subcommittees of the Committee**

The bill requires that the Committee hold its inaugural meeting not later than 30 days after the bill's effective date. Thereafter, the Committee is required to meet at least once a month, either in person or by utilizing telecommunication-conferencing technology. A majority of the voting members constitute a quorum.

The Committee must have two permanent subcommittees: the technical-standards subcommittee and the permanent public-safety-answering-point-operations subcommittee. The Committee may, from time to time, establish additional subcommittees, to advise and assist the Committee based upon the subcommittees' areas of expertise. The membership of subcommittees is to be determined by the Committee.

The technical-standards subcommittee must include one member representing a wireline service provider (a facilities-based provider of basic local exchange services) or a wireless service provider (a facilities-based provider of wireless service to end users in Ohio) that participates in the state's 9-1-1 system, one representative of the Ohio Academic Resources Network, one representative of the Ohio Multi-Agency Radio Communications System Steering Committee, one representative of the Ohio Geographically Referenced Information Program, and one member representing each of the following associations selected by the Committee from nominations received from that association:

- (1) The Ohio Telephone Association;

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<sup>66</sup> R.C. 125.183(A) and (B).

(2) The Ohio Chapter of the Association of Public-Safety Communications Officials;

(3) The Ohio Chapter of the National Emergency Number Association.

The public-safety-answering-point-operations subcommittee must include one member representing the Division of Emergency Management of the Department of Public Safety, one member representing the State Highway Patrol, two members recommended by the CCAO who are managers of public safety answering points, two members recommended by the OML who are managers of public safety answering points, and one member from each of the following associations selected by the Committee from nominations received from that association:

- The Buckeye State Sheriffs' Association.
- The Ohio Association of Chiefs of Police.
- The Ohio Association of Fire Chiefs.
- The Ohio Chapter of the Association of Public-Safety Communications Officials.
- The Ohio Chapter of the National Emergency Number Association.<sup>67</sup>

### **Eliminate township fiscal officer record entry**

The bill repeals a law that requires the township fiscal officer to incorporate into the board of township trustee's minutes a statement of the receipts and expenditures of the township and of school districts therein for the preceding year, and to post the statement at each township polling place, after the township officers have made their annual settlement of accounts. The Ohio Supreme Court has held that this duty arises only after township fiscal officers have made their annual settlement of accounts, which is no longer required by law, thus rendering the law the bill repeals obsolete and incapable of being given any operative effect because township officers have not been required to prepare an annual settlement of accounts for many years.<sup>68</sup>

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<sup>67</sup> R.C. 125.183(D).

<sup>68</sup> Repeal of R.C. 507.07; *State ex rel. Citizens for Open, Responsive & Accountable Government v. Register*, 116 Ohio St.3d 88, 876 N.E.2d 913 (2007).

## Deadline to certify presidential and vice-presidential candidates

The bill provides that when the Secretary of State certifies the forms of the official ballots to the county boards of elections on the 70th day before the 2012 general election, the Secretary of State must not include the names of the major political parties' presidential and vice-presidential candidates.<sup>69</sup>

The major political parties must certify to the Secretary of State the names of their candidates for president and vice-president nominated at their national conventions as soon as possible, but no later than 4 p.m. on the 60th day before the 2012 general election. Continuing law generally requires political parties to make this certification to the Secretary of State on or before the 90th day before the day of the general election.<sup>70</sup>

The bill requires the Secretary of State promptly to amend the original certification of the forms of the official ballots to the county boards of elections by adding the names of the major party presidential and vice-presidential candidates.<sup>71</sup>

Under the bill, these provisions take effect immediately because the statutory deadline for political parties to certify their presidential and vice-presidential candidates to the Secretary of State for placement on the ballot for the November 6, 2012 general election is prior to the date the national conventions of the major political parties are scheduled to take place.<sup>72</sup>

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## COMMENT

1. The Ohio Attorney General has opined that the positions of township trustee and trustee of a regional water and sewer district are incompatible. *See* 1984 Op. Att'y Gen. No. 84-059. The Attorney General noted numerous conflicts of interest and the well-established common law principle that an officer may not serve on a board to which the officer makes appointments. A similar analysis would likely apply to the other entities cited in this provision. The enactment of statutory authority to allow the simultaneous holding of two incompatible positions may be permissible (in the absence of constitutional, federal, statutory, or charter provisions to the contrary), despite the inherent remaining conflicts of interest that would otherwise preclude one from serving in those positions.

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<sup>69</sup> R.C. 3505.01(A) (not in the bill) and Section 3 of the bill.

<sup>70</sup> R.C. 3505.10(B)(1) (not in the bill) and Section 3 of the bill.

<sup>71</sup> Section 3 of the bill.

<sup>72</sup> Section 4 of the bill.

2. The authority to allow elected signatories to the creation of a regional water and sewer district serve in the dual capacity of a trustee to the district, in the absence of a statute allowing such service despite the incompatibility, would otherwise violate the common law prohibition discussed in **COMMENT 1**. In addition, a significant type of conflict of interest that the Attorney General has addressed is the divided loyalties particularly when the two positions may compete for tax revenue within the 10-mill limitation (inside millage); this is a conflict that "cannot be mitigated or eliminated." *See* 2012 Op. Att'y Gen. No. 2012-008; *see also* 2011 Op. Att'y Gen. No. 2011-048 ("Ohio's Attorneys General have, for more than 80 years, uniformly advised that a person is subject to a major, recurring conflict of interest when the person annually must directly participate in the competition for tax revenue generated within the ten-mill limitation on behalf of two governmental entities."); 2008 Op. Att'y Gen. No. 2008-022.

3. Presumably, the financial recovery plan actions that must be provided in detail under current law with specific dates for the beginning and ending of the actions cannot include an anticipated or potential shared services agreement that must be evaluated for its "feasibility" under the bill; a potential shared services agreement would be only speculative until an actual contract is entered into with another willing participant political subdivision. Because normal contract principles apply to these agreements, a potential participant cannot be compelled to enter into such a contract even if there is statutory authority to do so.

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## HISTORY

ACTION	DATE
Introduced	04-12-12
Reported, H. Local Government	04-25-12
Passed House (88-8)	04-25-12
Reported, S. State & Local Gov't & Veterans Affairs	--

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