



Am. Sub. H.B. 148
125th General Assembly
(As Passed by the General Assembly)

Reps. Grendell, Wagner, Wolpert, Daniels, Collier, Walcher, Schlichter, Sferra, McGregor, C. Evans, Flowers, Allen, Aslanides, Buehrer, Calvert, Carano, Carmichael, Cates, Cirelli, Clancy, DeBose, Domenick, Fessler, Gibbs, Gilb, Hagan, Hartnett, Harwood, Hollister, Hughes, Jerse, Key, Latta, Martin, Miller, Niehaus, Olman, Otterman, T. Patton, Perry, Raga, Reidelbach, Schaffer, Schmidt, Seaver, Setzer, D. Stewart, Strahorn, Taylor, Trakas, Yates, Young

Sens. Schuler, Dann, Roberts, Robert Gardner

Effective date: *

ACT SUMMARY

- Establishes a minimum amount for a township clerk's bond based upon the township's budget.
- Generally requires the township clerk to personally attend one meeting of the board of township trustees on a quarterly basis.
- Permits the board of township trustees, when township records are not kept at a public facility, to request the clerk on a quarterly basis to provide it with copies of those records for review.
- Authorizes the township clerk to hire one or more assistants.
- Provides parameters for certain consent decrees or court-approved settlement agreements in actions in which a township is a party.
- Authorizes expansion of township police districts into township-wide districts upon adoption of a resolution by unanimous vote of the board of

** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

township trustees and a favorable vote by the electors on a ballot measure pertaining to the expansion.

- Changes the purposes for which a county or township may adopt zoning regulations to instead generally be "in the interest of the public health, safety, convenience, comfort, prosperity, or general welfare"; but, for activities regulated under the Oil and Gas Law, the Coal Mining Law, or the Aggregates Mining Law and related processing activities, limits those purposes to "in the interest of public health or safety."
- Includes among the topics with which county or township zoning regulations may deal, reasonable residential landscaping standards and residential architectural standards.
- Provides for the creation of architectural review boards in the county and township zoning laws.
- Authorizes the board of trustees of a joint ambulance district to establish reasonable user charges for ambulance or emergency medical services.

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CONTENT AND OPERATION

Township clerk, records, and consent decrees/settlement agreements

The act makes several changes in Township Law relating to the township clerk, township records, and consent decrees and settlement agreements to which townships are parties.



Township clerk's bond

The office of township clerk is an elected office. Continuing law requires that, before discharging official duties, the clerk give a bond conditioned for the faithful performance of those duties. The bond must be payable to the board of township trustees and have sureties approved by the board. The board also determines the amount of the bond, which formerly was completely in the board's discretion. (Sec. 507.03.)

The act establishes a minimum sum for the clerk's bond that is based on a township's budget. A board of township trustees, when determining the bond's amount, now must impose a bond of no less than the following amounts (sec. 507.03):

- In a township with a budget of \$50,000 or less, \$10,000;
- In a township with a budget of more than \$50,000 but not more than \$100,000, \$35,000;
- In a township with a budget of more than \$100,000 but not more than \$250,000, \$60,000;
- In a township with a budget of more than \$250,000 but not more than \$500,000, \$85,000;
- In a township with a budget of more than \$500,000 but not more than \$750,000, \$110,000;
- In a township with a budget of more than \$750,000 but not more than \$1,500,000, \$135,000;
- In a township with a budget of more than \$1,500,000 but not more than \$3,500,000, \$160,000;
- In a township with a budget of more than \$3,500,000 but not more than \$6 million, \$195,000;
- In a township with a budget of more than \$6 million but not more than \$10 million, \$220,000;
- In a township with a budget of more than \$10 million, \$250,000.



Township clerk attendance at board meetings

Continuing law requires a township clerk to keep an accurate record of the proceedings of the board of township trustees at all of its meetings and an accurate record of all of its accounts and transactions (e.g., the acceptance of township officers' bonds). The act additionally requires the clerk to personally attend at least one meeting of the board during each quarter of every year, unless attendance is prevented by the occurrence of an emergency. (Sec. 507.04(A).)

Township records

As noted above, the township clerk must keep an accurate record of not only the proceedings of all board of township trustees meetings, but also of all the board's accounts and transactions, including the acceptance of the bonds of township officers. The act requires that in any township where the clerk does not keep the township's records in a public facility, the board may request once every quarter of every year that the clerk provide it with copies of township records for its review. If the board so requests, it must tell the clerk which records it wants copies of by indicating the dates or types of records it is requesting. (Sec. 507.04(B).) (See **COMMENT.**)

Authorization for township clerk to hire one or more clerk assistants

Under continuing law, when a township clerk is unable to carry out the duties of the office because of illness, entrance into military service, or other incapacity or disqualification, the board of township trustees must appoint a deputy clerk to discharge the duties of the office. The deputy clerk serves for the period the clerk is absent or incapacitated, or until a successor clerk is elected and qualified. The board, by resolution, must adjust and determine the compensation of the clerk and deputy clerk. The total compensation of both cannot exceed, in any one year, the amount of compensation set forth by law for the clerk. (Sec. 507.02--not in the act.)

Under former law, the board also could employ the number of persons it found necessary to provide stenographic and clerical assistance to the township clerk or deputy clerk. The act instead authorizes a *township clerk* to hire and appoint for the clerk or deputy clerk one or more assistants who are to serve at the pleasure of the clerk or deputy clerk. (Sec. 507.021(A).)

The clerk may delegate to an assistant any of the duties the clerk is otherwise required to perform, but the appointment of assistants under the act does not relieve the clerk of the responsibility to discharge the duties of the office. An assistant serves to provide assistance to the clerk in performing the duties of the office. (Sec. 507.021(A).)



Under the act, the compensation of a clerk assistant must be determined by the township clerk, subject to prior approval of the board. It also must be included in the estimate of contemplated expenditures for the clerk's office that is submitted to the board during the existing budgetary process. (Sec. 507.021(A) and (B).)

An assistant must give a bond. The bond must be payable to the board, be for the same sum as required under statutory law for the clerk, have sureties approved by the board, and be conditioned for the faithful performance of the delegated duties. The bond must be recorded by the clerk, filed with the county treasurer, and carefully preserved. (Sec. 507.021(C).)

Township consent decrees or settlement agreements

Background. Under continuing law and court procedural rules, parties involved in court actions, including townships, may be able to enter into a consent decree or settlement agreement in order to resolve disputed matters.

In general. The act provides that, notwithstanding any contrary provision in the Revised Code, notwithstanding the section of the Township Zoning Law that provides the procedure for amending zoning regulations and the procedure for a township zoning referendum (sec. 519.12), and notwithstanding any vote of the electors on a petition for a zoning referendum, a township may settle *any court action* by a consent decree or court-approved settlement agreement which may include: (1) an agreement to rezone any property involved in the action as provided in the decree or agreement *without following* the Township Zoning Law procedure for amending zoning regulations or its procedure for a township zoning referendum or (2) township approval of a development plan for any property involved in the action as provided in the decree or agreement. But, apparently under the act for a consent decree or court-approved settlement agreement to include the rezoning agreement mentioned in (1) above or township approval of a development plan mentioned in (2) above, the court in the action apparently must make specific findings of fact that (a) specified notice (see below) has been properly made, (b) the plaintiff has presented credible prima facie evidence in the form of an expert report from a planner, property economist, or real estate appraiser supporting the plaintiff's claim that the current zoning is invalid or unconstitutional, and (c) the consent decree or settlement agreement is fair and reasonable. (Sec. 505.07.)¹

¹ *The act does not define "development plan," and "township approval" of such a plan is unclear under the act--but it may mean board of township trustees' approval because of implications of the bill's notice-meeting provisions. Further, although aspects of any development may require township approval, such as a zoning or building permit, it is not clear what a "development plan" refers to in the act. It appears, however, that*

Notices. The general *notice provision* of the act applies if the subject of the consent decree or court-approved settlement agreement involves a zoning issue subject to referendum under the Township Zoning Law. The board of township trustees must publish, at least 15 days before its meeting on the decree or agreement, in a newspaper of general circulation in the township a notice of its intent to take action on the decree or agreement at a meeting scheduled for a particular date and time. At that meeting, the board must permit the public to express their objections to the *proposed* decree or agreement, and the act explicitly requires that copies of the proposed decree or settlement must be available to the public at the township clerk's office during normal business hours. (Sec. 505.07.)

For consent decrees only, the act contains *another notice provision*. The plaintiff in the action must publish a specified notice at least ten days before the submission of the *proposed* decree to the court for its review and consideration. That notice must include the case, case number, and court in which the decree will be filed, the intention of the parties to file a consent decree in the case, and a description of (a) the real property involved and (b) the proposed change in zoning "or permitted use." It must be published in a newspaper of general circulation in the township where that property is located. (Sec. 505.07.)

Intervention in the action. An elector in the township "involving the property in litigation" who circulated the petition for zoning referendum relating to the current zoning of the property has the right to intervene in the case in which a consent decree or court-approved settlement agreement is pending solely for the purpose of challenging the sufficiency of the evidence submitted under the act's provisions and the adequacy of the notice given under the act.² Any other members of the electorate may intervene only if permitted by the court under the Civil Rules (Civil Rule 24(B)) and solely for the purpose of challenging the sufficiency of the evidence submitted under the act and the adequacy of the notice given under the act. (Sec. 505.07.)

Expansion, by ballot measure, of certain township police districts

Under continuing law, a township police district may serve all or a portion of the unincorporated territory of a township. If a district serves only a portion

township approval of a development plan only may be included in a consent decree or settlement agreement when the court action is one in which the plaintiff has claimed the current township zoning is "invalid" or unconstitutional. It is unclear what standard "invalid" refers to in this context.

² *This language assumes circumstances where a referendum petition was circulated and, thus, does not address every zoning situation that might be related to a consent decree or court-approved settlement agreement.*

and the board of township trustees later wishes to expand the district's territory, continuing law allows for the expansion of the territorial limits by a *resolution of the board* adopted at any time 120 days or more after the district has been created and is operative. The resolution must be approved by two-thirds of the board under this continuing law. If that district levied a tax, the tax can be levied on the residents of the proposed expanded territory only after the board additionally adopts a resolution recommending the extension of the tax to the proposed expanded territory and the electors of that territory approve the tax; if the electors of that territory do not approve the tax, the expansion of the territorial limits also does not occur under this continuing law. (Sec. 505.48(B).)

The act authorizes an alternative method for achieving expansion if the expansion will encompass the *entire* unincorporated territory of the township. In that situation, the board must adopt a resolution by unanimous vote to place the issue of expansion on the ballot for the electors of the entire unincorporated territory of the township. The resolution may be adopted at any time 120 days or more after the district has been created and is operative. The resolution must state whether the proposed township police district initially will hire its own personnel as authorized by continuing law or contract for the provision of police protection services or additional police protection services as provided by continuing law. (Secs. 505.48(A) and (B), 505.482(A), and 505.50; secs. 505.43 and 505.49--not in the act.)

The ballot measure must provide for the addition of all of the unincorporated territory of the township not already included in the township police district and for the levy of any tax then imposed by the district throughout that unincorporated territory. The measure must state the rate of any such tax to be imposed in the district resulting from approval of the measure; that rate need not be the same rate as that imposed by the existing district. And, the measure also must state the last year in which any such tax will be levied or that it will be levied for a continuous period of time. (Sec. 505.482(A) and (B).)

If the measure is approved, the previous township police district ceases to exist, and a new district, with a separate and distinct name from the previous district, is created. (Sec. 505.482(B).)

County and township zoning law changes

Zoning purposes and topics

Continuing law that governs county and township zoning permits boards of county commissioners and boards of township trustees to adopt zoning regulations in accordance with a comprehensive plan. These regulations may deal with the location, height, bulk, number of stories, and size of buildings or other structures;



the percentages of lot areas that can be occupied; set back building lines; sizes of yards, courts, and other open spaces; the density of population; the uses of buildings and other structures; and the uses of land for trade, industry, residence, recreation, or other purposes. The regulations also may divide the zoned territory into districts or zones, but all regulations must be uniform for each class or kind of structure or use throughout any district or zone. Regulations in one district or zone may differ from those in other districts or zones. (Secs. 303.02 and 519.02.)

The discussion above describes what kind of (i.e., topics) county or township zoning regulations can address. The *purposes* for which any board of county commissioners or board of township trustees can adopt zoning regulations are a different but interrelated matter. Formerly, those purposes were ". . . promoting the public health, safety, and morals." The act instead provides that zoning regulations generally can be adopted "in the interest of the public health, safety, convenience, comfort, prosperity, or general welfare." This language parallels the statutory language used for municipal corporation zoning (sec. 713.06--not in the act). An exception is made, however, for activities regulated under the Oil and Gas Law, the Coal Mining Law, or the Aggregates Mining Law and any related processing activities: they may only be regulated in the interest of public health or safety. (Secs. 303.02 and 519.02.)

Further, the act expands the *topics* with which county and township zoning regulations may deal by including "reasonable residential landscaping standards and residential architectural standards, excluding exterior building materials, for the unincorporated territory" (secs. 303.02 and 519.02).

Architectural review boards

Under the act, the board of county commissioners or board of township trustees may create an architectural review board to enforce compliance with any zoning standards it may adopt pertaining to landscaping or architectural elements in areas zoned for residential use. (Presumably, this refers to the zoning *regulations* mentioned in the last paragraph.) If it creates such a board, the board of county commissioners or board of township trustees must adopt standards and procedures for that board to use in reviewing zoning permit applications for compliance with those landscaping or architectural standards. If an architectural review board is not created, the board of county commissioners or board of township trustees may delegate that enforcement authority to the zoning inspector or the zoning commission. (Secs. 303.161 and 519.171.)

An architectural review board must consist of no more than five residents of the county or township, as applicable. At least one member generally must be a licensed architect or engineer. But, in the case of a township, if a licensed architect or engineer does not reside in the unincorporated territory of the

township, a resident of the county may be appointed as the architect or engineer member of the board. (Secs. 303.161 and 519.171.)

Related legislative intent statements

The act also makes the following statements:

It is not the intent of the General Assembly in amending sections 303.02 and 519.02 of the Revised Code [county and township zoning purposes and topics] in this act to confer any authority on a county or township to preempt state law, including any statute requiring a person to obtain a permit, by including the "general welfare" of the public as a purpose for which a board of county commissioners or board of township trustees may adopt zoning regulations. (Section 3.)

Nothing in this act allows or shall be construed to allow any county or township authority to establish a minimum price for a house or lot. (Section 4.)

User charges for joint ambulance district services

The act authorizes a board of trustees of a joint ambulance district to establish reasonable charges for the use of ambulance or emergency medical services. The board may establish different charges for district residents and nonresidents, and, in its discretion, may waive all or part of the charge for any district resident. The charge for nonresidents must be an amount that is not less than the authorized Medicare reimbursement rate, except that, if before the act's effective date, the board had different charges for residents and nonresidents and the charge for nonresidents was less than that authorized rate, the board may charge nonresidents less than that authorized rate. (Sec. 505.721.)

The charges collected under the act must be kept in a separate fund designated as the ambulance and emergency medical services fund, and must be appropriated and administered by the board. The moneys in the fund must be used for the payment of the costs of the management, maintenance, and operation of ambulance and emergency medical services in the district. If those services are discontinued in the district, any balance remaining in the fund must be allocated in amounts proportionate to the percentage of the district's total population served and be paid accordingly into the general funds of the participating political subdivisions. (Sec. 505.721.)



COMMENT

The act states that its "*Township records*" provisions do not diminish the right of any trustee to inspect township records following the procedures in the Public Records Law. That law generally requires that any public record be promptly prepared and made available for inspection *to any person at all reasonable times during regular business hours*. And, it also requires that public offices maintain public records in a manner that they can be made available for such inspection. (Sec. 507.04(B); sec. 149.43(B)--not in the act.)

The Attorney General, in construing the Public Records Law and the rights of township trustees to inspect records kept by a township clerk, noted "that the right of the township trustees to inspect the township books is at least as great as that of the general public and that, at a minimum, the books must be maintained in such a manner that they can be made available for inspection by the trustees in accordance with R.C. 149.43(B)." 1986 Op. Att'y Gen. No. 86-057. See generally *State ex rel. Beacon Journal Pub. Co. v. Andrews* (1976), 48 Ohio St.2d 283, 289 (an official who has charge of public records "is under a statutory duty to organize his office and employ his staff in such a way that his office will be able to make . . . [the] records available for inspection and to provide copies when requested within a reasonable time. This is the public's business, not the . . . [official's] private record.").

The act's authorization for township trustees to request records *quarterly* and its requirement for that request to include *specified information* is more limiting than the Public Records Law.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-26-03	p. 290
Reported, H. County & Township Government	10-15-03	p. 1117
Passed House (90-0)	12-03-03	pp. 1250-1251
Reported, S. State & Local Gov't & Veterans Affairs	03-18-04	p. 1650
Passed Senate (31-0)	05-26-04	pp. 2055-2059
House concurrence in Senate amendments (96-1)	05-26-04	pp. 2108-2109

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