



Ohio Legislative Service Commission

Final Analysis

Joseph D. Heller

Sub. H.B. 313

128th General Assembly
(As Passed by the General Assembly)

Reps. Ujvagi and Winburn, Domenick, Patten, Murray, Hagan, Driehaus, B. Williams, Foley, Skindell, S. Williams, Letson, Stewart, Lehner, Yuko, Bacon, Belcher, Blair, Bolon, Boose, Boyd, Brown, Carney, Celeste, Chandler, Combs, DeBose, DeGeeter, Dyer, Fende, Garland, Garrison, Gerberry, Goyal, Grossman, Hackett, Harris, Heard, Koziura, Luckie, Mallory, Mecklenborg, Moran, Newcomb, Pillich, Szollosi, Weddington, Yates

Sens. D. Miller, Schuring, Strahorn, Cafaro, Fedor, Harris, Kearney, R. Miller, Morano, Sawyer, Schiavoni, Smith, Turner, Wilson, Gibbs, Wagoner

Effective date: July 7, 2010

ACT SUMMARY

- Authorizes a county with a population greater than 60,000 to organize a county land reutilization corporation (CLRC).
- Authorizes the county treasurer of any county with a CLRC to invoke a potentially shorter period of time within which a property owner can redeem tax-foreclosed property by paying the tax debt.
- Exempts a CLRC from being subject to equitable remedies in connection with a parcel of land the CLRC acquires.
- Immunizes a CLRC from liability for breach of a common law duty in connection with a parcel of land the CLRC acquires.
- Modifies the membership of a CLRC board of directors.
- Authorizes county funds not currently needed for expenditure to be used to purchase CLRC-issued obligations.
- Authorizes a county treasurer to pledge property tax penalties and interest to the repayment of CLRC-issued obligations and to grant a security interest in the penalties and interest if the treasurer, under continuing law, advances money to

taxing units in anticipation of collecting otherwise unpaid taxes; requires continued advances as necessary to satisfy the pledge.

- Requires CLRC annual financial reports to be made available online.
- Specifies that when a law designates two or more county ex-officio representatives to serve on a board or other body, and a county's charter combines the designees' offices, the combined office succeeds to only one of the ex-officio positions on the board or body, and any resulting vacancy on the board or body is to be filled by the county taxing authority.
- Authorizes new community authorities created on or after July 7, 2010, and before January 1, 2012, to impose a community development charge based on business revenues or gross receipts.
- Authorizes citizen members of the board of trustees of such a new community authority to be selected by means other than an election.
- Expands the purposes for which such a new community authority's community facilities may be used to include governmental, industrial, commercial, distribution, and research activities.
- Expressly authorizes counties to levy taxes outside the 10-mill limitation for soil and water conservation districts and Ohio State University Extension services.
- Authorizes the state to convey real property that was the Twin Valley Behavioral Healthcare Dayton campus to Amamata, LLC, of New Albany.

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CONTENT AND OPERATION

County land reutilization corporations

Creation of county land reutilization corporations

(R.C. 1724.04)

Continuing law authorizes the board of county commissioners of a county having a population exceeding 1.2 million (at the time of enactment, Cuyahoga County), and that has elected to implement land reutilization powers, to create a county land reutilization corporation (CLRC). A CLRC is a nonprofit corporation created for the purposes of promoting development and managing and facilitating the reclamation, rehabilitation, and reutilization of vacant, abandoned, or tax-foreclosed real property.

The act authorizes counties having a population of more than 60,000 as of the most recent federal decennial census to create a CLRC.¹

Board of CLRC

(R.C. 1724.03)

Under prior law the board of directors of a CLRC was required to be composed of at least five members, including the county treasurer, at least two of the members of the board of county commissioners, and two members selected by the treasurer and the county commissioners who are members of the CLRC's board and approved by a majority of the chief executive officers of all municipal corporations the majority of the territory of which is located in the county. The treasurer and the county commissioners who are members of the board of directors must establish the process by which this approval is obtained. The failure, refusal, or inability of any chief executive officer to respond in writing to any request for approval of the members selected by the treasurer and county commissioners within 14 days was deemed to be an approval by that chief

¹ According to the Department of Development, 41 counties had a 2000 population exceeding 60,000; in 2009, 42 counties had a projected 2010 population exceeding 60,000. Two counties, Huron and Knox, with populations below 60,000 in 2000 are expected to have 2010 populations above 60,000, and one county, Sandusky, is expected to fall below 60,000 in 2010.

executive officer. Any such failure, refusal, or inability to respond does not prevent the CLRC from exercising its powers and authority under the CLRC Law.

The act requires the board of directors of a CLRC to be composed of five, seven, or nine members, including the county treasurer, at least two of the members of the board of county commissioners, one representative of the largest municipal corporation, based on the population according to the most recent federal decennial census, that is located in the county, one representative of a township with a population of at least 10,000 in the unincorporated area of the township according to the most recent federal decennial census, if such a township exists in the county, and any remaining members selected by the treasurer and the county commissioners who are members of the CLRC's board. Additionally, the act requires that at least one board member have "private sector or nonprofit experience in rehabilitation or real estate acquisitions." The act also removes the mayoral approval process described above.

CLRC liabilities

(R.C. 5722.22)

Under continuing law, a CLRC that acquires property is not subject to liability for damages arising from damage caused by leaking underground storage tanks, air pollution, sewage waste, and hazardous wastes and chemicals under R.C. Chapters 3704., 3734., 3737., 3745., 3746., 3750., 3751., 3752., 6101., and 6111., or for violation of any rule adopted, or order, permit, license, variance, or plan approval issued, under those chapters that is or was committed by another person in connection with a parcel of land the CLRC acquires.

The act adds that a CLRC is not liable for damages or subject to equitable remedies for breach of a common law duty or for violation of the chapters listed above or any rule adopted or order, permit, license, variance, or plan approval issued under any of those chapters in connection with a parcel of land the CLRC acquires. The act also removes the limitation that the violation had to be committed "by another person."

Foreclosure procedure: right of redemption

(R.C. 323.78)

After a tax foreclosure action is initiated, a property owner can "redeem" the property by paying the debt for which the property is being foreclosed. Before S.B. 353 of the 127th General Assembly, the right to redeem continued until the filing of an entry of confirmation of sale or transfer, which occurs after the property is sold in a tax sale auction. S.B. 353 created an alternative redemption period and authorized it to be invoked by the county treasurer of a county having a population of more than 1.2

million (i.e., only in the one county, Cuyahoga County, where a CLRC could be created). The alternative redemption period potentially shortens the time within which an owner or other interested party may redeem abandoned tax-foreclosed property. The alternative redemption period is the 45-day period after an adjudication of foreclosure is journalized by a court or county board of revision.

The act authorizes the county treasurer of all counties in which a CLRC operates, not just those having a population exceeding 1.2 million, to invoke the alternative redemption period.

Financial investment or deposit

(R.C. 135.35)

Continuing law specifies several classifications of securities and obligations county treasurers may purchase with county inactive money. (Inactive money refers to public funds on deposit with public depositories that are not needed to meet the current needs of the county treasury.) Continuing law also states that such investments, except for ones specifically exempted, must be made only through a member of the National Association of Securities Dealers, through a bank, savings bank, or savings and loan association regulated by the Superintendent of Financial Institutions, or through an institution regulated by the Comptroller of the Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System.

Under the act, a county treasurer may invest county inactive moneys in bonds and other obligations of a CLRC if the CLRC is located wholly or partly within the same county as the county treasurer. Additionally, the act exempts this type of investment from the requirement of being made through a member of the National Association of Securities Dealers, through a bank, savings bank, or savings and loan association regulated by the Superintendent of Financial Institutions, or through an institution regulated by the Comptroller of the Currency, Federal Deposit Insurance Corporation, or Board of Governors of the Federal Reserve System.

CLRC obligations: pledging of penalties and interest; security

(R.C. 321.343)

Continuing law authorizes the county treasurer of a county where a CLRC has been created to make advance payments to taxing units of unpaid property taxes in anticipation of eventually collecting the taxes. (R.C. 321.341.) The advances are funded by either a line of credit or securities issued by the county. Once the taxes and associated penalties and interest are collected, the taxes may be applied to reimbursing the line of credit or to the securities' debt charges; the penalties and interest are credited

to a special fund used to pay the CLRC's expenses or to reimburse the line of credit or pay the debt charges.

The act authorizes a county treasurer making such advances to agree with the CLRC to pledge the penalties and interest collected to the payment of debt charges on CLRC-issued obligations. The pledge agreement may include the granting of a security interest to the CLRC in the penalty and interest collections and a covenant that the treasurer will continue to advance payments to taxing units for as long as the CLRC debt remains outstanding as needed to pay the debt charges. The treasurer's duties and obligations under the agreement are enforceable by writ of mandamus.²

Making of loans by CLRC

(R.C. 1724.02)

Under continuing law, a CLRC can make revolving loans to community development corporations or "groups" for the purposes contained in the CLRC's plan. The act modifies to whom a CLRC can make revolving loans by authorizing them to be made to community development corporations, "private entities, or any person."

Financial report

(R.C. 1724.05)

Under continuing law, a CLRC must prepare an annual financial report that conforms to rules prescribed by the Auditor of State, that is prepared according to generally accepted accounting principles, and that is certified by the board of directors of the CLRC or its treasurer or other chief fiscal officer to the best knowledge and belief of those persons certifying the report. The financial report must be filed with the Auditor within 120 days following the last day of the CLRC's fiscal year, unless the Auditor extends that deadline. The Auditor can establish terms and conditions for granting any extension of that deadline.

The act adds that the financial report must be published on the CLRC's web site, or if the CLRC does not have a web site, on the web site of the county in which the CLRC is located.

² Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station (R.C. 2731.01, not in the act).

Charter county representation on boards

(R.C. 1.62)

Continuing law specifies that, with respect to charter counties, any references in the Revised Code to a county's board of commissioners, officers, or other bodies refer as well to the equivalent board, officer, or body designated by the charter to perform the same duties or functions.

The act states that for a county that has adopted a charter under the Ohio Constitution (currently, only Summit and Cuyahoga counties), if any section of the Revised Code requires county representation on a board, commission, or authority by more than one county officer, and the charter vests the powers, duties, or functions of each county officer representing the county on the board, commission, or authority in fewer officers or in only a single county officer, the county officers or officer must succeed to the representation of only one of the county officers on the board, commission, or authority. If any vacancy in the representation of the county on the board, commission, or authority remains, the taxing authority of the county must adopt a resolution to fill the vacancy.

Because the board of directors of a CLRC includes at least two members of a board of county commissioners, this provision might be applicable to a charter county that creates a CLRC.

New community authorities (NCA)

(R.C. 349.01, 349.03, 349.04, 349.06, and 349.14)

Continuing law authorizes New Community Districts to be established by developers by petition to the board of county commissioners. A board of county commissioners may approve the petition if it finds that creation of a district "will be conducive to the public health, safety, convenience, and welfare" and is intended to result in development of a facilities for industrial, commercial, residential, cultural, educational, and recreational activities. (The board of county commissioners that approves a petition is the "organizational board of commissioners.") If a petition is approved, a New Community Authority is established to develop land in the district, provide services in the district, and to raise revenue by levying community "charges" in the district. The Authority is governed by a board of trustees composed of a local government representative and representatives of the developer and (in an equal number) of residents.

The act modifies the law governing NCAs, but applies only to NCAs created between July 7, 2010, and January 1, 2012.



"Community development charge"

(R.C. 349.01(L)(2))

Under continuing law, a NCA has among its powers the authority to levy a community development charge upon land, on resident income, or business profit within the district to cover all or part of the cost of the acquisition, construction, operation, maintenance, and debt service charges of "community facilities."

The act authorizes NCAs created on or after July 7, 2010, and before January 1, 2012, to impose a community development charge based on business revenues or gross receipts, in addition to the current bases. The act specifies that charges on the basis of income or profits may be based on all or part of such income or profits.

Board of trustees

(R.C. 349.04)

Under continuing law, the board of trustees of a NCA must be composed of a representative of a local government and an equal number of members, between three and six, representing citizens and the developer. Citizen members serve overlapping two-year terms and are replaced through election by a majority of the district's residents at an annual election. Citizen members must be residents of the district.

The act authorizes citizen members of NCAs created on or after July 7, 2010, and before January 1, 2012, to be selected by means other than an election if the organizational board of commissioners, by resolution, provides for such an alternative means of selection. The selection of citizen members may include elections held according to the manner provided by the board in the resolution. In addition to representing any residents, such citizen members may also represent "present and future employers" within the district.

NCA authority

(R.C. 349.06(D) and (S))

Under continuing law, NCAs are authorized to provide activities and services "primarily for residents of" the community.

The act expands the authority of NCAs created on or after July 7, 2010, and before January 1, 2012, by permitting them to provide activities and services for visitors to and employees and employers in the district.

Continuing law grants NCAs general authority to contract "relating to a new community development program," including with local governments "for the provision of any services or activities relating to and in furtherance of" the program, among other things. (R.C. 349.06(I).) The act authorizes NCAs created after July 7, 2010, and before January 1, 2012, to enter agreements with political subdivisions providing for revenue sharing, for services, products, and materials, and for the administration, calculation, or collection of community charges.

Developer land ownership or control

(R.C. 349.01(E) and 349.03(A)(3) and (B))

Under continuing law, a developer must own or control land inside a proposed new community district through leases of at least 75 years in order to establish a NCA. The act decreases the required duration of such leases to 40 years for NCAs created after July 7, 2010, and before January 1, 2012.

NCA definitions

For NCAs created on or after July 7, 2010, and before January 1, 2012, the act expands the definitions of the following terms:

"New community"

(R.C. 349.01(A) and (N) and 349.03(A)(3))

Under continuing law, a "new community" is a community or an addition to an existing community that includes facilities for conducting industrial, commercial, residential, cultural, educational, and recreational activities.

For NCAs created on or after July 7, 2010, and before January 1, 2012, "new community" may mean "a community or development of property that is planned in relation to an existing community, not necessarily an existing new community, so that the community includes facilities for conducting community activities." "Community activities" is defined to include any of the above mentioned activities, or governmental, distribution, or research activities if combined with residential activities.

"Community facilities"

(R.C. 349.01(I)(2))

Among the various types of "community facilities" that a NCA may finance, construct, own, and operate, the act expands the list to include "town buildings or other facilities, health care facilities, . . . and off-street parking facilities."

"New community development program"

(R.C. 349.01(B))

Under continuing law, a "new community development program" is a program for the development of a new community characterized by "well-balanced and diversified land use patterns." The act expands the definition to take existing communities into account when considering whether land use patterns are well-balanced and diversified. Apparently, this means that a development program undertaken under the act's authority need not itself exhibit "well-balanced and diversified" land use patterns so long as such patterns remain present in the wider "community" once the development occurs.

"Proximate city"

(R.C. 349.01(M))

Under continuing law, approval of a proximate city is required before a NCA may be created. The act changes the definition of "proximate city" so that, rather than being the "most populous" city, a proximate is a city with the greatest population located in the county, or with the greatest population located in an adjoining county if the city is within five miles of the district. This change addresses situations where a high-population city overlaps county borders and constitutes the most populous city in a county, even though most of the city's residents are not in that county.

Dissolution

(R.C. 349.14)

Under continuing law, NCAs may be dissolved only by a majority of the voters of the district. The act authorizes the organizational board of commissioners of a NCA created on or after July 7, 2010, and before January 1, 2012, to provide, by resolution, for an alternative means of dissolution.

County tax levy authority

Soil and water conservation district programs

(R.C. 5705.19(VV))

Under continuing law, boards of county commissioners are authorized to use county general fund money to support soil and water conservation districts. (R.C. 5705.05(E).) The act specifically authorizes counties to levy a voter-approved property tax to provide funding for construction or maintenance of improvements for, and expenses of, a soil and water conservation district.

Ohio cooperative extension service (aka O.S.U. Extension)

(R.C. 5705.19(WW))

Under continuing law, boards of county commissioners may levy a tax for educational programs for county citizens through the O.S.U. Extension service. (R.C. 3335.37.) The act expressly authorizes boards of county commissioners to propose to voters a county levy for educational programs provided through O.S.U. Extension to citizens of the county.

Land conveyance

(Section 3)

The act authorizes the state to convey real property located in Dayton (the former Twin Valley Behavioral Healthcare Dayton Campus) to Amamata, LLC, of New Albany, Ohio for the price of \$1,700,000. The proceeds of the conveyance that are necessary to retire any debt of the state for the facilities will be credited to the Mental Health Facilities Improvement Fund (Fund 033), and any remaining proceeds will be deposited into the Department of Mental Health Trust Fund.

HISTORY

ACTION	DATE
Introduced	10-14-09
Reported, H. Local Gov't & Public Administration	12-10-09
Passed House (84-14)	12-16-09
Reported, S. Ways & Means & Economic Development	03-11-10
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