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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 676
133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Jordan

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SUMMARY

- Creates 12 State and Local Government Accountability Appeals Boards throughout the state to hear appeals from businesses related to issues that arise in the continuation of businesses as it relates to the Governor's COVID-19 declaration of emergency.
- Permits any business alleging that a particular state or local government regulation or policy will unnecessarily hinder, impair, obstruct, or prevent the continuation of business to file an appeal with the Board.
- Provides that each Board will consist of five members, appointed for a term of five years, and describes the duties of each Board.
- Provides that each Board is a public body and subject to Ohio's Sunshine Law.
- Requires the head of the Common Sense Initiative to appoint an executive director to oversee all Boards as the principal administrative officer and to assist in coordinating the Boards' activities with the goal of achieving a reasonably consistent approach.
- Requires the Board to either hold a hearing within 14 days of a business filing an appeal with the Board, or resolve the issue by the use of alternative dispute resolution.
- Authorizes each Board to hold hearings and conduct investigations related to the matter before the Board.
- Permits any party to apply to the Board for reconsideration of a Board's final order.
- Provides procedures in which any party can obtain judicial review of a Board's final order by bringing a claim in the court of common pleas in the county in which the Board is located.
- Declares an emergency.

DETAILED ANALYSIS

Overview

The bill creates 12 regional State and Local Government Accountability Appeals Boards throughout the state to hear appeals from businesses related to issues that arise in the reopening or continuation of businesses related to the Governor's COVID-19 declaration of emergency, issued on March 9, 2020. These issues include, but are not limited to, state health guidelines, state and local government business requirements, and regulations regarding licenses and permits.¹ Under the bill, any business may file an appeal with a Board alleging that a particular state or local government regulation or policy will unnecessarily hinder, impair, obstruct, or prevent the continuation of business. If a business files an appeal, the Board must either hold a hearing or resolve the issue by the use of alternative dispute resolution.²

State and Local Government Accountability Appeals Boards

Board members

Under the bill, one State and Local Government Accountability Appeals Board will be located in each of the same districts as the state court of appeals, for a total of 12 Boards. These Boards are considered public bodies and subject to Ohio's Sunshine Law. Each Board will consist of five members. Three of the members will be appointed by the Governor, one member will be appointed by the Speaker of the House of Representatives, and one member will be appointed by the President of the Senate. Board members will serve for a term of five years, starting on July 29. In addition to Board members, an executive director will act as the principal administrative officer overseeing all of the Boards. The executive director will be appointed by the head of the Common Sense Initiative and work with each Board to assist in coordinating the Boards' activities with the goal of achieving a reasonably consistent approach among all the of the Boards. Salaries for Board members and the executive director will be determined by the Department of Administrative Services.³

The bill authorizes the Governor to remove any member of a Board for inefficiency, neglect of duty, misconduct, or malfeasance in office, after being given a written statement of the charges against the member and an opportunity to be heard publicly.⁴

Board duties

In order to conduct hearings and resolve disputes, each Board must establish and maintain a principal office in the assigned geographic district, appoint staff, such as hearing examiners, alternative dispute resolution professionals, and other employees and agents. The

¹ R.C. 196.01(C), 196.02(A), and 196.03(A).

² R.C. 196.03(C) and (D).

³ R.C. 196.02(A), (B), (C), (E), and (G); R.C. 121.22, not in the bill.

⁴ R.C. 196.02(F).

Board must also receive, investigate, and determine the best course of action for each business that files an appeal. Each Board is required to formulate policies to effectuate the purposes of the bill and make recommendations to state and local agencies and officers to effectuate the policies. At least once a year, each Board is required to report to the General Assembly and the Governor, describing the hearings it has conducted and their outcome, the decisions it has rendered, and the other work performed by it.⁵

Business appeals

A business that wishes to file an appeal must do so with the Board located within the geographic district in which the main principal office of the business is located. After a business files an appeal with the Board, the Board must hold a hearing within 14 days after the appeal is filed or resolve the issue by the use of alternative dispute resolution. Alternative dispute resolution can only be used if both parties agree to participate in the process.

The purpose of alternative dispute resolution is to resolve the issues in a satisfactory manner to both parties and should not be used as a forum to decide the merits of the case. If the alternative dispute resolution is successful, the case is closed and the Board will take no further action. If not successful, or if the party other than the business does not agree to alternative dispute resolution, the business may file for an official hearing with the Board or file a civil action in a court of competent jurisdiction.⁶

Hearings

In order to conduct business, three members of a Board constitutes a quorum. The Board has the authority to subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the production for examination of any books and papers relating to any matter under investigation or in question before the Board. The Board has the authority to access premises, records, documents, individuals, and other evidence reasonably necessary for the furtherance of a hearing or investigation. If necessary, subpoenas issued by the Board may also be enforced by the court of common pleas. However, if the Board issues a subpoena on a person, within five days, the person may petition the Board that issued the subpoena to revoke or modify the subpoena. The Board must grant the petition if there is a good reason or if it finds any of the following relating to the subpoena:

1. It requires an appearance or attendance at an unreasonable time or place.
2. It requires production of evidence that does not relate to any matter before the Board.
3. It does not describe with sufficient particularity the evidence to be produced.
4. Compliance would be unduly onerous.

⁵ R.C. 196.03(B).

⁶ R.C. 196.03(C), (D), and (E).

A determination by a Board is a final order, however any party may apply to a Board for reconsideration, and a party may also obtain judicial review of a final order.⁷

Reconsideration of a Board order

Any party may apply to a Board for reconsideration of any final order. In order to apply for reconsideration, the party must apply in writing and state the specific grounds it is seeking reconsideration. The application and supporting materials for reconsideration must be filed with the Board within ten days from the date of service of the final order. The Board may, in its discretion, accept or reject an application for reconsideration. The Board may also, upon its own motion, reconsider any determination it makes. A new determination constitutes a final order.⁸

Judicial review

Any party claiming to be aggrieved by a Board's final order may obtain judicial review of the order. In addition, a Board that issued a final order may also obtain a court order for enforcement of its final orders. Proceeding for judicial review must be brought in the court of common pleas located within the county in which the Board is located. If a proceeding is not initiated by a party within 30 days from the service of the Board's final order, the Board may obtain a decree of the court for the enforcement of its order. The bill requires that all suits for judicial review must be heard and determined as expeditiously as possible. If proceedings are initiated, the Board must file with the court a transcript that includes all evidence that was included or excluded during the Board's hearing of the particular case.

Unless an extraordinary circumstance exists, an objection that was not made before the hearing with the Board cannot be considered by the court. The bill authorizes the court to grant a request for additional evidence, if the additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the hearing before the Board. The findings of the Board as to the facts, however, must be conclusive if supported by reliable, probative, and substantial evidence on the record and any additional evidence the court has admitted is considered as a whole.

The court has the power to grant temporary relief, restraining order, or other order as it deems just and proper, which can include an order enforcing, modifying, or setting aside in whole or in part, the Board's order or remanding the case back to the Board for further proceedings. The jurisdiction of the court is exclusive and its judgment and order are final and subject to appellate review. Any violation of the court's order is punishable as contempt.⁹

⁷ R.C. 196.02(D) and 196.03(F), (G), (H), (I), and (J).

⁸ R.C. 196.04.

⁹ R.C. 196.05.

HISTORY

Action	Date
Introduced	05-26-20
