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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 463
134th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Stephens

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SUMMARY

- Requires the five-member board of health of a general health district to include four members representing the county commissioners, township trustees, municipal corporations, and school districts located in the district; one member continues to be a physician.
- Eliminates district advisory councils and makes conforming changes.
- Removes the authority of the Director of Health to appoint the board of health of a general health district.

DETAILED ANALYSIS

Board of health – general health district

Each county has a health district or health department tasked with providing for the public health within that county. These are called “general health districts,” and include all territory of the county except any territory that is covered by a city health district.¹ Each general health district has a board of health responsible for regulating public health, preventing or restricting disease, and preventing, abating, and suppressing nuisances.²

Membership

Currently, boards have five members: one is required to be a physician; the remaining four members have no stated qualifications but many have backgrounds and expertise in medicine, public health, and related fields. Instead, under the bill, the remaining four members

¹ R.C. 3709.01, not in the bill.

² R.C. 3709.02; R.C. 3709.21, not in the bill.

will represent the county commissioners, township trustees, municipal corporations, and school districts located in the district (one member representing each); one member continues to be a physician.³ Sitting board members are not removed when the bill takes effect; they may serve the remainder of their terms, then the board of county commissioners appoints their successor.⁴

The Attorney General has opined that the positions of county commissioner, township trustee, and school board member are incompatible with membership on a general health district board of health.⁵ In the case of a township trustee, the Attorney General opined the “danger inherent in such a situation” is that “interests of the township and the general health district will be conflicting in that the amount of funds made available to the one subdivision will often be dependent in a measure upon the amount made available to the other. It would follow that one serving in both capacities might be influenced of the needs of the other.”⁶ With reference to a county commissioner and school board member, the Attorney General said they are incompatible because one is a check upon the other.⁷

The bill’s grant of statutory authority overrides the common law doctrine of incompatibility and therefore, allows an individual to hold both positions despite the potential inherent conflicts.

Appointing authority

The bill requires the *board of county commissioners*, rather than a *district’s advisory council*, to appoint the five members to a board of health; the bill eliminates advisory councils (see “**advisory council**” below).⁸

³ R.C. 3709.03(B).

⁴ Section 4.

⁵ The Attorney General also opined that a member of the legislative authority of a statutory municipality is incompatible with a board of health member, but because a statutory municipal officer is prohibited, by law, from holding another public office. See R.C. 731.12, not in the bill. 1999 Op. Att’y Gen. No. 036.

⁶ 1965 Op. Att’y. Gen. No. 088, citing 1930 Att’y. Gen. No. 2603.

⁷ 1986 Op. Att’y Gen. No. 060 (local board of education member and board of health member are incompatible because a board of health has authority to require a board of education to abate a nuisance or otherwise correct a “condition detrimental to health” within school facilities. See R.C. 3707.03, not in the bill); 1923 Op. Att’y. Gen. No. 200 (county commissioner and board of health member are incompatible because “one is a check upon the other,” though the opinion focused on how the commissioners provided certain facilities (e.g., jails and infirmaries) that were subject to inspection by the board of health. The basis for this opinion may no longer stand, given the modification of duties since 1923).

⁸ R.C. 3709.03(C).

If a health district has a licensing council, a board of health expands to seven members under the bill; the two additional members are appointed by the licensing council.⁹ Currently, in a district with a licensing council, the advisory council appoints four members (not five) and the licensing council appoints one.¹⁰

Currently, if the advisory council in a general health district fails to appoint a board of health as required, the Director of the Department of Health appoints the board. The bill eliminates this authority,¹¹ but the Director still has authority to appoint an individual member of the board if necessary.¹²

Combined health districts

On occasion, a city health district will merge with a general health district. The result is a general health district that may be referred to as a “combined district.” The board of health of such a merged district might vary from that of a general health district, because:

- When a merger is initiated by the districts themselves, the merging districts may enter into a contract that provides for the administration of the new, merged district. The contract must set forth the number of members, and the manner of appointment or election. The only requirement is that one member must be a physician.
- Or, when a merger is initiated by petition of the electors, the petition may specify the qualifications for membership, number of members, and the method for appointing members.

The bill, in similar fashion to the above discussion, requires that at least four people representing the various political subdivisions serve on the board of a combined district, as follows: at least one to represent the board of county commissioners; at least one to represent the boards of township trustees; at least one to represent municipal corporations; at least one to represent school districts.¹³

District advisory council

The bill eliminates advisory councils, which currently exist in each general health district.¹⁴ An advisory council’s main responsibilities include appointing the board of health and

⁹ A licensing council exists in districts where the board of health voted to establish one. Currently, the council is appointed by the advisory council, but the bill modifies this to have the board of county commissioners appoint the licensing council instead. The licensing council consists of one member to represent each business activity for which the board of health operates a licensing program. R.C. 3709.41.

¹⁰ R.C. 3709.03(B), 3709.07, and 3709.41.

¹¹ R.C. 3709.04 (repealed, Section 3) and 3701.57.

¹² R.C. 3709.03(C).

¹³ R.C. 3709.07 and 3709.071.

¹⁴ R.C. 3709.03(A).

recommending (to the board of health) improvements within the district. The board of county commissioners takes over the duties of the advisory council. This includes, specifically:

- Appointing the board of health, filling vacancies, and removing members for misfeasance, malfeasance, or nonfeasance, or the failure to perform duties;¹⁵
- Receiving and considering the annual or special reports from the board of health;¹⁶
- Making recommendations to the board of health in regard to matters for the betterment of health and sanitation within the district or for needed legislation;¹⁷
- Approving the board of health's policy regarding the authority of the district's health commissioner;¹⁸
- Managing a merger with a city health district or another general health district. This involves voting on the merger and contracting for the administration of a merged district;¹⁹
- Approving contracts under which the health district provides services to another health district;²⁰
- Disapproving fees charged by the health district.²¹

Appropriation measure

Under continuing law, the board of health of a general health district submits an appropriation measure (anticipated expenses) and an itemized estimate of revenue for the next fiscal year to the county auditor, who submits them to the county budget commission. Once the county budget commission calculates the amount that is necessary to appropriate from the townships and municipal corporations located in the district, the county auditor appropriates those amounts. The bill adds the board of county commissioners into the process; the board of health would be required to submit the items to the board of county commissioners first. The commissioners can approve or adjust the appropriation measure, then certify it to the county auditor. The remainder of the process is unchanged.²²

¹⁵ R.C. 3709.03, 3709.02, and 3709.35.

¹⁶ R.C. 3709.03 and 3709.19.

¹⁷ R.C. 3709.03.

¹⁸ R.C. 3707.34.

¹⁹ R.C. 3709.012, 3709.07(A), 3709.071, and 3709.10.

²⁰ R.C. 3709.08.

²¹ R.C. 3709.09, 3717.25, and 3717.45.

²² R.C. 3709.28.

Structure of a general health district

CURRENT

Advisory council

Includes the chairperson of the board of county commissioners and one representative from each municipal corporation and township located within the district.

Appoints the board of health.

Board of health

Generally, includes medical experts, public health experts, and related fields; must include one physician.

Adopts rules and issues orders to regulate public health, to prevent or restrict disease, and to prevent, abate, and suppress nuisances.

Appoints the director of health.

Director of health

Must be a licensed professional or have a master's degree in public health/related field.

UNDER THE BILL

Board of county commissioners

Meaning, the board of county commissioners of the county where the district is located.

Appoints the board of health.

Board of health

Includes one county commissioner representative; one township trustee representative; one municipal corporation representative; one school district representative; and one physician.

Adopts rules and issues orders to regulate public health, to prevent or restrict disease, and to prevent, abate, and suppress nuisances.

Appoints the director of health.

Director of health

Must be a licensed professional or have a master's degree in public health/related field.

HISTORY

Action	Date
Introduced	10-25-21
