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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 286
134th General Assembly

Final Analysis

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Primary Sponsor: Rep. Seitz

Effective date: Vetoed

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SUMMARY

This act was vetoed in its entirety. A detailed description of the vetoed provisions is available in [LSC's Analysis of H.B. 286, As Reported by Senate Judiciary](#), which is available on the General Assembly's website: legislature.ohio.gov. Please note: that analysis does not reflect the amendment adopted on the Senate floor, which eliminated the provisions described under **"Challenge of administrative order responding to state of emergency."**

Appeals of administrative orders

- Would have restructured and modified the Administrative Procedure Act provisions regarding appeals by a party adversely affected by an order of an agency, by specifying that, subject to certain provisions, the appeal must be filed in the county where the licensee's place of business was located or the county where the licensee was a resident.

No claim preclusion in zoning appeals

- Would have provided that a final judgment on the merits by a court pursuant to its power of review of administrative orders on claims brought under the law regarding county rural zoning or the renewal of slums and blighted areas in a county, the Township Zoning Law, or the law regarding municipal zoning, regional and county planning commissions, or interstate regional planning commissions does not preclude later claims for damages.

Challenge of administrative order responding to state of emergency

- Would have modified the law by providing that an action challenging an order of an administrative department or head, state agency, or state elected officer issued in response to a state of emergency must be brought in the Court of Claims instead of the court in the county of the person's residence or business. (This change was removed by an amendment adopted on the Senate floor. It is addressed in the analysis of the bill as

reported by the Senate Judiciary Committee, but it was not part of the act presented to the Governor.)

Hamilton County Drug Court jurisdiction

- Would have replaced the statutory provisions that specify the types of cases that may be referred to the Drug Court of the Hamilton County Court of Common Pleas with authority for local rule, with limitations, and allowed the Municipal Court to refer eligible cases to the Drug Court.

Jurisdiction of Tiffin-Fostoria Municipal Court and Bowling Green Municipal Court – Perry Township

- Would have transferred Perry Township in Wood County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Bowling Green Municipal Court.

State involvement in legal actions

- Would have specified that the General Assembly and each chamber may intervene as a matter of right at any time in any action or proceeding in state or federal court that involves a challenge to the validity, applicability, or constitutionality of the Ohio Constitution or the laws of Ohio.
- Would have created exceptions to the law requiring the Attorney General to represent a state agency in any legal action, by allowing the Speaker of the House, the Senate President, and the Governor to retain separate legal counsel to represent the House, the Senate, the General Assembly, or the interests of the Office of the Governor.

DETAILED ANALYSIS

Appeal of administrative agency order

The act would have provided that a party adversely affected by an order of an agency issued pursuant to an adjudication may appeal from the order to the court of common pleas in the appropriate county, as described below.

Under the act, an appeal by a party adversely affected by any order of an agency issued pursuant to an adjudication would have been required to be filed in the county designated as follows:

1. Except as otherwise described below in (2), an appeal from an order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, denying the issuance or renewal of a license or registration of a licensee, revoking or suspending a license, or allowing the payment of a forfeiture rather than suspending operations of a liquor permit holder by order of the Liquor Control Commission would have been required to be filed in the county where the licensee's business is located or the county where the licensee is a resident.

2. An appeal from an order issued by any of the following agencies would have been required to be made to the Franklin County Court of Common Pleas (Franklin County CCP). The court of common pleas in the county where the licensee's business is located, or the county where the licensee is a resident: (a) Liquor Control Commission, (b) Ohio Casino Control Commission, (c) State Medical Board, (d) State Chiropractic Board, (e) Board of Nursing, and (f) Bureau of Workers' Compensation regarding participation in the health partnership program administered by the Bureau.
3. Appeals from orders of the State Fire Marshal issued under R.C. Chapter 3737 would have been required to be made to the court of common pleas of the county where the building of the aggrieved person is located.
4. As under continuing law retained by the act, appeals under R.C. 124.34(B) from a decision of the State Personnel Board of Review or a municipal or civil service township civil service commission would still be taken to the court of common pleas of the county where the appointing authority is located or, in the case of an appeal by the Department of Rehabilitation and Correction, to the Franklin County CCP.
5. If a party appealing from an order described in (1) or (2) or (6) is not an Ohio resident and has no place of business in Ohio, the party would have been required to appeal to the Franklin County CCP.
6. A party adversely affected by any order of an agency issued pursuant to any other adjudication would have been permitted to appeal to the Franklin County CCP or the court of common pleas of the county where the party's business is located or where the party is a resident.

Appeal from order of specific agencies

The act's provision that a party adversely affected by an agency order may appeal from the order to the court of common pleas of the county where the party's place of business is located or the county where the party is a resident would have been expressly made applicable to a list of specific types of appeals involving the State Personnel Board of Review, city or city school district municipal civil service commissions, the Director of Agriculture, the Director of Health, the Superintendent of Insurance, the Department of Job and Family Services, and the Medicaid Department, which the Revised Code currently specifies must be made to particular courts of common pleas.¹

No claim preclusion in zoning appeals

The act would have provided that a final judgment on the merits issued by a court of competent jurisdiction pursuant to its power of review of orders of administrative officers and agencies on claims brought under the law regarding county rural zoning or the renewal of slums and blighted areas in a county, the Township Zoning Law, or the law regarding municipal

¹ R.C. 124.34, 956.11, 956.15, 3794.09, 3901.321, 3913.13, 3913.23, 5101.35, and 5164.38.

zoning, regional and county planning commissions, or interstate regional planning commissions does not preclude later claims for damages, including claims brought under 42 U.S.C. 1983 (the federal law allowing civil actions against the state for deprivation of rights), even if the common law doctrine of *res judicata* would otherwise bar the claim.²

The act stated that the General Assembly intended that it be construed to override the federal Sixth Circuit Court of Appeals' decision in the case of *Lavon Moore v. Hiram Twp.*, 988 F.3d 353 (6th Cir. 2021).

Challenge of administrative order responding to state of emergency

In the law that specifies that, notwithstanding any other provision of the Revised Code, a person who challenges an order or rule of an administrative department, administrative department head, state agency, or statewide elected officer that is issued or adopted in response to a state of emergency, in a civil action for damages, declaratory judgment, injunctive relief, or other appropriate relief, the version of the bill reported by the Senate Judiciary Committee would have authorized the person to challenge the order or rule in the Court of Claims, instead of in the "appropriate court in the county where the person's residence or business is located."³ This change was removed from that version by an amendment adopted on the Senate floor, and was not part of the act presented to the Governor.

Hamilton County Drug Court jurisdiction

The act would have modified the law regarding the jurisdiction of the Drug Court of the Hamilton County Court of Common Pleas as follows:⁴

1. It would have replaced the statutory provisions specifying the types of cases that may be referred to the Drug Court with a provision specifying that: (a) eligibility for admission of a case into the Drug Court is to be set forth in a local rule adopted by the Court of Common Pleas, and (b) the local rule specifying eligibility may not permit referral to the Drug Court of a case that involves a first or second degree felony, a violation of a prohibition contained in R.C. Chapter 2907 (the Sex Offenses Chapter) that is a third degree felony, or aggravated murder or murder.
2. It would have replaced the statutory provision authorizing the Hamilton County Municipal Court to refer a case to the Drug Court if the case is of a type covered under the statutory provisions replaced as described above in (1), with a provision that authorizes the Municipal Court to refer a case to the Drug Court if it is of a type eligible for admission into the Drug Court under the local rule adopted by the Court of Common Pleas.

² R.C. 303.65, 519.26, and 713.16.

³ R.C. 107.43(D)(1).

⁴ R.C. 1901.041 and 2301.03.

Repealed provisions regarding jurisdiction

The act would have repealed statutory provisions specifying the types of cases that may be referred to the Drug Court of the Hamilton County Court of Common Pleas. These provisions generally relate to the Drug Court's jurisdiction and the process by which a judge of the general division of the Hamilton County Court of Common Pleas and a judge of the Hamilton County Municipal Court may refer cases to the Drug Court, and the criteria a case must meet for that referral.⁵

Jurisdiction of Tiffin-Fostoria Municipal Court and Bowling Green Municipal Court – Perry Township

The act would have transferred Perry Township in Wood County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Bowling Green Municipal Court.⁶

State involvement in legal actions

Intervention by the General Assembly

The act would have specified that the General Assembly and each chamber may intervene as a matter of right (that is, become a party to a court case) at any time in any action or proceeding in state or federal court that involves a challenge to the validity, applicability, or constitutionality of the Ohio Constitution or the laws of Ohio.⁷

Special counsel

The act would have created exceptions to the law that requires the Attorney General to represent a state agency in any legal action, either through the Attorney General's office or by appointing special counsel, and that prohibits agencies from obtaining other counsel.⁸

General Assembly

First, the act would have allowed the Speaker of the House and the Senate President to retain their own legal counsel to represent the House, the Senate, or the General Assembly in any matter, action, or proceeding in which the legislature may intervene as described above, or in any other matter, action, or proceeding in which the interests of the legislature may be affected, as determined solely by those leaders. The Speaker and the President would have been required to approve all terms of representation and authorize payment for all financial costs incurred.

⁵ R.C. 2301.03(B)(3).

⁶ R.C. 1901.02 and 1901.021.

⁷ R.C. 101.55(A).

⁸ R.C. 109.02.

The act would have prohibited any person from retaining legal counsel on behalf of the House, the Senate, or the General Assembly, or on behalf of any member of the General Assembly in the member's official capacity, except as authorized above or as provided by the Attorney General under continuing law.

The act also would have specified that these provisions do not constitute a waiver of the legislative immunity or legislative privilege of the Speaker, the President, or any member, officer, or staff of either house of the General Assembly.⁹

Governor

Similarly, the act would have allowed the Governor to retain legal counsel, from other than the Attorney General, in any matter, action, or proceeding the Governor deemed to be necessary and proper to protect the interests of the Office of the Governor. The Governor would have been required to approve all terms of representation and authorize payment for all financial costs incurred.¹⁰

HISTORY

Action	Date
Introduced	05-04-21
Reported, H. Civil Justice	06-23-21
Reported, H. Rules & Reference	03-29-22
Passed House (60-31)	03-30-22
Reported, S. Judiciary	12-07-22
Passed Senate (25-4)	12-07-22
House concurred in Senate Amendments (61-31)	12-13-22

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⁹ R.C. 101.55.

¹⁰ R.C. 107.13.