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Bill Analysis

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SUMMARY

- Authorizes a board of county commissioners to create a water improvement district (WID) within the county to facilitate, coordinate, fund, finance, construct, reconstruct, or repair water projects.
- Specifies that a water project is any waste water facility or water management facility constructed or improved by a WID, including all buildings and facilities that the WID board of trustees considers necessary for the operation of the project.
- Requires a WID to be governed by a board of trustees that includes at least six specified members (five of whom are voting members), but up to an additional six members representative of governmental agencies within the WID's territory.
- Specifies the powers and duties of the WID board of trustees.
- Authorizes the WID board of trustees to enter into agreements with other governmental agencies, including the boards of county commissioners of contiguous counties, in order to assist in financing water projects or creating/repairing them within those other jurisdictions.
- Authorizes the WID board of trustees to levy special assessments and issue bonds to assist in financing the water projects proposed by the WID.
- Exempts WID projects and their contracts from certain restrictions (e.g., competitive bidding, prevailing wage law) that otherwise govern government contracts.
- Requires the creation of a WID appeals board, consisting of 12 members (11 of whom are voting members), to review appeals of any actions that arise concerning decisions made by the WID board of trustees.
- Specifies the hearing process for any appeals and the governing procedures for the WID appeals board.
- Declares an emergency.

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DETAILED ANALYSIS

Water Improvement District (WID)

Creation and purpose

The bill authorizes a board of county commissioners, via resolution, to create a water improvement district (WID) within a county to facilitate, coordinate, fund, finance, construct, reconstruct, or repair water projects or engage in any combination of those activities. A WID is a body both corporate and politic, and its exercise of its powers, granted under the bill, is an essential governmental function.¹

The concept of a WID is similar to the current law transportation improvement district (a.k.a. a TID), which is a political entity that helps with the financing of transportation-related projects. In the case of a WID, a water project is any waste water facility or water management facility constructed or improved by a WID, including all buildings and facilities that the WID board of trustees (see “**WID board of trustees**” below) considers necessary for the operation of the project. Also included in the water project are all property and rights that must be acquired by the board to construct, reconstruct, or repair the project.²

¹ R.C. 6120.02(A) and (B).

² R.C. 6120.01(Q).

While the WID is authorized to assist in financing the creation or repair of a water project, the long-term operation and maintenance of the project remains with another governmental agency. A governmental agency is any of the following:

- A department, division, or other unit of state government;
- A county, township, or municipal corporation;
- A watershed district, soil and water conservation district, park district, special water district (including a county and regional water and sewer district), conservancy district, sanitary district, sewer district (or any other public corporation or agency having the authority to operate a waste water or water management facility), or other political subdivision;
- A port authority; and
- The federal government.³

The bill requires a WID board of trustees to enter into an intergovernmental agreement with the legislative body of one or more governmental agencies that specifies that the governmental agency or agencies must operate and maintain a project under the terms specified in the agreement. The intergovernmental agreement must contain terms that are agreed upon by all parties prior to the WID board of trustees' approval of a project.⁴

WID board of trustees

Creation

As indicated above, the bill requires each WID to be governed by a board of trustees ("WID board"). The WID board must include at least six members as follows:

- Five voting members consisting of:
 - Either the county sanitary engineer (if one has been appointed) or the county engineer, or the engineer's designee; and
 - Four members appointed by the board of county commissioners, who have experience in waste water facilities, waste water, sewage, or water management facilities; and
- One nonvoting member appointed by the regional planning commission for the county.

The WID board may consist of up to an additional six nonvoting members who are representative of the governmental agencies that are located within the WID's territory. All of the members serve without compensation, but may be reimbursed for their actual and necessary expenses that are incurred in the performance of their official duties.

³ R.C. 6120.01(L).

⁴ R.C. 6120.02(A).

Each appointed member of the board must hold office for a term of two years, subject to removal of their appointing authority only for malfeasance. Members may be reappointed and any vacancy on the board must be filled in the same manner as the original appointment. A majority of the board's voting members constitutes a quorum, the affirmative vote of which is necessary for any action of the WID. A vacancy does not impair the right of a quorum to exercise all the rights and perform all the duties of the WID.

The five voting members of the WID board must elect a chairperson, vice-chairperson, and a secretary-treasurer. The original organizational meeting of the WID board must be held at a time and place designated by the nonvoting member who was appointed by the regional planning commission. The WID board is authorized to establish fees related to its services in order to pay the costs incurred by the WID in its exercise of its functions.⁵

Powers and duties

Similar to other political entity boards, the bill authorizes a WID board to do all of the following:

- Adopt bylaws for the regulation of its affairs and the conduct of its business;
- Adopt an official seal;
- Sue and be sued in its own name;
- Facilitate, coordinate, fund, finance, construct, reconstruct, or repair projects or engage in a combination of any of those activities;
- Issue WID revenue bonds and economic development bonds pursuant to the Ohio Constitution to pay the costs of any project;
- Maintain funds as the WID board considers necessary;
- Direct its agents or employees, under certain circumstances, to enter upon lands within its jurisdiction to make surveys and examinations preliminary to the location and construction of projects for the WID, without liability of the WID or its agents or employees except for actual damage done;
- Make and enter into all contracts and agreements necessary or incidental to the performance of the WID board's functions and the execution of its powers;
- Employ or retain or contract for the services of consulting engineers, superintendents, managers, and other experts, as are necessary and fix their compensation;
- Receive and accept from any governmental agency, loans and grants for or in aid of the construction, reconstruction, or repair of any project, and receive and accept contributions from any source of money, property, labor, or other things of value;

⁵ R.C. 6120.02(C) to (G).

- Acquire, hold, and dispose of property in the exercise of its powers and the performance of its duties;
- Cooperate with any governmental agencies in the planning, design, acquisition, construction, maintenance, funding, and financing of projects; and
- Do all acts necessary and proper to carry out the powers expressly granted by the bill.⁶

Consistency with state requirements

The bill requires the WID board to determine whether a water project is consistent with both:

- Any comprehensive plan of water management approved by or in the process of preparation by the Director of Natural Resources; and
- The standards set for the waters of the state affected thereby by the Environmental Protection Agency.

Relatedly, the bill requires a WID board resolution providing for the construction, reconstruction, or repair of a project to include the WID board's finding of the aforementioned determinations.⁷

Agreements with other local governments

The bill authorizes a WID board to enter into an agreement with a contiguous board of county commissioners for the WID to exercise all or any portion of its powers with respect to a water project that is located wholly or partially within that contiguous county. Similarly, the WID board may enter into an agreement with both the board of county commissioners that created it and with the contiguous boards of county commissioners (for contiguous counties). The agreement with the boards is to exercise all powers of the WID with respect to a project that is (1) located partially or wholly within any of the counties that are party to the agreement and (2) partially funded with federal money.⁸ Any agreements entered into with contiguous counties must also include the board of county commissioners that creates the WID. The WID is prohibited from undertaking any project located partially or wholly in another county unless there is an agreement between the WID, the creating board of county commissioners, and any other relevant boards of county commissioners.⁹

The bill also authorizes other local governments (specifically a county, a municipal corporation, or a township) to make appropriations from money available to them and not

⁶ R.C. 6120.03(A).

⁷ R.C. 6120.032.

⁸ R.C. 6120.03(A)(12) and (14).

⁹ R.C. 6120.15.

otherwise appropriated to pay the costs incurred by the WID in the exercise of its functions. Such money must be available for those purposes.¹⁰

Financing options for WIDs: special assessments and bonds

Special assessments

The bill allows a WID board to levy special assessments if all of the following occur:

1. The board determines that the construction, reconstruction, improvement, alteration, or repair of any waste water or water management facility (“public improvement”) will benefit the area where the project will occur;
2. If the public improvement is proposed in a political subdivision outside of the WID’s territory, the legislative authority of that political subdivision approves the undertaking of the improvement within their jurisdiction;
3. The board fixes a day for a hearing on the proposed improvement;
4. The board notifies, at least 15 days prior to the hearing, each landowner who will benefit from the proposed improvement of the substance of the proposed improvement and the time and place of the hearing on it and publishes the notification in an appropriate newspaper;
5. The board conducts a hearing on the proposed improvement and indicates by metes and bounds the area in which the public improvement will be made and the area that will benefit from the improvement;
6. At the hearing, the board hears any and all testimony provided by any of the parties affected by the proposed improvement and any other person competent to testify;
7. The board, or its representatives, inspect, by an actual viewing, the area to be benefited by the improvement; and
8. The board determines the necessity of the improvement and finds that it will result in general as well as special benefits.¹¹

If the WID board levies a special assessment, the proceeds from the assessment may pay the costs and expenses of the public improvement for which it was levied. The bill prohibits a WID board from levying a special assessment more than one time on the same lot or parcel of land, and the special assessment may not exceed 10% of the assessable value of a parcel of land. The bill establishes procedures for determining a parcel’s assessable value.

A property owner may pay the special assessment in full in a lump sum or in semiannual installments at the same time as other real property taxes. If the WID board levies the assessments in semiannual installments, however, the county auditor must annually place upon the tax duplicate the two installments of the assessment for that year.

¹⁰ R.C. 6120.02(F).

¹¹ R.C. 6120.031.

The bill requires the WID board to certify to the appropriate county auditor the boundaries of the area that is benefited by the public improvement. The county auditor must then apportion the valuation of any lot or parcel of land lying partly within and partly outside the area so benefited when requested by the WID board. If the WID board allocates special assessment proceeds to pay a note, bond, instrument, or obligation issued to pay for the improvement and proceedings in relation to it, the bill requires the WID board, by resolution, to assess against the lots and parcels of applicable land and certify those costs to the county auditor.¹²

Bonds

The bill allows a WID to issue bonds to pay for water projects in the exact same manner as a transportation improvement district may issue bonds to pay for transportation projects under R.C. Chapter 5540. In doing so, it generally specifies all of the following:

- That bond proceeds must be used solely for payment of the costs of the water project or projects for which the bonds were issued;¹³
- A WID may pledge net revenues with respect to bonds to secure payments to be paid by the WID and to refund any bonds outstanding;¹⁴
- A WID board may acquire real property in fee simple in the name of the WID and dispose of such property in a manner specified in the bill;¹⁵
- That the bond service charges must be payable solely from pledged revenues pursuant to applicable bond proceedings;
- The requirements governing bond proceedings, terms, and requirements, including interest, maturity, and bond service charges;
- The duties of the WID board in relation to issuing bonds;¹⁶
- An additional and alternative method for financing, constructing, maintaining, repairing, and operating water projects;¹⁷
- That the bonds do not constitute a debt, or a pledge of the faith and credit, of Ohio or any of its political subdivisions;¹⁸

¹² R.C. 6120.031(G) and (H).

¹³ R.C. 6120.06.

¹⁴ R.C. 6120.04 and 6120.07.

¹⁵ R.C. 6120.05.

¹⁶ R.C. 6120.06.

¹⁷ R.C. 6120.08.

¹⁸ R.C. 6120.09.

- That the WID board may secure bonds by a trust agreement between the board and a corporate trustee;¹⁹
- The manner in which any outstanding bonds are applied to pay project costs and bond service charges;²⁰
- The manner in which bond revenues are to be held for the WID;²¹
- The rights of any bond holders and trustees under a trust agreement;²² and
- That the bonds are free from taxation, and that the WID is not subject to state and local taxes or assessments.²³

Exemptions for a WID project

The bill also exempts a WID project and its related contracts from all of the following:

- The laws governing public works, personnel, and office services regulated by the Department of Administrative Services;
- The laws governing construction and public improvements and the state requirements for public bids, including notice and advertisement requirements;
- Ohio's competitive bidding law; and
- Ohio's prevailing wage law (unless the project is funded in part with federal money, in which case the federal prevailing wage laws still apply).²⁴

WID appeals board

Creation

The bill requires the board of county commissioners that establishes a WID to also create a WID appeals board within 30 days of the WID board appointments. The WID appeals board has exclusive original jurisdiction over any action regarding a waste water facility or water management facility located within the county, including an action regarding any WID water project.²⁵ The WID appeals board must consist of 12 members (11 voting members and one nonvoting member) as follows:

- The five voting members of the WID board;

¹⁹ R.C. 6120.10.

²⁰ R.C. 6120.11.

²¹ R.C. 6120.12.

²² R.C. 6120.13.

²³ R.C. 6120.14.

²⁴ R.C. 6120.03(B).

²⁵ R.C. 6120.16(A).

- Two members appointed by the legislative authority of the most populous municipal corporation in the WID;
- One member appointed by the legislative authority of the second most populous municipal corporation in the WID;
- One member appointed by the township trustee association within the district (if such an association does not exist, the member must be appointed by the township board of trustees of the most populous township in the county's unincorporated area);
- One member appointed by the county engineer who represents regional water and sewer districts (if there is no such district, the member must be appointed by the county engineer and be an expert in matters related to water and waste water management);
- One member appointed by the board of county commissioners who is an expert on matters related to water and waste water management; and
- One member appointed by the regional planning commission for the county, who is the only nonvoting member.²⁶

Each appointed member of the WID appeals board must hold office for a term of two years, subject to removal of their appointing authority only for malfeasance. Members may be reappointed and any vacancy on the board must be filled in the same manner as the original appointment. A majority of the board's voting members constitutes a quorum, the affirmative vote of which is necessary for any decision of the WID appeals board. A vacancy does not impair the right of a quorum to exercise all the rights and perform all the duties of the board.

The 11 voting members of the WID appeals board must elect a chairperson, vice-chairperson, and a secretary-treasurer. Members serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.²⁷

Appeals process

Filing an appeal

The bill allows any person who has an interest in any decision made or agreement entered into regarding a waste water facility or water management facility located in a county in which a WID appeals board has been created ("action") to file an appeal with the WID appeals board for a decision that modifies or revokes the action.²⁸ A person who files an appeal must do all of the following:

1. File the appeal, in writing, within 15 days after the action or after the WID appeals board is created, whichever event occurs later;

²⁶ R.C. 6120.16(B).

²⁷ R.C. 6120.16(C) to (E).

²⁸ R.C. 6120.01(A) and 6120.18(A)(1).

2. Set forth in the appeal the action complained of and the grounds upon which the appeal is based; and
3. Pay a \$70 filing fee, which the WID appeals board, in its discretion, may reduce if by affidavit the appellant demonstrates that payment of the full amount of the fee would cause extreme hardship.²⁹

Pre-hearing

The bill requires the chairperson of the WID appeals board to notify all members of the appeals board of the filing of an appeal and any other person that is a party to the proceeding within 24 hours after the appeal is filed. It then requires the WID board, or any other applicable appellee, within three days after an appeal is made, to prepare and certify to the WID appeals board a record of the proceedings out of which the appeal arises, including all documents and correspondence, and a transcript of all testimony.³⁰

Once an appeal is filed, the WID appeals board must fix the time of the hearing and place at which the hearing of the appeal will be held and give the appellant and appellee at least three days' notice of the hearing. The WID appeals board may postpone or continue any hearing so long as the postponement or continuance is reasonable and the WID appeals board takes into account the interest of expediency.³¹

Hearing

The bill requires the WID appeals board to conduct an appeals hearing, which is subject to the laws governing public meetings, within 15 days after a person files the appeal.³² The WID appeals board must issue a final decision at the hearing. Within three days after a final decision, the chairperson must serve on each party to the appeal a written statement that the appealed action was either affirmed, revoked, or modified along with the reasons for the final decision. If the final decision modifies an action, the bill requires the chairperson to describe how the appealed action was modified in the written statement.³³

Post-hearing

The bill allows any party adversely affected by a final decision of the WID appeals board to appeal the decision to the court of appeals in the county in which the applicable WID is located. If appealed further, the original written notice of appeal or a copy of the notice of appeal must be filed with both the WID appeals board and the reviewing court within

²⁹ R.C. 6120.18(A) and (B).

³⁰ R.C. 6120.18(A)(2) and (C).

³¹ R.C. 6120.18(D).

³² R.C. 6120.18(A)(3) and (4).

³³ R.C. 6120.18(E).

15 calendar days of the WID appeals board's final decision. Additionally, a copy of the notice of appeal must be served upon the WID board.³⁴

Appeals board governing procedures

The bill requires the WID appeals board to adopt or amend, as appropriate, regulations governing procedures to be followed for hearings before it, including regulations governing all of the following:

- Procedures for conducting hearings on appeals;
- Procedures for issuing final decisions; and
- Stays, which must specify that if an appeal of an action made by a WID board is filed, the action cannot go into effect until the WID appeals board issues its final decision on the matter.³⁵

The bill further specifies that any regulation adopted by the WID appeals board does not go into effect until the 10th day after it has been adopted by the filing of a certified copy with the Secretary of State. After the filing, the Secretary of State must record the WID appeals board's regulations under the heading "regulations of the [insert name of county] water improvement district appeals board," number the regulations consecutively under the heading, and ensure that the regulations display the date of filing. The regulations are public records and open to public inspection.³⁶

The bill exempts the WID appeals board from adhering to the laws governing administrative procedure (the JCARR process) when adopting governing regulations.³⁷ However, it requires the WID appeals board to do all of the following:

- Have available, at all times, copies of all of its regulations;
- Furnish copies of their regulations, free of charge, to any person requesting them; and
- Keep available for public inspection, at its principal office, a current register of all appeals filed, hearings pending, its final decision, and the dates on which those filings, hearings, and final decision occur.³⁸

Emergency

The bill declares its content to be an emergency measure necessary to promote water projects in rapidly developing areas. By doing so, it bypasses the 90-day referendum period and

³⁴ R.C. 6120.19.

³⁵ R.C. 6120.17(A).

³⁶ R.C. 6120.17(B).

³⁷ R.C. 6120.17(E).

³⁸ R.C. 6120.17(F) and (G)

allows its provisions to go into effect immediately once passed by the General Assembly and signed by the Governor.³⁹

HISTORY

Action	Date
Introduced	06-03-24

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³⁹ Section 2.