



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **Sub. H.B. 312 (L\_132\_1530-8)**

132nd General Assembly

(As Pending in H. Government Accountability and Oversight)

**Reps.** Schuring and Greenspan

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## **BILL SUMMARY**

- Requires political subdivisions, except counties, to follow procedures for the use of credit card accounts including adopting a policy, conducting a periodic review, and in some cases providing itemized receipts to the political subdivision's fiscal officer.
- Requires the name of a political subdivision to appear on each credit card and check related to a credit card account the political subdivision holds.
- In political subdivisions where the fiscal officer does not retain possession and control of the credit card accounts and of the related cards and checks, requires the political subdivision to appoint a compliance officer to oversee the use of credit card accounts.
- Specifies that an officer, employee, or public servant who knowingly misuses a credit card account violates the criminal offense "misuse of credit cards."
- Prohibits the use of debit card accounts by political subdivisions for any purpose other than law enforcement purposes, excluding a debit or gift card account related to the receipt of grant moneys.
- Requires all political subdivisions including counties to report to the Auditor of State any amount of money or rewards the political subdivision derives from the use of a credit card account rewards program.

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## CONTENT AND OPERATION

The bill establishes general procedures political subdivisions must follow when using credit card accounts by amending or enacting numerous specific provisions that apply to certain types of political subdivisions and one general provision, R.C. 9.21, that applies to all political subdivisions except counties. The specific and general provisions are similar with a few exceptions as noted throughout this analysis. The bill does not change the law regarding the use of credit cards by counties, which is prescribed in continuing law by R.C. 301.27. However, counties are subject to the bill's prohibition against the use of debit card accounts by all political subdivisions except for law enforcement purposes. Finally, chartered municipal corporations probably are not subject to the bill, but nonchartered municipal corporations may be subject to some or all of the bill's requirements; please see the **COMMENT** below for a full discussion on municipal home rule authority and the bill.

### **Use of credit card accounts by political subdivisions**

#### **All political subdivisions must adopt policy regarding use of credit card accounts**

The bill requires political subdivisions to adopt a policy before first holding a credit card account or, if a political subdivision holds a credit card account on the bill's effective date, to adopt a policy not later than three months after the effective date. The policy must contain at least all of the following provisions:

- The officers or positions authorized to use a credit card account;
- The types of expenses for which the credit card account may be used;
- The procedure for acquisition, use, and management of a credit card account and presentation instruments related to the account including credit cards and checks;
- How frequently the political subdivision has credit card accounts reissued;
- The political subdivision's credit card account's maximum spending limit or limits; and



- The actions or omissions by an officer or employee that qualify as misuse of a credit card.<sup>1</sup>

### **Name of political subdivision must appear on credit cards and checks**

The name of the political subdivision holding the credit card account must appear on each presentation instrument related to the account including credit cards and checks.<sup>2</sup>

### **Some political subdivisions must appoint compliance officer**

A political subdivision must appoint a compliance officer if the political subdivision's fiscal officer does not retain general possession and control of a credit card account or presentation instruments related to an account such as credit cards and checks. The compliance officer oversees officers' and employees' use of credit card accounts under the policy. A political subdivision's fiscal officer is not eligible for appointment as compliance officer; a library director is specifically eligible under the bill.

In the case of townships and municipal corporations, only limited home rule townships<sup>3</sup> and municipal corporations having the authority to operate a mayor's court<sup>4</sup> are subject to this compliance officer requirement; in all other townships and municipal corporations whose fiscal officer does not retain possession and control of credit card accounts and presentation instruments, the fiscal officer must present monthly to the board of township trustees or legislative authority of the municipal corporation the credit card account transaction detail from the previous month. The board or legislative

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<sup>1</sup> R.C. 9.21(A) (general provision applying to all political subdivisions except counties or a political subdivision specifically addressed in a separate provision), 505.64(A) (townships), 511.234(A) (township park districts), 717.31(A) (municipal corporations), 940.11 (soil and water conservation district), 1545.072(A) (general park districts), 1711.131(A) (agricultural societies), 3313.311(A) (school districts, educational service centers, information technology centers), 3314.52(A) (community schools), 3326.52(A) (science, technology, education, mathematics (STEM) schools), 3328.52(A) (college preparatory boarding schools), 3375.392(A) (library districts), and 6119.60(A) (regional water and sewer districts).

<sup>2</sup> R.C. 9.21(B), 505.64(B), 511.234(B), 717.31(B), 940.11(B), 1545.072(B), 1711.131(B), 3313.311(B), 3314.52(B), 3326.52(B), 3328.52(B), 3375.392(B), and 6119.60(B).

<sup>3</sup> See Chapter 504. of the Revised Code.

<sup>4</sup> Generally, municipal corporations having a population of more than 200, but see R.C. 1905.01 for the complete list.



authority must review the transaction detail and sign an attestation stating the board or legislative authority reviewed the detail.<sup>5</sup>

#### **Compliance officer use of credit card account and ability to authorize other users**

Except in the case of a board of township trustees, board of park commissioners of a township park district, or director of a library serving as compliance officer, a compliance officer may not authorize an officer or employee to use a credit card account. Except in municipal corporations and library districts, or in the case of a board of township trustees, board of park commissioners of a township park district, or director of a library serving as compliance officer, a compliance officer may not use a credit card account. A township trustee, township park commissioner, or library director serving as compliance officer may use a credit card if the policy so authorizes. The compliance officer of a municipal corporation or library district (other than the director) may use a credit card only with authority from the fiscal officer; the legislative authority<sup>6</sup> must review the transaction detail each month and sign an attestation stating the board or legislative authority reviewed the detail.<sup>7</sup>

#### **All political subdivisions must conduct periodic review**

Generally, the legislative authority of a political subdivision and the compliance officer, if one exists, must review the following at least quarterly: the number of cards issued, the number of active cards issued, the cards' expiration dates, and the cards' credit limits. Townships and library districts conduct this review semiannually, and in school districts, educational service centers, and information technology centers, the board of education, governing board, or governing authority respectively do not participate in the review.<sup>8</sup>

#### **If fiscal officer retains possession, credit card users provide itemized receipt**

If a fiscal officer retains general possession and control of the credit card accounts and presentation instruments, and officers or employees may use the account or instruments, including through a system the fiscal officer utilizes to sign out credit cards to the authorized users, then the officer or employee must provide the fiscal officer an itemized receipt for each charge upon returning the credit card to the fiscal

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<sup>5</sup> R.C. 505.64(C)(2) and 717.31(C)(2).

<sup>6</sup> In a municipal corporation, the finance committee of the legislative authority.

<sup>7</sup> R.C. 9.21(C), 505.64(C)(1), 511.234(C), 717.31(C)(1), 940.11(C), 1545.072(C), 1711.131(C), 3313.311(C), 3314.52(C), 3326.52(C), 3328.52(C), 3375.392(C), and 6119.60(C).

<sup>8</sup> R.C. 9.21(D), 505.64(D), 511.234(D), 717.31(D), 940.11(D), 1545.072(D), 1711.131(D), 3313.311(D), 3314.52(D), 3326.52(D), 3328.52(D), 3375.392(D), and 6119.60(D).



officer. The officer or employee is liable in person and upon any official bond the officer or employee has given to the political subdivision to reimburse the treasury the amount for which the officer or employee does not provide itemized receipts. Any failure by the officer or employee to reimburse an amount for which the officer or employee is liable within a reasonable time is a violation of the criminal offense of misuse of credit cards.<sup>9</sup>

### **Misuse of credit card is criminal offense**

Additionally, the bill specifies that an officer, employee, or public servant<sup>10</sup> who knowingly uses a credit card account for expenses beyond those authorized by the legislative authority violates the criminal offense of misuse of credit cards.<sup>11</sup> Current law regarding the use of credit cards by townships, soil and water conservation districts, general park districts, agricultural societies, and library districts makes the misuse of a credit card a violation of this offense but does not specify the culpable mental state.<sup>12</sup>

### **All political subdivisions must report credit card rewards to Auditor of State**

Political subdivisions must report to the Auditor of State, using a process the Auditor must establish, any amount of money or rewards the political subdivision derives from the use of a credit card account rewards program. This requirement applies to counties.<sup>13</sup>

### **Definition of credit card account**

The bill defines "credit card account" to include any bank-issued credit card account, store-issued credit card account, financial institution-issued credit card account, financial depository-issued credit card account, affinity credit card account, or any other card account allowing the holder to purchase goods or services on credit or otherwise transact with the account, and any debit or gift card account related to the receipt of grant moneys. The term expressly excludes any procurement card account,

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<sup>9</sup> R.C. 2913.21 (the penalty for this offense is a first degree misdemeanor), 9.21(E), 505.64(E), 511.234(E), 717.31(E), 940.11(E), 1545.072(E), 1711.131(E), 3313.311(E), 3314.52(E), 3326.52(E), 3328.52(E), 3375.392(E), and 6119.60(E).

<sup>10</sup> "Public servant" includes any public official, any person performing ad hoc a governmental function, including, a juror, member of a temporary commission, master, arbitrator, advisor, or consultant, and a person who is a candidate for public office. R.C. 2921.01, not in the bill.

<sup>11</sup> R.C. 2913.21(A)(3), 9.21(F), 505.64(F), 511.234(F), 717.31(F), 940.11(F), 1545.072(F), 1711.131(F), 3313.311(F), 3314.52(F), 3326.52(F), 3328.52(F), 3375.392(F), and 6119.60(F).

<sup>12</sup> R.C. 505.64(B), 940.11, 1545.072(B), 1711.131(D), and 3375.392(B).

<sup>13</sup> R.C. 117.102.



gasoline or telephone credit card account, or any other card account where merchant category codes are in place as a system of control for use of the account.<sup>14</sup>

### **Current law regarding use of credit card accounts by certain political subdivisions**

The bill replaces current law regarding the use of credit cards by townships, township park districts, general park districts, soil and water conservation districts, agricultural societies, and library districts. For those types of political subdivisions, current law generally provides that credit cards be used only for work-related expenses<sup>15</sup> and that money be appropriated or certain funds be used for such purposes.<sup>16</sup> Only agricultural societies currently are required to adopt a policy regarding the use of credit cards.<sup>17</sup> Officers and employees generally are liable in person and upon official bond for any unauthorized use of credit cards and any officer or employee who suspects the loss, theft, or possibility of unauthorized use of a credit card must notify their legislative authority immediately.<sup>18</sup> For townships and agricultural societies, the prosecuting attorney of the applicable county must recover the amount of any authorized expenses incurred by an officer or employee by civil action.<sup>19</sup>

### **Prohibition against use of debit cards by political subdivisions**

The bill prohibits the use of debit card accounts by political subdivisions including counties, except for law enforcement purposes or a debit or gift card account related to the receipt of grant moneys. A political subdivision that uses a debit card account for any other purpose is guilty of the criminal offense of misuse of credit cards.<sup>20</sup>

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<sup>14</sup> R.C. 9.21(G), 505.64(G), 511.234(G), 717.31(G), 940.11(G), 1545.072(G), 1711.131(G), 3313.311(G), 3314.52(G), 3326.52(G), 3328.52(G), 3375.392(G), and 6119.60(G).

<sup>15</sup> R.C. 505.64(A) (townships), 511.234(A) (township park districts), 940.11 (soil and water conservation districts), 1545.072(A) (general park districts), 1711.131(A) (agricultural societies), and 3375.392(A) (library districts).

<sup>16</sup> R.C. 505.64(A), 511.234(A), 940.11, 1545.072(A), and 3375.392(A).

<sup>17</sup> R.C. 1711.131(A).

<sup>18</sup> R.C. 505.64(B) and (C), 511.234(D) and (E), 940.11, 1545.072(C) and (D), 1711.131(B) and (C), and 3375.392(B) and (C).

<sup>19</sup> R.C. 505.64 and 1711.131(B).

<sup>20</sup> R.C. 9.22 and 3313.291.



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## COMMENT

Under the Ohio Constitution, a municipal corporation may regulate all matters of local self-government,<sup>21</sup> but the General Assembly may limit or restrict the power of a municipality to incur debt.<sup>22</sup> Credit or debit card usage by a municipal corporation is likely a matter of local self-government, and although the General Assembly may limit a municipality's aggregate indebtedness, the Ohio Supreme Court has held the General Assembly "may not . . . prescribe the manner and method which a municipal corporation must follow" in incurring debt.<sup>23</sup> However, this case was decided before the Court made a distinction between *procedural* and *substantive* matters of local self-government; chartered municipalities may deviate from state law on both procedural and substantive matters while nonchartered municipal corporations may deviate only on substantive matters. In other words, nonchartered municipal corporations must follow state laws that establish procedures for self-government.<sup>24</sup> A court may decide the bill's requirements are procedural rather than substantive, in which case they will apply to nonchartered municipal corporations. Or, a court may decide that municipal use and regulation of credit and debit cards is substantive, and therefore a valid exercise of municipal home rule by all municipal corporations. In either case, chartered municipal corporations probably may deviate from the bill's requirements.

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## HISTORY

ACTION	DATE
Introduced	07-26-17

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<sup>21</sup> Ohio Const., art. XVIII, sec. 3.

<sup>22</sup> Ohio Const., art. XVIII, sec. 13.

<sup>23</sup> *State ex rel. Cronin v. Wald*, 26 Ohio St.2d 22 (1971).

<sup>24</sup> *Northern Ohio Patrolmen's Benevolent Ass'n. v. Parma*, 61 Ohio St.2d 375 (1980).

