



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 312*

132nd General Assembly

(As Reported by S. Government Oversight and Reform)

Reps. Schuring and Greenspan, Blessing, Faber, Ginter, Anielski, Antonio, Arndt, Ashford, Barnes, Boyd, Craig, Cupp, Dean, Dever, Edwards, Fedor, Green, Hagan, Hambley, Holmes, Householder, Hughes, Ingram, Johnson, Landis, Lang, LaTourette, Leland, Lepore-Hagan, Manning, O'Brien, Patterson, Pelanda, Perales, Reineke, Rezabek, Roegner, Rogers, Ryan, Schaffer, Seitz, Sheehy, R. Smith, Sprague, Stein, Strahorn, Sweeney, Thompson, West, Wiggam, Young, Zeltwanger

BILL SUMMARY

Political subdivision credit card accounts

- 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.
- 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 periodically review the use of credit card accounts.
- Specifies that an officer, employee, or public servant who knowingly misuses a credit card account commits the crime of misuse of credit cards.

* This analysis was prepared before the report of the Senate Government Oversight and Reform Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires a political subdivision's fiscal officer to file an annual report with the legislative authority concerning all rewards the political subdivision derives from the use of a credit card account.
- Prohibits the use of debit card accounts by political subdivisions, including counties, for any purpose other than law enforcement purposes, excluding a debit account related to the receipt of grant moneys.

Financial planning and supervision commissions

- Allows a county auditor or, in the case of a chartered county, a county fiscal officer, to designate an individual within the person's office to serve on a financial planning and supervision commission formed concerning a county that is in fiscal emergency, instead of serving personally.
- Requires the Auditor of State, as the financial supervisor of a village or township with a population of less than 1,000, to make reports and recommendations to the legislature concerning the fiscal emergency.
- Requires the Director of Budget and Management, serving as chairperson of a commission, to submit those reports and recommendations, instead of the commission itself as under current law.
- Requires a commission or a fiscal supervisor to make those reports and recommendations annually by April 1 as long as the commission or the position of supervisor continues to exist, instead of only during the fiscal emergency period.
- Provides a process for filling vacancies in appointed seats on commissions established before October 17, 2017.

Auditor of State

- Increases from three to six the number of deputy inspectors and supervisors of public offices the Auditor of State may appoint, and specifies that no more than three of the deputies may belong to the same political party.
- Prohibits the Auditor from logging a complaint regarding an ongoing criminal investigation in the Auditor's public log of fraud complaints, and instead requires the Auditor to log the complaint not later than 30 days after the investigation is complete.
- Eliminates the requirement that the Auditor publish an annual volume of statistics, and instead requires the Auditor to publish the substance of each public office's annual financial report in an electronic format that is available to the public.



Electronic public records requests

- Allows a person who submits a public records request electronically, instead of by hand delivery or certified mail, to recover statutory damages if the office fails to comply with the Public Records Law.

Property tax abatement for submerged land leases

- Establishes a temporary procedure by which a municipal corporation may apply for tax exemption and the abatement of unpaid taxes, penalties, and interest charged and payable in 2004 and thereafter for a submerged land lease.

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CONTENT AND OPERATION

Political subdivision credit card accounts

The bill establishes general procedures that political subdivisions must follow when using credit card accounts. The bill enacts a general provision, R.C. 9.21, that applies to all political subdivisions except for counties, and also amends and enacts



numerous specific provisions that apply to certain types of political subdivisions. The specific and general provisions are similar, except as otherwise noted in this analysis.

The bill does not change the continuing law regarding the use of credit cards by counties.¹ However, counties are subject to the bill's prohibition against the use of debit card accounts by all political subdivisions except for certain 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.

Credit card policy

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:²

- 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, such as physical credit cards and checks;
- The procedure for submitting itemized receipts to the fiscal officer or the fiscal officer's designee;
- The procedure for issuing, reissuing, and canceling a credit card and the process for reporting lost or stolen credit cards;
- The credit card account's maximum credit limit or limits; and
- The actions or omissions by an officer or employee that qualify as misuse of a credit card.

¹ R.C. 301.27, not in the bill.

² 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(A) (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).

Name 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.³

Compliance officer

Generally

A political subdivision must appoint 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 reviews officers' and employees' use of credit card accounts under the policy (see "**Periodic review**," below). A political subdivision's fiscal officer is not eligible for appointment as compliance officer; library directors, school district superintendents, and chief administrators of information technology centers, community schools, STEM schools, and college-preparatory boarding schools are specifically eligible under the bill.

In the case of townships and municipal corporations, only limited home rule townships⁴ and municipal corporations having the authority to operate a mayor's court⁵ 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 authority must review the transaction detail and sign an attestation stating the board or legislative authority reviewed the detail.⁶

Use of credit card account

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

³ 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).

⁴ See Chapter 504. of the Revised Code.

⁵ Generally, municipal corporations having a population of more than 200, but see R.C. 1905.01, not in the bill, for the complete list.

⁶ R.C. 505.64(C)(2) and 717.31(C)(2).



compliance officer may not authorize an officer or employee to use a credit card account.

Generally, a compliance officer may not use a credit card account, but a township trustee, township park commissioner, library director, school district superintendent, or chief administrator of an information technology center, community school, STEM school, or college-preparatory boarding school serving as compliance officer may use a credit card if the policy so authorizes, and the compliance officer of a library district other than the director may use a credit card only with authority from the fiscal officer.

If the compliance officer of a library district uses a credit card account, then the fiscal officer or the fiscal officer's designee, who must not be the compliance officer, must review the transaction detail each month and sign an attestation stating the fiscal officer or designee did so. If the chief administrator of an information technology center, community school, STEM school, or college-preparatory boarding school serving as compliance officer uses a credit card account, then the legislative authority must review the transaction detail each month and sign an attestation stating the legislative authority did so. If a school district superintendent serving as compliance officer uses a credit card account, then the treasurer of the school district or the treasurer's designee, who must not be the superintendent, performs the review and signs the attestation.⁷

Periodic review

Generally, the legislative authority⁸ 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 must conduct this review at least semiannually. In school districts, educational service centers, and information technology centers, the review must be done at least once every six months, and the board of education, governing board, or governing authority respectively do not participate in the review.⁹

Itemized receipts

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

⁷ 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).

⁸ In a library district, the finance committee of the board of trustees.

⁹ 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).



instruments, the fiscal officer may use a system to sign out credit cards to the authorized users. 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 in accordance with the credit card policy described above.¹⁰

Misuse of credit card

Additionally, the bill specifies that an officer, employee, or public servant¹¹ who knowingly uses a credit card account for expenses beyond those authorized by the legislative authority is guilty of misuse of credit cards, which is a continuing law criminal offense. Depending on the circumstances and the amount of money involved, misuse of credit cards ranges from a first-degree misdemeanor to a second-degree felony.¹² 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.¹³

Credit card rewards

The fiscal officer or the fiscal officer's designee annually must file a report with the political subdivision's legislative authority, detailing all rewards received based on the use of the political subdivision's credit card account.¹⁴

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

¹⁰ R.C. 2913.21(A)(3) (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).

¹¹ "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.

¹² 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).

¹³ R.C. 505.64(B), 940.11, 1545.072(B), 1711.131(D), and 3375.392(B).

¹⁴ 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).



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, 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.¹⁵

Debit cards

The bill prohibits the use of debit card accounts by political subdivisions, including counties, except for law enforcement purposes or a debit 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.¹⁶

Current law

The bill replaces the existing 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 expenses¹⁷ and that money be appropriated or certain funds be used for such purposes.¹⁸ Only agricultural societies currently are required to adopt a policy regarding the use of credit cards.¹⁹ 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.²⁰ 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.²¹

¹⁵ R.C. 9.21(H), 505.64(H), 511.234(H), 717.31(H), 940.11(H), 1545.072(H), 1711.131(H), 3313.311(H), 3314.52(H), 3326.52(H), 3328.52(H), 3375.392(H), and 6119.60(H).

¹⁶ R.C. 9.22 and 3313.291.

¹⁷ 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).

¹⁸ R.C. 505.64(A), 511.234(A), 940.11, 1545.072(A), and 3375.392(A).

¹⁹ R.C. 1711.131(A).

²⁰ 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).

²¹ R.C. 505.64 and 1711.131(B).



Financial planning and supervision commissions

The bill makes changes to the law governing financial planning and supervision commissions, which continuing law requires to be created when a municipal corporation, county, or township is in a state of fiscal emergency.

Membership

Under the bill, when a financial planning and supervision commission is formed with respect to a county, the county auditor or, in the case of a chartered county, the county fiscal officer, may designate an individual within the auditor's or fiscal officer's office to serve on the commission. Current law requires the county auditor or fiscal officer personally to serve on the commission.

Under continuing law, a commission formed concerning a nonchartered county includes four ex-officio members: the Treasurer of State, the Director of Budget and Management, a member of the board of county commissioners, and the county auditor. Currently, all of those ex-officio members, other than the county auditor, may send a designee. In a chartered county with a county executive and a county fiscal officer, a commission includes the Treasurer of State, the Director of Budget and Management, the county executive, and the county fiscal officer as ex-officio members. The Treasurer and the Director may send designees, but the county executive and the county fiscal officer currently may not do so. Under the bill, the county executive still must personally serve on the commission. Continuing law also requires commissions concerning political subdivisions with more than 1,000 residents to include certain appointed members.²²

Annual report

The bill requires the Auditor of State, as the financial supervisor of a village or township with a population of 1,000 or fewer that is in fiscal emergency, to make reports and recommendations to the legislature concerning the fiscal emergency. Under continuing law, the Auditor serves as financial supervisor for such a village or township instead of having a financial planning and supervision commission.

Further, under the bill, the Director of Budget and Management, serving as chairperson of a commission, must submit those reports and recommendations, instead of the commission itself. Existing law requires a commission to submit those reports and recommendations but does not include a provision for a financial supervisor to do so.

²² R.C. 118.05(B).



Finally, the bill requires a financial planning and supervision commission or a fiscal supervisor to make those reports and recommendations annually by April 1 as long as the commission or the position of supervisor continues to exist, instead of only during the fiscal emergency period. (Continuing law specifies several requirements that must be met before a commission or supervisor position may be terminated, which are not necessarily the same as the requirements for a fiscal emergency to end.)²³

Filling vacancies in appointed seats

Background

H.B. 103 of the 132nd General Assembly, which took effect October 17, 2017, changed the composition and vacancy-filling procedures for financial planning and supervision commissions. Specifically, under the act, for a municipal corporation with a population over 1,000, the county auditor appoints one member, the mayor appoints one member with the approval of the municipal legislative authority, and the Governor appoints one member. In a township with a population over 1,000, the board of township trustees appoints two members and the Governor appoints one member. A vacancy in an appointed seat on a commission is filled by the officer who appointed the previous member to that seat. Under prior law, the Governor made all of those appointments based on recommendations from local officials and filled any vacancies that occurred.

Several financial planning and supervision commissions existed before H.B. 103 took effect. As a result, when a vacancy occurs on one of those commissions, it is not clear who has the authority to fill the vacancy – the Governor, who made the original appointment, or one of the officers who have appointing authority under H.B. 103. The bill provides a process for filling vacancies on those pre-H.B. 103 commissions. (The bill includes procedures for commissions concerning municipal corporations and townships, but not counties. It appears that no pre-H.B. 103 commissions exist concerning counties.)²⁴

Procedure

Under the bill, if an appointed seat on a financial planning and supervision commission that was established before October 17, 2017, is or becomes vacant, the vacancy must be filled as follows. After one or more vacancies in appointed seats on a commission have been filled under the bill, any subsequent vacancy or vacancies must be filled as under current law.

²³ R.C. 118.05(L) and 118.07. See also R.C. 118.03, 118.04, and 118.27, not in the bill.

²⁴ R.C. 118.05(B) and (D).



In the case of a commission established with respect to a municipal corporation:

(1) If one such vacancy exists, the county auditor of the county in which the largest portion of the territory of the municipal corporation is located must appoint a member to fill the vacancy. The new member may be the county auditor. Of the two remaining appointed members of the commission, the mayor must determine, not later than the 15th day after the bill's effective date or the 15th day after the vacancy occurs, whichever is later, which of those members must be considered the member appointed by the mayor for the purpose of filling any future vacancies, and the other appointed member must be considered to be appointed by the Governor for that purpose.

(2) If two such vacancies exist, the county auditor of the county in which the largest portion of the territory of the municipal corporation is located must appoint one member, who may be the county auditor. The mayor must appoint a member confirmed by the municipal corporation's legislative authority to fill the other vacancy. The remaining appointed member must be considered the member appointed by the Governor for the purpose of filling any future vacancies.

(3) If three such vacancies exist, the members must be appointed by the county auditor, the mayor, and the Governor, as under current law.

In the case of a commission established with respect to a township:

(1) If one such vacancy exists, the board of township trustees must appoint a member, who must not be a township trustee. Of the two remaining appointed members, the board of township trustees must determine, not later than the 15th day after the bill's effective date or the 15th day after the vacancy occurs, whichever is later, which of those members must be considered the second member appointed by the board of township trustees for the purpose of filling any future vacancies, and which of those must be considered the member appointed by the Governor for that purpose.

(2) If two such vacancies exist, the board of township trustees must appoint two members, who must not be township trustees. The remaining appointed member must be considered the member appointed by the Governor for the purpose of filling any future vacancies.

(3) If three such vacancies exist, two members must be appointed by the board of township trustees and one by the Governor, as under current law.²⁵

²⁵ R.C. 118.05(M).

Auditor of State

Deputy inspectors and supervisors of public offices

The bill increases from three to six the number of deputy inspectors and supervisors of public offices the Auditor of State may appoint, and specifies that no more than three of the deputies, rather than two, may belong to the same political party.²⁶

Log of fraud complaints

Under the bill, the Auditor must not log a complaint regarding an ongoing criminal investigation in the Auditor's public log of fraud complaints. Instead, the bill requires the Auditor to log the complaint not later than 30 days after the investigation is complete. Current law requires the Auditor to log all complaints filed through the Auditor's fraud reporting system.²⁷

Annual volume of statistics

The bill eliminates the requirement that the Auditor publish an annual volume of statistics containing the substance of each public office's annual financial report and submit it to the Governor and the General Assembly. Instead, the bill requires the Auditor to publish the substance of each report in an electronic format that is available to the public.²⁸

Electronic public records requests

The bill allows a person who submits a public records request electronically, instead of by hand delivery or certified mail, to recover statutory damages if the office fails to comply with the Public Records Law. Under continuing law, a court may impose statutory damages in an amount that does not exceed \$100 for each business day during which the office failed to comply, beginning with the day on which the requester files a mandamus action to recover the damages, up to a maximum of \$1,000.²⁹

²⁶ R.C. 117.09.

²⁷ R.C. 117.103.

²⁸ R.C. 117.38.

²⁹ R.C. 149.43.



Property tax abatement for submerged land leases

The bill establishes a temporary procedure by which a municipal corporation may apply for a tax exemption and the abatement of unpaid property taxes, penalties, and interest charged and payable in 2004 and thereafter for a submerged land lease held by a municipal corporation pursuant to an assignment of the lease from a previous lessee. To qualify for the exemption and abatement, the property must currently be used for an exempt purpose. No taxes, penalties, or interest may be abated for any tax year in which the property was used in the operation of a business.³⁰

In 2015, the General Assembly authorized a similar procedure for such property, but that procedure applied to the exemption and abatement of taxes, penalties, and interest charged and payable on such property in 2000 and thereafter.³¹

The application for exemption and abatement must be filed with the Tax Commissioner before January 1, 2019.

Under continuing law, municipally owned property is tax-exempt if it is used "exclusively for a public purpose," but such property may not be exempted if more than three years' worth of taxes remain unpaid. Submerged land leases are agreements by which the state leases submerged land within the state's territory in and along Lake Erie for development and improvement. Submerged land leases are administered by the Department of Natural Resources through the submerged lands program.

COMMENT

Under the Ohio Constitution, a municipal corporation may regulate all matters of local self-government,³² but the General Assembly may limit or restrict the power of a municipality to incur debt.³³ 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.³⁴ However, this case was decided before the Court made a distinction between *procedural* and *substantive* matters of local self-

³⁰ Section 3 of the bill.

³¹ Section 757.180 of Am. Sub. H.B. 64 of the 131st G.A.

³² Ohio Const., art. XVIII, sec. 3.

³³ Ohio Const., art. XVIII, sec. 13.

³⁴ *State ex rel. Cronin v. Wald*, 26 Ohio St.2d 22 (1971).



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.³⁵ A court might decide that the bill's requirements are procedural rather than substantive, in which case they will apply to nonchartered municipal corporations. Or, a court might 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.

HISTORY

ACTION	DATE
Introduced	07-26-17
Reported, H. Gov't Accountability & Oversight	11-01-17
Passed House (95-0)	12-05-17
Reported, S. Gov't Oversight & Reform	---

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³⁵ *Northern Ohio Patrolmen's Benevolent Ass'n. v. Parma*, 61 Ohio St.2d 375 (1980).

