



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Final Analysis

Emily E. Wendel

### **Sub. H.B. 34**

132nd General Assembly  
(As Passed by the General Assembly)

**Reps.** Hambley and Ryan, Wiggam, Greenspan, Blessing, Hill, Becker, Riedel, Goodman, Bishoff, Arndt, Anielski, Antani, Antonio, Ashford, Boyd, Carfagna, Conditt, Craig, Dever, Edwards, Faber, Fedor, Ginter, Green, Henne, Holmes, Howse, Huffman, Kick, Koehler, Landis, Lanese, LaTourette, Leland, Lepore-Hagan, Lipps, McColley, Miller, O'Brien, Patterson, Patton, Pelanda, Perales, Reineke, Rogers, Romanchuk, Scherer, Seitz, Sheehy, Slaby, K. Smith, R. Smith, Stein, Sweeney, Thompson, Vitale, West, Young

**Sens.** Coley, Beagle, Dolan, Hackett, LaRose, Peterson, Uecker, Yuko

**Effective date:** November 2, 2018

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## **ACT SUMMARY**

### **Notice by ordinary mail and Internet identifier of record**

- Allows for several types of official government notices to be sent by ordinary mail and Internet identifier of record, instead of by certified mail.

### **Public records training for public officials**

- Allows a person who has been elected but has not yet taken office to complete the required public records training for elected officials conducted by the Attorney General before the person takes office.

### **County prosecuting attorney as legal adviser**

- Permits a county prosecuting attorney, in the attorney's discretion and with the approval of the board of county commissioners, to contract with a regional airport authority, port authority, or regional planning commission to be its legal adviser.
- Allows the county prosecuting attorney to charge a fee for legal services agreed to under the contract.

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## CONTENT AND OPERATION

### Notice by ordinary mail and Internet identifier of record

The act allows for several types of official government notices that previously were required to be sent by certified mail to be sent instead by means of a combination of ordinary mail and "Internet identifier of record," which the act defines as "an electronic mail address, or any other designation used for self-identification or routing in Internet communication or posting, provided for the purpose of receiving communication" (see **COMMENT**).<sup>1</sup> The following table shows the notice requirements the act modifies.

Notice requirement	Method of notice under prior law	Method of notice under the act
A state agency or political subdivision that is required to award contracts by competitive bidding must notify an apparent low bidder found not to be responsive and responsible of that finding and the reasons for the finding. (R.C. 9.312)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
A state agency must notify an employee who is recalled from layoff of an offer of reinstatement or reemployment. (R.C. 124.327)	None specified	Either (1) certified mail or (2) ordinary mail and Internet identifier of record
A 9-1-1 planning committee must notify the board of county commissioners, the legislative authority of each municipal corporation, and the board of trustees of each township in the county of its proposal and final plan to implement a countywide 9-1-1 system, and of its public meeting on the proposal. (R.C. 128.07)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
The Ohio History Connection must send notice to the owner of a property added to the National Register of Historic Places. (R.C. 149.30)	Certified mail only	Alternatively, ordinary mail

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<sup>1</sup> R.C. 9.312(D).



<b>Notice requirement</b>	<b>Method of notice under prior law</b>	<b>Method of notice under the act</b>
A county board of zoning appeals must notify the holder of an authorized variance or conditional zoning certificate granted for the extraction of minerals of (1) the board's intent to revoke the variance or certificate upon violation of a condition of the variance or certificate, and (2) the holder's right to a hearing. (R.C. 303.14)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
A person must notify a board of county commissioners of proposed construction or expansion of a concentrated animal feeding facility. (R.C. 307.204)	Certified mail only	Alternatively, ordinary mail
A board of county commissioners must notify a person who does not comply with the board's recommendations regarding the person's concentrated animal feeding facility of the board's intent to initiate mediation if the person remains out of compliance with the recommendations. (R.C. 307.204)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
A county board of alcohol, drug addiction, and mental health services that experiences a vacancy must notify the vacant member's original appointment authority of the vacancy. (R.C. 340.02)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
The Director of Environmental Protection may issue an order to require a county or joint solid waste management district to receive out-of-district waste. (R.C. 343.01)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
A person must notify a board of township trustees of proposed construction or expansion of a concentrated animal feeding facility. (R.C. 505.266)	Certified mail only	Alternatively, ordinary mail
A board of township trustees must notify a person who does not comply with the board's recommendations regarding the person's concentrated animal feeding facility of the board's intent to initiate mediation if the person remains out of compliance with the recommendations. (R.C. 505.266)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record



<b>Notice requirement</b>	<b>Method of notice under prior law</b>	<b>Method of notice under the act</b>
A township board of zoning appeals must notify the holder of an authorized variance or conditional zoning certificate granted for the extraction of minerals of (1) the board's intent to revoke the variance or certificate upon violation of a condition of the variance or certificate and (2) the holder's right to a hearing. (R.C. 519.14)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
A county or municipal corporation issuing authority that intends to issue certain bonds must send notice to the Director of Agriculture and the Director of Development Services providing certain information about the nature of the bonds. (R.C. 902.04)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
A county auditor must notify an owner of agricultural land of the denial of the owner's application to place the land in an agricultural district and must notify an eligible owner of land in an agricultural district who fails to file a renewal application. (R.C. 929.02)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
A board of township trustees or board of county commissioners that determines an application to enroll land into an agricultural security area is incorrect or incomplete, or that approves or rejects an application, must notify the applicant. (R.C. 931.03)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
The supervisors of a soil and water conservation district must send notice to the owner of land that is adjacent to a proposed improvement. (R.C. 940.20)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record (the words "Legal Notice" must be in conspicuous typeface at the top of the notice)
The Secretary of State and the boards of elections must notify certain candidates for public office about campaign finance statement filing requirements. (R.C. 3517.01 and 3517.11)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record



Notice requirement	Method of notice under prior law	Method of notice under the act
A board of elections must send notice of a recount or contest for a local option election regarding certain liquor-related issues to the Superintendent of Liquor Control; the board also must send notice of a final determination of a recount or contest to the Superintendent and the Liquor Control Commission. (R.C. 4301.39)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
A county auditor must send notice to the owner of property that is reentered to the tax list. (R.C. 5713.082)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
A county auditor must notify an owner of agricultural land who fails to file an application for land valuation for property tax purposes; must return an incorrect or incomplete application for valuation to the applicant; and must notify an unsuccessful applicant for a determination that land is devoted exclusively to agricultural use. (R.C. 5713.31 and 5713.32)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
A county board of revision must notify the complainant and the property owner of the time and place of a hearing on a complaint regarding the property's valuation and of its decision regarding the complaint. (R.C. 5715.19 and 5715.20)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
A county board of revision must notify all persons who were parties to a property valuation hearing that the board's decision has been appealed. (R.C. 5717.01)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record (must file with the Board of Tax Appeals an affidavit attesting that the board sent the notice)
A county treasurer must send to the owner of record or all interested parties notice (1) that a tax certificate is to be sold and (2) that it has been sold via public auction or negotiated sale or transfer. (R.C. 5721.30, 5721.31, 5721.32, and 5721.33)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record



Notice requirement	Method of notice under prior law	Method of notice under the act
A board of county commissioners that adopts a resolution to approve or reject an application for certification as a qualified energy project must send copies of the resolution to the owner of the facility seeking certification and to the Director of Development Services. (R.C. 5727.75)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record

### Public records training for public officials

The act allows a future official – that is, a person who has been elected to a local or statewide nonjudicial office but has not yet taken office – to complete the required public records training for elected officials conducted by the Attorney General before the person takes office. However, a future official may not send a designee to the training in the official's place, as an elected official who has taken office may do under continuing law.

Under the act, the requirements concerning registration fees for future officials are the same as for current elected officials and their designees under continuing law. The Attorney General must not charge a future official any fee for attending the training, but if another public or private entity offers the training, the entity may charge a reasonable registration fee. A future official's public office may use public funds to pay the fee.<sup>2</sup>

### County prosecuting attorney as legal adviser

The act permits a county prosecuting attorney, in the prosecuting attorney's discretion and with the approval of the board of county commissioners, to contract with a regional airport authority, a port authority, or a regional planning commission to be its legal adviser.

The contract may provide for the payment of a fee to the prosecuting attorney for legal services agreed to under the contract. All money received under the contract must be deposited into the prosecuting attorney's legal services fund. Moneys in that fund may be appropriated only to the prosecuting attorney for providing legal services under the contract with a regional airport authority, port authority, or regional planning commission.

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<sup>2</sup> R.C. 109.43 and 149.43.



If the regional airport authority, port authority, or regional planning commission covers territory or a region in more than one county, the board of trustees, board of directors, or commission may choose the prosecuting attorney with whom it enters into the contract, with the approval of the board of county commissioners of that county.<sup>3</sup>

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## COMMENT

Several of the notice requirements changed by the act involve situations in which the government is acting to deprive a person of a property interest – for example, a county treasurer notifying a property owner that the property has been sold in a delinquent property tax certificate sale, which could result in foreclosure.<sup>4</sup> The Due Process Clause of the Fourteenth Amendment gives a person the right to receive appropriate notice before being deprived of a property or liberty interest. Notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."<sup>5</sup> If a reviewing court found that, in some circumstances, notice by ordinary mail and Internet identifier of record is insufficient under the Due Process Clause, the finding might make the government's actions invalid. However, notice by certified mail also might be vulnerable to a constitutional challenge, especially if officials do not resend a notice that is returned unclaimed.

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## HISTORY

ACTION	DATE
Introduced	02-07-17
Reported, H. State & Local Gov't	02-22-17
Passed House (94-0)	02-28-17
Reported, S. Gov't Oversight & Reform	06-27-18
Passed Senate (30-0)	07-10-18
House concurred in Senate amendments (85-0)	07-24-18

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<sup>3</sup> R.C. 308.061, 309.09, 713.21, 4582.021, and 4582.23.

<sup>4</sup> R.C. 5721.32 and 5721.33.

<sup>5</sup> *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). See also *Dusenbery v. United States*, 534 U.S. 161 (2002) and *Jones v. Flowers*, 547 U.S. 220 (2006).

