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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 397  
134<sup>th</sup> General Assembly

## Final Analysis

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**Primary Sponsors:** Reps. Stewart and Kick

**Effective date:** July 21, 2022; appropriation effective April 20, 2022

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### SUMMARY

#### Termination of agricultural leases

- Requires an agricultural lease agreement to be terminated by written notice from the lessor to the lessee unless the lease agreement contains a termination date or method for providing notice of termination.
- Requires notice to terminate an agricultural lease agreement to be given by September 1, in the year it is to be effective, and sets the termination date after notice as the date harvesting is complete or December 31 of the year notice is given, whichever comes first.

#### Soil and water conservation district officer, employee liability

- Expands the options that boards of soil and water conservation districts have for employees and officers entrusted with funds to allow the boards to provide insurance policies for these employees, in addition to the continuing option of executing surety bonds.

#### Investing in Ohio Fund

- Creates the Investing in Ohio Fund, to promote economic development throughout Ohio.
- Appropriates \$85 million in FY 2022 to the new fund and reappropriates the FY 2022 unspent, unencumbered balance for FY 2023.

#### Oil and gas unit application timelines

- Establishes timelines within which the Chief of the Division of Oil and Gas Resources Management must hold a hearing on an application for unit operation and issue the unit operation order.

## Ohio Public Works Commission

- Makes various changes to the law governing the Ohio Public Works Commission (OPWC), including:
  - Removing the requirement that the private sector voting member of OPWC with public finance experience have eight years of experience in public finance prior to appointment;
  - Clarifying that a quorum for OPWC is four voting members instead of four members; and
  - Removing obsolete language requiring OPWC to administer the defunct Small Counties Capital Improvement Program.
- Makes various changes to the law governing grants awarded by natural resources assistance councils for natural resources projects, including:
  - Requiring a nonprofit organization that wishes to receive grant funding to be an environmental and conservation organization and formed to protect the natural environment, in addition to being exempt from federal income taxation;
  - Clarifying that money may be awarded to an eligible conservation open space acquisition project for open space improvements, rather than open space developments as in the former law;
  - Eliminating the restrictions against funding hydromodification projects, such as dams, dredging, and sedimentation; and
  - Specifying that technical assistance provided by OPWC to natural resources assistance councils does not constitute approval or denial of a grant application.

## Battery-charged fences

- Exempts certain fences used for agricultural purposes from the law regarding battery-charged fences.

## Fairfield County land conveyance

- Authorizes the conveyance of state-owned land, the Ohio University Pickerington Center, to the board of commissioners of Fairfield County at a price acceptable to the Director of Administrative Services and the Ohio University Board of Trustees.

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## DETAILED ANALYSIS

### Termination of agricultural leases

The act amends the law for termination of agricultural lease agreements, which can be written or oral agreements, by requiring the landlord to give the tenant written notice of termination, unless the agreement provides a termination date or method for providing notice of termination. The act applies only to leases that involve planting, growing, and harvesting of crops and does not apply to leases for pasture, timber, buildings, or leases solely for

equipment. Written notice provided under the act's provisions must be delivered by September 1, in the year the termination is to be effective, by personal delivery, fax, or email. This notice of termination is effective either on the date harvesting is complete, or December 31 of the year the notice is given, whichever comes first.<sup>1</sup>

In general, under law unchanged by the act, the Statute of Frauds requires interests in land, including leases, to be granted in writing and the Statute of Conveyances requires leases of over three years to be notarized. Despite these statutory rules, under longstanding precedent, an oral agreement, including an oral agreement to lease agricultural land, can fall outside of the Statute of Frauds or Statute of Conveyances. Specifically, the parties' conduct can demonstrate the existence of an enforceable agreement, even if no written contract exists.<sup>2</sup> The act states that its provisions apply notwithstanding the requirements under the Statute of Frauds, and that it does not affect the requirements under the Statute of Conveyances.<sup>3</sup>

### **Soil and water conservation district employee liability**

Under law retained in part by the act, boards of supervisors for soil and water conservation districts are required to provide for the execution of surety bonds for employees and officers entrusted with funds. The act amends this requirement by instead requiring the board to either:

- Provide for the execution of surety bonds for employees and officers entrusted with funds (as under continuing law);
- By resolution, adopt a policy to allow for use of an employee dishonesty and faithful performance of duty insurance policy to cover financial or property loss caused by the fraudulent or dishonest actions of, and the failure to perform a duty prescribed by law for, an officer, employee, or appointee that is otherwise required by law to give an individual surety bond before entering upon the discharge of official duties (new law).<sup>4</sup>

### **Investing in Ohio Fund**

The act creates the Investing in Ohio Fund and requires the fund to be used to promote economic development throughout Ohio, including infrastructure improvements. The act also appropriates \$85 million in FY 2022 to the fund from the GRF. Any unspent, unencumbered amount remaining at the end of FY 2022 is reappropriated to FY 2023.<sup>5</sup>

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<sup>1</sup> R.C. 5301.71(A) and (B).

<sup>2</sup> R.C. Chapter 1335. and R.C. 5301.01 and 5301.08, not in the act. See, e.g., *Checkers Pub, Inc. v. Sofios*, 2016-Ohio-6963 (6<sup>th</sup> Dist. Ct. App.) and *Martin v. Jones*, 2015-Ohio-3168 (4<sup>th</sup> Dist. Ct. App.).

<sup>3</sup> R.C. 5301.71(B)(1) and (C).

<sup>4</sup> R.C. 940.05(F).

<sup>5</sup> R.C. 126.62; Sections 201.10, 209.10, 228.10, and 229.10.

## Oil and gas unit application timelines

Unitization is the process by which an oil and gas driller, seeking to develop oil or gas resources, applies for an order to obtain control over all the mineral rights underlying a large area of land. The ultimate goal of unitization is to create an area of consolidated mineral rights that is large enough and that best suits the shape of an underground oil or gas reservoir to make the most efficient use of those resources. A person who has obtained the consent of the owners of at least 65% of the land area over the reservoir may submit an application for unit operation to the Chief of the Division of Oil and Gas Resources Management. The Chief also may make a motion for unit operation on the Chief's behalf.

The act requires the Chief to hold a hearing on the application for a unit operation order not later than 60 days after receiving that application (or 60 days after the Chief's own motion, if applicable), unless the Chief determines the application is materially incomplete before the required hearing date. In that circumstance, the Chief must notify the applicant that the application is materially incomplete. The applicant must correct the application not later than three business days after receiving the notice. If the applicant does not timely respond, the Chief may reschedule the hearing.

The act requires the Chief to issue the unit operation order not later than 60 days after the hearing, unless the Chief denies the application or motion in that time period.<sup>6</sup>

Former law did not specify a deadline by which the Chief had to take any of the actions described above.

## Ohio Public Works Commission

The act makes various changes to the law governing the Ohio Public Works Commission (OPWC). It removes the requirement that the private sector voting member of OPWC with public finance experience have eight years of experience in public finance prior to appointment. It also clarifies that a quorum for OPWC is four *voting* members instead of four members.

The act also removes obsolete language requiring OPWC to administer the defunct Small Counties Capital Improvement Program. The program provided financial assistance to counties with less than 85,000 residents. It has not been funded since 2003. The act also repeals corresponding obsolete language that required, during program years 12 and 14, \$2 million annually be allocated to the program if the obligations are authorized and available for allocation.<sup>7</sup>

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<sup>6</sup> R.C. 1509.28.

<sup>7</sup> R.C. 164.02, 164.05, 164.06, and 164.08.

## Natural resources assistance councils

### Background

Natural resource assistance councils are appointed by district public works integrating committees to represent each area of Ohio. The purpose of each council is to oversee the issuance of grants funded via the Clean Ohio Program for environmental conservation, including acquisition of green space and the protection and enhancement of river and stream corridors. Upon selection of a grant proposal submitted by a local political subdivision or an eligible nonprofit organization, a council must submit its recommendations to the OPWC Director for further consideration.<sup>8</sup>

### Nonprofit organization funding

The act specifies that a nonprofit organization approved for program funding must be an environmental and conservation organization that is exempt from federal income taxation and formed to protect the natural environment. Prior law required that such an organization had to be exempt from federal income taxation and had to focus at least one of its designated activities on the purposes for which Clean Ohio Program grants may be issued.<sup>9</sup>

### Additional funding specifications and technical assistance

The act also does the following regarding natural resources assistance councils:

1. Clarifies that a council may award money to an eligible conservation open space acquisition project for open space *improvements*, rather than open space *developments* as in former law.
2. Eliminates the restrictions against funding hydromodification projects, such as dams, dredging, and sedimentation<sup>10</sup>; and
3. Specifying that technical assistance provided by OPWC to natural resources assistance councils does not constitute approval or denial of a grant application.<sup>11</sup>

## Battery-charged fences

The act exempts certain fences used for agricultural purposes from the law regarding battery-charged fences. Continuing law, unchanged by the act, requires battery-charged fences that are located on private property in nonresidential zones to meet certain safety standards. Under the law, a battery-charged fence must:

- Be connected to a monitored alarm system;

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<sup>8</sup> R.C. 164.22.

<sup>9</sup> R.C. 164.20.

<sup>10</sup> R.C. 164.22.

<sup>11</sup> R.C. 164.26.

- Have an energizer that meets the standards set forth by the International Electrotechnical Commission;
- Be completely surrounded by a nonelectric perimeter fence or wall at least five feet tall;
- Be no taller than the higher of either ten feet, or two feet higher than the height of the nonelectric perimeter fence or wall; and
- Be marked with conspicuous warning signs, no more than 40 feet apart, that read “WARNING—ELECTRIC FENCE.”

The law exempts several types of fences from these safety provisions, including fences keeping livestock off of railroads, preferred partition fences for livestock, fences constructed by the federal government, the state, or a political subdivision (prisons, for example), and fences at zoos and wildlife sanctuaries. The act exempts partition fences, as opposed to preferred partition fences, and it also adds that fences constructed and used for agricultural purposes are exempt from these safety provisions.<sup>12</sup>

## Fairfield County land conveyance

The act authorizes the conveyance of state-owned land, namely, the Ohio University Pickerington Center, to the board of commissioners of Fairfield County at a price acceptable to the Director of Administrative Services and the university’s board of trustees. The sale proceeds must be deposited into university accounts. The authorization is for two tracts totaling approximately 5.5 acres in Fairfield County under the control of the university, and the conveyance follows the standard process for public land conveyances. The authorization expires July 21, 2025.<sup>13</sup>

## HISTORY

Action	Date
Introduced	08-24-21
Reported, H. Agriculture & Conservation	12-08-21
Passed House (89-2)	12-08-21
Reported, S. Agriculture and Natural Resources	04-06-22
Passed Senate (32-0)	04-06-22
House concurred in Senate amendments (85-8)	04-06-22

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<sup>12</sup> R.C. 3781.1011.

<sup>13</sup> Section 3.