



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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Sub. H.B. 34

132nd General Assembly
(As Passed by the House)

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

BILL SUMMARY

- Authorizes state agencies, local governments, and certain boards, commissions, and officers to deliver certain notices by ordinary mail and Internet identifier of record as an alternative to delivery by certified mail.

CONTENT AND OPERATION

Internet identifier of record

The bill provides, throughout Ohio law, that notice may be provided by means of a combination of ordinary mail and "Internet identifier of record," which the bill 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."¹ In most cases, current law authorizes only delivery by certified mail. The bill provides, as an alternative, that notice may be sent by ordinary mail and Internet identifier of record. The following table indicates the instances under Ohio law the bill modifies to allow for this alternative method. The first column indicates the notice requirement and relevant Revised Code citation; the second indicates the allowable method of notice under current law; and the third indicates the allowable method under the bill.

¹ R.C. 9.312(D).

Notice requirement	Method of notice under current law	Method of notice under the bill
State agency or political subdivision 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
State agency must notify an employee 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
9-1-1 planning committee must notify the applicable board of county commissioners, legislative authority of each municipal corporation, and board of trustees of each township in the applicable county of the committee's proposal and final plan on the implementation of a countywide 9-1-1 system, and of the committee's public meeting on the proposal (R.C. 128.07)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
Ohio History Connection must send notice to the owner of property added to the National Register of Historic Places (R.C. 149.30)	Certified mail only	Alternatively, ordinary mail
County board of zoning appeals must notify the holder of an authorized variance or conditional zoning certificate granted for the extraction of minerals of the board's intent to revoke the variance or certificate upon violation of a condition thereof and of the holder's right to a hearing (R.C. 303.14)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
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
County auditor must certify and send notice to the owner of property of the amount and the calculation of any service payments charged against the property for the tax year (R.C. 307.699)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record



Notice requirement	Method of notice under current law	Method of notice under the bill
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
Before selling unclaimed property, the chief of police or other head of the organized police department of a township, township police district, joint police district, or office of a township constable must provide notice to the owner and mortgagee or other lienholder of the sale (R.C. 505.109)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
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
Board of township trustees may give notice to a commercial establishment or residential building at which an automatic fire alarm system yields a false alarm to which a fire department, district, or contracted private company responds that the board may assess a \$300 charge for each false alarm after the third within one calendar year; township fiscal officer must send notice after nonpayment of the above charge indicating that failure to pay the bill or to show just cause for nonpayment will result in the assessment of a lien (R.C. 505.391)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
Township fiscal officer or sheriff must send notice to a commercial establishment or residential building at which a security alarm system yields a false alarm to which a police department, district, or contracted law enforcement agency responds that fails to pay a charge assessed by the board of township trustees or county sheriff, indicating that failure to pay a bill or to show just cause for nonpayment will result in the assessment of a lien (R.C. 505.511)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record



Notice requirement	Method of notice under current law	Method of notice under the bill
Township board of zoning appeals must notify the holder of an authorized variance or conditional zoning certificate granted for the extraction of minerals of the board's intent to revoke the variance or certificate upon violation of a condition thereof and of the holder's right to a hearing (R.C. 519.14)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
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 providing certain information about the nature of the bonds (R.C. 902.04)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
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
Supervisors of a soil and water conservation district must send notice to landowners that are 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)
Secretary of State and county board 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
Executive authority of a municipal corporation or a board of county commissioners must notify the owners of a service station of: (1) the authority or board's inspector's finding that the station qualifies as abandoned, (2) the date and place of the authority or board's hearing to determine whether the station is abandoned, and (3) information that the station may be ordered repaired or removed if determined to be abandoned (R.C. 3791.12)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record



Notice requirement	Method of notice under current law	Method of notice under the bill
County 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; 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
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
County board of revision must send notice to a person before the board increases any valuation affecting the persons' property affording the person an opportunity to be heard (R.C. 5715.12)	Deliver to the person; leave a copy at the person's usual place of residence or business; or send by registered letter mailed to the person's address	Alternatively, ordinary mail and Internet identifier of record
County board of revision must notify a complainant and the applicable property owner of the time and place of a hearing for the complaint regarding the property's valuation (R.C. 5715.19)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
County board of revision must notify a complainant and property owner of its decision regarding a valuation complaint (R.C. 5715.20)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
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)
County treasurer must send notice to the owner of record or all interested parties that a tax certificate is to be sold (R.C. 5721.30 and 5721.31)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
County treasurer must send notice to the owner of record or all interested parties that a tax certificate has been sold via public auction (R.C. 5721.32)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record



Notice requirement	Method of notice under current law	Method of notice under the bill
County treasurer must send notice to the owner of record or all interested parties that a tax certificate has been sold via negotiated sale or transfer (R.C. 5721.33)	Certified mail only	Alternatively, ordinary mail and Internet identifier of record
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

COMMENT

Due process² requires a person to receive appropriate notice before being deprived of a property or liberty interest. Specifically, procedural due process requires "notice 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." This is sometimes referred to as the "reasonableness under the circumstances test." Notice that does not meet this test may serve to invalidate the deprivation of the underlying interest.³

Several of the notice requirements changed by the bill encompass situations in which a government actor is moving to deprive a person of a property interest. For example, the bill authorizes a county treasurer to notify a property owner by ordinary mail and Internet identifier of record that the owner's property has been sold in a delinquent property tax certificate sale, which could result in the property's eventual foreclosure.⁴ Thus, the bill might be challenged by a person arguing that notice by ordinary mail and Internet identifier of record may not satisfy procedural due process notice requirements.

Whether a particular method of delivering notice satisfies due process depends on whether the notice satisfies the reasonableness under the circumstances test. For example, the Court disapproved the use of "notice by publication" in a newspaper and opined that sending a notice by ordinary mail would satisfy the test in a situation in

² U.S. Const., amend. XIV, sec. 1.

³ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

⁴ R.C. 5721.32 and 5721.33.



which the names and addresses of recipients were known.⁵ In a second, more recent case, the Court held that sending a notice by certified mail to a prison inmate satisfied the test, even though a prison employee signed for the mail and the inmate did not timely receive the notice.⁶ But in a later case, the Court held that certified mail was insufficient to satisfy the test after the certified mailing was returned unclaimed. In that case, the Court held that a state must take additional steps to send notice to the recipient, for example, by resending the notice by ordinary mail.⁷

Ultimately, whether service by ordinary mail and Internet identifier of record is sufficient to pass constitutional muster depends largely on the circumstances of a particular situation. For example, if ordinary mail is returned to the sender and an "invalid address" message is received in response to email service, due process may require the local government or officer to take additional steps to attempt to serve notice on the intended recipient. But if the ordinary mail is not returned and the email is not rejected, a court may consider due process to be satisfied.

Additionally, current law, which generally requires these notices to be sent by certified mail, may also raise procedural due process issues in some circumstances, especially if a certified mailing is returned unclaimed.

HISTORY

ACTION	DATE
Introduced	02-07-17
Reported, H. State & Local Gov't	02-22-17
Passed House (94-0)	02-28-17

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⁵ *Mullane*, at 319.

⁶ *Dusenbery v. United States*, 534 U.S. 161 (2002).

⁷ *Jones v. Flowers*, 547 U.S. 220 (2006).

