UPDATED VERSION*

OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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Sub. H.B. 292

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

Reps. Scherer, Hambley, Retherford, Anielski, Antani, Brown, Faber, Galonski, Ginter, Goodman, Greenspan, Henne, Householder, Hughes, Lang, Patton, Reineke, Riedel, Roegner, Rogers, Ryan, Schaffer, Seitz, R. Smith, Sprague, Sweeney, Thompson

Sens. Eklund, Beagle, Peterson, O'Brien, Burke, Gardner, Hackett, Hoagland, Hottinger, Huffman, Oelslager, Tavares, Terhar, Thomas

Effective date: September 13, 2018; Emergency, Section 12 (referendum for 2018 village ordinances) and operating appropriations effective June 14, 2018

ACT SUMMARY

Taxation

- Specifies that an individual cannot be presumed to be an Ohio resident for income tax purposes unless the individual has an Ohio abode for at least a portion of the taxable year.
- Extends the deadline for filing a statement affirming out-of-state residency to the 15th day of the tenth month following the end of the taxable year.
- Adds several objective criteria for establishing the presumption that an individual is not an Ohio resident for income tax purposes.
- Limits the factors that may be used by the Tax Commissioner to rebut the presumption that a taxpayer is not an Ohio resident.
- Specifies that the changes to the state's residency test apply to taxable years beginning in 2018 or thereafter.

* This version updates the effective date.

- Authorizes the appeal of a decision of the Board of Tax Appeals (BTA) directly to the Supreme Court if the decision involves a final determination of the Tax Commissioner or a municipal income tax review board.

- Modifies the deadline by which manufactured and mobile homeowners may apply for the homestead exemption, from December 31 of the year for which the exemption is sought, to December 31 of the year before the year for which the exemption is sought.

- Requires a county in which current or certain former Olympic training facilities are located to enter into an agreement to provide a property tax exemption for those facilities in exchange for service payments.

- Increases the maximum term of a delinquent tax contract for such a facility.

State employee compensation

- Increases pay for exempt state employees paid in accordance with salary schedules E-1 and E-2.

- Authorizes each state appointing authority to make expenditures from current state operating appropriations to provide for compensation increases.

- Authorizes the Director of Budget and Management to increase expenditures from the General Revenue Fund and non-GRF appropriation items to the extent the Director determines necessary to effectuate changes to compensation, and makes an appropriation.

- Allows certain state employees who work 30 or more hours a week to take up to six continuous weeks of paid parental leave at the birth of a child if the employee is listed as a parent on the child's birth certificate, instead of if the employee is the biological parent.

- Permits certain state employees to begin using vacation leave when the leave appears on the employee's earning statement and the compensation described in the earning statement is available to the employee.

- Prohibits certain state employees who separate from state employment with less than 12 months of total state service from being compensated for unused accrued vacation leave.

- Beginning in December 2019, requires the Director of Administrative Services to allow certain full-time or part-time state employees who are credited with at least

200 hours of unused accrued vacation leave annually to convert up to 40 hours of that leave to cash.

- Permits the Department of Administrative Services (DAS) to use the State Employee Health Benefit Fund to pay the cost or premiums of a contract with a health insuring corporation to provide a state employee with coverage for the employee's health care services.

- Eliminates a prohibition against DAS contracting with a health insuring corporation when the state's cost to cover an employee would be greater than the cost under a contract that was selected in consultation with the Superintendent of Insurance and in accordance with competitive bidding requirements.

- During fiscal year 2019, allows the DAS Director to request a transfer of cash from the Accrued Leave Liability Fund to the State Employee Health Benefit Fund to pay for voluntary health plans offered to state employees who elect to enroll in a qualifying high deductible plan.

Other state and local government provisions

- Expands the circumstances in which a workers' compensation claim based on a motor vehicle accident involving a third party may be charged to the Surplus Fund Account in lieu of to an employer's experience.

- Changes the funding source of the Brownfields Revolving Loan Fund so that it consists of repayments of loans made for brownfield revitalization purposes, any other money transferred to it, and investment earnings, rather than consisting of transfers to the Fund made by the U.S. EPA under federal law.

- Authorizes, rather than requires as in prior law, the Director of Development Services to both:

  --Make grants and loans from the Brownfields Revolving Loan Fund; and

  --Establish a schedule of fees and charges payable by loan recipients.

- Modifies the content requirements for the semiannual fund reports the Director of Budget and Management must furnish to the General Assembly.

- Increases the public library facility borrowing limit as a percentage of Public Library Fund receipts from 30% to 40%, and lengthens the maximum repayment period from 25 to 40 years.

- Provides special passage and referendum procedures for a 2018 village ordinance that accommodates a new use of real property and is determined likely to bring at least 500 new jobs and at least $50 million in investment to the village.

- Adjusts capital appropriations and re-appropriations for the biennium ending June 30, 2020, clarifies the authorized use of certain capital earmarks, and makes other appropriations.

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CONTENT AND OPERATION

TAXATION

Income tax residency test

The act modifies the test for determining an individual's state of residence for income tax purposes by adding several explicit, objective criteria for establishing the presumption that an individual is not an Ohio resident, extending the deadline for filing a statement attesting that the individual is not an Ohio resident, and limiting the factors that may be considered by the Tax Commissioner to rebut the presumption that an individual is not an Ohio resident. The changes first apply to taxable years beginning in 2018.[1]

Taxation of residents versus nonresidents

Ohio's income tax applies to residents, and also applies to nonresidents who have income that is attributable to Ohio (e.g., compensation from working in Ohio or net profit from conducting business in Ohio). Both residents and nonresidents must report all their federal adjusted gross income regardless of whether the source of the income is in Ohio or elsewhere, and the tax rates are applied to this income after various adjustments. Residents receive an Ohio tax credit for income taxes paid to another state, up to the amount of Ohio tax that would be due on that non-Ohio income. Nonresidents receive a credit equal to the Ohio tax paid on income not attributable to Ohio under income apportionment and allocation rules set forth by law.

Presumptions about residency

Under ongoing law changed in part by the act, the test to determine if an individual is domiciled in Ohio – and therefore is an Ohio resident for income tax purposes – depends primarily on the number of overnight stays, or "contact periods," a person has in Ohio during the person's taxable year. Technically, a contact period is any period of time during a 24-hour period that includes midnight. The number of contact periods and whether a person has an "abode" outside Ohio are used to establish presumptions about the person's residency; these presumptions may be rebutted under specified circumstances.[2] The test is commonly referred to as a "bright line" test as, on its face, it concentrates primarily on number of contact periods, the existence of a non-

[1] R.C. 5747.24; Section 14(B).

[2] "Abode" is not defined by law for this purpose, so it likely would be construed according to its common, ordinary meaning. According to *Webster's New World Dictionary*, an abode is "a place where one lives or stays; home; [or] residence."

Ohio abode, and a taxpayer's affirmation, rather than on the various circumstantial elements that influence traditional common law domicile determinations.

Persons presumed to be residents

If a person has at least 213 contact periods, the person is presumed to be a full-year Ohio resident for income tax purposes. A person can rebut this presumption only with clear and convincing evidence and only for as much of the year as such evidence is provided.

If a person has less than 213 contact periods, the person is presumed to be a full-year Ohio resident unless (1) the person moved during the year, or (2) the person has a full-year abode outside Ohio and files a statement with the Tax Commissioner affirming that the person was not domiciled in Ohio during the entire year and had a full-year abode outside Ohio. The state can rebut this presumption (for all or part of the year) by providing a preponderance of evidence to the contrary.

The act specifies that these presumptions apply only if the person also had an abode in Ohio for at least part of the taxable year. The act also adds criteria that must be attested to in the statement filed with the Commissioner (see below in "**Persons presumed to be nonresidents**").[3]

Persons presumed to be nonresidents

Continuing law establishes a process by which a person with fewer than 213 contact periods and a full-year out-of-state abode may file a statement affirming that they are not domiciled in Ohio. The statement, if truthful and filed before the 15th day of the fourth month following the close of the taxable year, establishes an "irrebuttable" presumption that the person is a nonresident.

The act extends the deadline for filing the statement to the 15th day of the tenth month following the close of the taxable year. The act also establishes additional objective criteria that must be met to establish the presumption – specifically, that the person:

- Did not claim a federal depreciation deduction with respect to the out-of-state abode (the deduction is available only for property used in business or held for the production of income – e.g., as rental property);

- Did not hold a valid Ohio driver's license or identification card;

[3] R.C. 5747.24(B), (C), and (D).

- Did not receive the benefit of an Ohio homestead exemption or 2½% tax reduction for the property tax year that began in the person's taxable year (both of which depend on ownership and occupancy);

- Did not receive a tuition discount based on residency for attending an Ohio institution of higher education.

The act limits the factors that may be used by the Tax Commissioner to rebut this presumption of nonresident status to (1) an individual's number of contact periods, (2) the possession of a full-year abode outside the state, and (3) any of the new objective criteria prescribed by the act.[4] Under prior law as construed by the Ohio Supreme Court, the Commissioner could rebut such a presumption with evidence that an individual was "domiciled" in Ohio under the common law definition of the term – and that the individual's affirmation of nondomicile was therefore false – even though the individual satisfied the contact period and non-Ohio abode criteria and filed the affirmation statement on time.[5] Administrative rules specify 18 circumstances that may not be considered in rebutting or confirming the presumption, including such things as where a person's banks, medical providers, attorneys, accountants, lenders, relatives, and political contributees are located.[6]

Appeals of Board of Tax Appeals decisions

The act allows parties to appeal a decision of the Board of Tax Appeals (BTA) directly to the Supreme Court if the decision involves a final determination of the Tax Commissioner or a municipal corporation's income tax review board.

Prior law – which had recently been amended by the 2017 biennial budget bill, H.B. 49 of the 132nd G.A. – required that all decisions of the BTA had to be filed initially with a Court of Appeals. Before H.B. 49, a taxpayer could appeal any decision of the BTA to either the Court of Appeals or the Supreme Court, except for decisions on the BTA's small claims docket, which, under continuing law, are conclusive and not appealable.

The act allows, but does not require, direct appeals to the Supreme Court of BTA decisions involving a final determination of the Tax Commissioner or municipal income tax review board. A party may still elect to file such an appeal with the Court of

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[4] R.C. 5747.24(B)(3).

[5] See, *Cunningham v. Testa*, 144 Ohio St.3d 40 (2015). The act also specifically states that its changes are intended to abrogate this common law of domicile (Section 15).

[6] Ohio Administrative Code 5703-07-16.

Appeals. Any appeal that does not involve a final determination of the Tax Commissioner or municipal review board may still only be filed initially with the Court of Appeals.

The act also removes a provision – added by H.B. 49 – that authorized a party to file a petition with the Supreme Court requesting that the Court take jurisdiction over an appeal from the Court of Appeals, which the Supreme Court was authorized to do if the appeal involved a substantial constitutional question or a question of great general or public interest.[7]

Homestead exemption: application deadline for mobile home owners

The act modifies the deadline by which manufactured and mobile homeowners may apply for the homestead exemption, from December 31 of the tax year for which the exemption is sought, to December 31 of the year before the tax year for which the exemption is sought.

Homestead exemption background

Continuing law authorizes a homestead exemption for homeowners, including owners of manufactured and mobile homes, who are aged 65 or older, permanently and totally disabled, or at least 59 years old and the surviving spouse of an individual who previously received the exemption. The exemption reduces the taxes that would be charged on up to $25,000 of the fair market value of the homeowner's property ($50,000 in the case of qualified disabled veterans). This essentially exempts $25,000 (or $50,000) of the value of the homestead from taxation.

Application deadline

Before 2017, owners of manufactured and mobile homes had to apply for the homestead exemption on or before the first Monday in June of the year before the year for which the exemption is sought. In 2017, H.B. 49 extended this deadline to December 31 of the year for which the exemption is sought. So, for example, in order to receive the homestead exemption for tax year 2018, the homeowner had to apply on or before December 31, 2018.

The act partially reverses this change, such that the new deadline would be December 31 of the year before the year for which the exemption is sought. Using the example above, the homeowner would need to apply on or before December 31, 2017.[8]

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[7] R.C. 5717.04.

[8] R.C. 4503.066(A)(2).

Overpayments

Under continuing law, if a manufactured or mobile home is located in Ohio on January 1 of a tax year, the homeowner's taxes for that tax year are due on or before March 1 and July 31. The result of H.B. 49's extension of the application deadline was that a homeowner could apply for the exemption after he or she paid taxes for that year. Consequently, H.B. 49 allowed such homeowners whose applications were approved to receive a refund of any tax overpayment.

The act removes this refund procedure, since the new deadline will not result in overpayments.

Reporting a change in circumstances

Under continuing law, county auditors must provide homeowners with a form for reporting changes in circumstances that would affect the owner's homestead exemption. H.B. 49 required that the auditors make this form available in February of each year, rather than in January as required under pre-H.B. 49 law.

The act also reverses this H.B. 49 change, so that auditors must provide the form in January of each year.[9]

Local government reimbursement

Under continuing law, the state reimburses local governments for tax revenue the local governments would otherwise lose when homeowners claim the homestead exemption. County auditors must notify the Tax Commissioner of the amount of the resulting tax reductions by the second Monday in September of each year.[10] Under prior law, no such deadline was specified for reductions arising from late applications; the act adds that this notification also must be made by the second Monday in September.[11] Under continuing law, late applications enable homeowners who qualified for the exemption for the preceding year, but who did not apply for it by the normal deadline, to have the exemption applied retrospectively to the preceding year's taxes and receive a credit or refund.

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[9] R.C. 4503.066(B).

[10] R.C. 4503.068, not in the act.

[11] R.C. 4503.066(A)(3).

Application date

The act's changes to the manufactured and mobile homestead exemption apply beginning with the 2018 tax year.[12]

Olympic training facility property taxes

Property tax exemption

The act requires a county to enter into an agreement with the owner of an Olympic training facility granting the facility a property tax exemption in exchange for the owner making direct payments to subdivisions levying a property tax on the complex. A qualifying athletic complex is defined to be a complex designated in or after 2013 as an Olympic or Paralympic training facility by the U.S. Olympic Committee. Any part of the facility constructed after 2017 is not eligible for exemption.[13]

The county must enter into the agreement within 60 days after the act's September 13, 2018, effective date. The agreement may exempt all or part of the complex's value for up to 17 years, though the exemption may be applied retrospectively to tax year 2010 if the agreement so provides. If the exemption is retrospective, the act permits property taxes owed, but not paid, for prior years to be forgiven, but any taxes already paid for those years may not be refunded.[14]

The agreement must require the complex's owner to make direct payments to subdivisions levying property taxes where the complex is located in the amounts and frequency prescribed by the agreement. Payments are to be deposited in a subdivision's general fund and may be used for any lawful purpose.[15] As with other kinds of payments made in lieu of taxes on tax-exempt property, the agreement's payments may be used to support unvoted debt issuance by a school district if the Department of Education approves.[16]

The agreement must additionally specify under what circumstances the agreement may be canceled for noncompliance and require that any penalty or other charge under the agreement be charged against the qualifying athletic complex in a manner similar to delinquent property taxes. The agreement may specify whether its

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[12] Section 14(A).

[13] R.C. 5709.57(A).

[14] R.C. 5709.57(B) and (E).

[15] R.C. 5709.57(B) and (D).

[16] R.C. 133.06(H).

terms will continue to apply if the athletic complex is sold or transferred to a new owner.[17]

Before executing the agreement, the county must submit it to the local school board for approval. The school board may indicate its approval or disapproval of the agreement or may contingently approve it.[18] In the state school funding computation, the assessed value of the exempted property is not counted toward tax-exempt value that may qualify a school district for a special funding adjustment for school districts having tax-exempt value exceeding 30% of total valuation. This exclusion is the same treatment given property exempted from taxation under local discretionary tax exemption laws such as tax increment financing, enterprise zone, and community reinvestment area laws.[19]

Extended-term delinquent tax contract

Continuing law authorizes the owner of tax-delinquent property to formally commit to paying off the delinquency in installments over a period of years in exchange for additional penalties and interest not continuing to accrue and a foreclosure action being forestalled. Under prior law, the term of any such "delinquent tax contract" could not have exceeded five years. The act creates a special exception for a qualifying athletic complex by permitting a delinquent tax contract to authorize installment payments for up to ten years.[20]

STATE EMPLOYEE COMPENSATION

State exempt employee pay increases

The act increases pay for exempt state employees paid in accordance with salary schedule E-1 by approximately 2.7% as of the pay period that includes July 1, 2018, an additional 2.8% (approximate) as of the pay period that includes July 1, 2019, and an additional 3.0% (approximate) as of the pay period that includes July 1, 2020. For exempt state employees paid in accordance with salary schedule E-2, the act increases the maximum pay range amounts by approximately 2.7% as of the pay period that includes July 1, 2018, an additional 2.8% (approximate) as of the pay period that includes July 1, 2019, and an additional 3.0% (approximate) as of the pay period that

[17] R.C. 5709.57(B).

[18] R.C. 5709.57(C).

[19] R.C. 3317.021.

[20] R.C. 323.31(A)(4).

includes July 1, 2020. An exempt employee generally is an employee subject to the state job classification plan but exempt from collective bargaining.

The act authorizes each state appointing authority to make expenditures from current state operating appropriations to provide for compensation increases pursuant to approved collective bargaining agreements and pursuant to the act for employees exempt from collective bargaining. It also authorizes the Director of Budget and Management (OBM Director) to increase expenditures from the General Revenue Fund and non-GRF appropriation items for the same purposes. The act appropriates any increases in expenditures that the OBM Director is authorized to make.[21]

Certain state employee leave

Parental leave

Continuing law allows an eligible employee listed below who works 30 or more hours a week to take up to six continuous weeks of paid parental leave at the birth of a child. Under the act, such an employee is eligible if the employee is listed as a parent on the child's birth certificate, rather than if the employee is the child's biological parent, as under former law.

The following employees are eligible for parental leave under continuing law: part-time and full-time exempt employees; legislative employees and Legislative Service Commission employees; employees in the Governor's office; employees who are in the unclassified civil service and exempt from collective bargaining coverage in the office of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General; Supreme Court employees; and certain employees for whom their appointing authority establishes their job classifications and compensation.[22]

Use of vacation leave

Under the act, an employee described under "**Parental leave**," above, can begin using vacation leave when the leave appears on the employee's earning statement and the compensation described in the earning statement is available to the employee. Under former law, the employee could begin using accrued vacation leave only after an initial probation period.[23]

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[21] Section 10.

[22] R.C. 124.136(A).

[23] R.C. 124.134(A).

Compensation for unused vacation leave

Under the act, an employee described under "**Parental leave**," above who separates from state employment with less than 12 months of total state service is not entitled to compensation for unused accrued vacation leave. Previously, such an employee was entitled to compensation at the employee's current rate of pay. In case of an employee's death, the act specifies that unused *accrued* vacation leave will be paid in accordance with continuing law, rather than unused vacation leave as under former law.[24]

Annual vacation leave cash conversion

Beginning in December 2019, and every year after, the act requires the Director of Administrative Services (DAS Director) to allow an employee described under "**Parental leave**," above, to convert to cash a maximum of 40 hours of unused accrued vacation leave. To qualify for the conversion, the employee must have at least 200 hours of unused accrued vacation leave available for use on the last day of the first pay period of November.

The vacation leave converted to cash must be paid in the first paycheck of December at the employee's base rate of pay for every hour of leave that the employee converts. An employee serving in a temporary work level who elects to convert vacation leave to cash must do so at the employee's base rate of pay for the employee's normal classification. An employee who separates from state employment during the year is not eligible for the cash conversion. The cash provided pursuant to the conversion is not subject to contributions to any retirement system.

The DAS Director must establish procedures to implement the conversion. The procedures must include a final date by which an employee must notify the Director of the amount of vacation leave to be converted to cash. Subject to continuing law limits on total accrued vacation leave, an employee's unused accrued vacation leave balance automatically carries forward if the employee does not notify the Director using the procedures.

The cash conversion will apply to employees of the Supreme Court, the General Assembly, the Legislative Service Commission, the Secretary of State, the Auditor of State, the Treasurer of State, or the Attorney General only if the employer decides that its employees should be eligible and notifies the DAS Director in writing on or before October 1 of the decision. The first year that these employers can make this election is 2019.

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[24] R.C. 124.134(E).

After notifying the Director that employees are eligible, those employees remain eligible until the employer notifies the Director in writing on or before October 1 that the employees are ineligible. If any of the listed employers notifies the Director of a decision that its employees are ineligible during any calendar year, those employees remain ineligible until the employer notifies the Director in writing on or before October 1 that the employees are eligible. An election to allow employees to participate in the cash conversion does not apply to any employee who is subject to collective bargaining.[25]

Accrued unused vacation leave converted to cash under the act is paid from the Accrued Leave Liability Fund.[26]

Employee healthcare benefits

Continuing law allows DAS to contract with a health insuring corporation to provide a state employee with health care coverage. The act permits DAS to use the State Employee Health Benefit Fund to pay the cost or premiums associated with that contract.[27]

The act eliminates a prohibition against DAS entering a contract for health care coverage with a health insuring corporation if the premium or cost contributed by the state to cover an employee or the employee's family exceeds the state's premium or cost under a contract with an insurance company that was selected in consultation with the Superintendent of Insurance and in accordance with competitive bidding requirements.[28]

Under continuing law DAS may provide benefits equivalent to the health care services that DAS may provide through an insurer. The act adds that DAS may provide the benefits that are equivalent to what DAS may provide through a health insuring corporation as well.[29]

Funds transfers

During fiscal year 2019, the act allows the DAS Director, at the request of the OBM Director, to transfer cash from the Accrued Leave Liability Fund to the State

[25] R.C. 124.134(B), (F), and (G).

[26] R.C. 125.111.

[27] R.C. 124.87(A).

[28] R.C. 124.82(A) and (B).

[29] R.C. 124.87(B) and (D).

Employee Health Benefit Fund in an amount sufficient to pay for voluntary health plans offered by the DAS Director to state employees who elect to enroll in a qualifying high deductible health care plan. If the OBM Director makes the transfer, when the cash balance of the State Employee Health Benefit Fund is sufficient to support the expenditures for voluntary health plans to state employees, the DAS Director must request the OBM Director to transfer cash from the State Employee Health Benefit Fund to the Accrued Leave Liability Fund in an amount equal to the transfer authorized by the act.[30]

OTHER STATE AND LOCAL GOVERNMENT PROVISIONS

Certain workers' compensation claims involving third parties

The act expands the circumstances in which a workers' compensation claim based on a motor vehicle accident involving a third party may be charged to the Surplus Fund Account in the State Insurance Fund and not to an employer's experience, to include if the claim is covered by the third party's insurance or uninsured or underinsured motorist coverage and the third party is primarily liable for the accident. Under the act, "primarily liable" means more than 50% liable for purposes of the law governing contributory fault. The proposed circumstances apply to a claim arising on or after July 1, 2017.

The act maintains law allowing a claim to be charged to the Surplus Fund Account if the third party is issued a citation for a violation of any law or ordinance regulating the motor vehicle's operation arising from the accident on which the claim is based and the claim is covered by either the third party's insurance or uninsured or underinsured motorist coverage.[31]

Brownfields Revolving Loan Fund

Under prior law, the Brownfields Revolving Loan Fund was to consist of money received from the U.S. Environmental Protection Agency under the federal Small Business Liability Relief and Brownfields Revitalization Act.[32] The Director of Development Services was required to issue grants and loans from the Fund for brownfield revitalization purposes and to establish a schedule of fees and charges payable by recipients of grants or loans to defray administrative expenses. A brownfield is an abandoned, idled, or under-used industrial, commercial, or institutional property

[30] Section 11.

[31] R.C. 4123.932 and Section 13.

[32] See 42 United States Code 9601 and 9604.

where expansion or redevelopment is complicated by known or potential releases of hazardous substances or petroleum.[33]

There was no money in the Fund before and at the act's enactment. The act changes and expands the sources of revenue for the Fund by requiring it to consist of repayments of loans made under the terms of the federal Act, any other money transferred to the Fund, and the Fund's investment earnings. The act also authorizes, rather than requires, the Director to make the grants and loans and to establish the schedule of fees and charges. However, the Director no longer may impose fees and charges on grant recipients.[34]

Semiannual OBM report

The act revises the 2017 law (enacted by the budget bill, H.B. 49) requiring the Director of Budget and Management to furnish semiannual reports on certain appropriation items and state treasury funds to leadership of the General Assembly and the chairpersons of the House and Senate finance committees. (The first report is due October 1, 2018.)

Under the act, the report must contain line items without current year appropriations but with remaining open encumbrances. The law originally required the report to contain line items that have been discontinued but had a remaining balance.

The act also specifies that funds without recent expenditures must be included in the reports only if they have remaining cash balances. For an October report, this refers to funds with no expenditures in the immediately preceding fiscal year. For an April report, this refers to funds with no expenditures in the current fiscal year.

Finally, the act clarifies a requirement that the report indicate funds that have spent less than 50% of their appropriations. An October report must include funds that have spent less than 50% of their preceding fiscal year appropriations. An April report must include funds that have spent or encumbered less than 50% of their current fiscal year appropriations through December of that fiscal year.[35]

Public library borrowing authority

The act increases the amount that public library systems may borrow against their Public Library Fund receipts to finance library facilities and lengthens the time

[33] R.C. 122.6510; R.C. 122.65(D), not in the act.

[34] R.C. 122.6510(B) and (D); Section 9.

[35] R.C. 126.231.

over which they must repay the borrowed funds and interest. Under ongoing law, public library boards that receive money from the PLF may borrow against anticipated future receipts by issuing notes, subject to statutory limitations, and using the note proceeds to finance library facilities.

One of the limitations is that the annual repayment obligation may not exceed a percentage of the average annual amount of PLF money the library system received over the two preceding years. Before the act, the percentage was 30%; the act increases it to 40%.[36]

Another limitation is that the notes must mature – i.e., be completely repaid – within a specified number of years after they are originally issued. Before the act, the maximum maturity was 25 years; the act increases it to 40 years.[37]

Special procedure for certain 2018 village ordinances

The act provides a special procedure for a village whose legislative authority (typically a village council), between May 15 and September 1, 2018, considers an ordinance that would make zoning or other changes to accommodate a new use of real property that the authority determines is likely to bring at least 500 new jobs and at least $50 million in investment to the village (see **COMMENT**).[38]

Abstention procedure

If a member of the legislative authority is present but abstains from voting on the ordinance, the act prohibits the member's seat from being counted for the purpose of determining the required number of votes to pass the ordinance or to pass it as an emergency measure. For example, if a village council has six members, the vote of four members constitutes a majority vote. If one member abstains from voting on an ordinance because of a conflict of interest, then under the act the council would be deemed to have only five members, and the vote of three members would be required to constitute a majority vote. That is, the abstaining member would be counted as voting "yes" instead of "no."[39]

The Revised Code does not specify whether an abstaining member must be counted as part of the legislative authority for this purpose, although a village might

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[36] R.C. 3375.404(B)(1).

[37] R.C. 3375.404(F).

[38] Section 12.

[39] Section 12(A).

have its own ordinance or council rule on that matter. In the absence of such an ordinance or rule, Ohio's courts generally have held that an abstaining member's seat is not counted in determining the required number of votes for a majority, the same as the act's provision in this particular circumstance.[40]

Accelerated referendum procedure

The act significantly shortens the time required to hold a referendum vote on an ordinance that is subject to the act compared to the timeline set in statute. Under the act, if the legislative authority passes the ordinance and it is subject to the referendum, the authority and the board of elections immediately must prepare for a special election for the purpose of a referendum vote on the ordinance, in anticipation of any valid referendum petition that may be filed. The legislative authority immediately must transmit a certified copy of the text of the ordinance to the board of elections, and the board immediately must schedule the special election for the first Tuesday occurring at least 60 days after the ordinance is passed. The board must make all preparations for holding the election in accordance with the Revised Code.

Because continuing law requires a board of elections to have uniformed services and overseas absent voters' ballots ready for use not later than 45 days before an election, the act requires the board to have those ballots ready, as well as some other preparations completed, before the deadline to file a referendum petition with the village clerk and before it is determined whether the election actually will be held.[41]

Referendum election held

If a referendum petition is filed with the village clerk by the 30th day after the ordinance is passed, the clerk must immediately transmit the petition and a certified copy of the ordinance text to the board. As soon as possible, and not later than five days after the petition is filed with the clerk, the board must verify the number of valid signatures on the petition and return it to the clerk. The clerk then immediately must determine whether the petition is sufficient and valid and certify that determination to the board.

If the petition is valid, the board must submit the ordinance to the voters for their approval or rejection at the special election. Not later than the fifth day after Election day, the board must complete a preliminary canvass of the election returns that

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[40] *State ex rel. Shinnich v. Green,* 37 Ohio St. 227 (1881); *Gitlin v. Berea,* 1990 Ohio App. LEXIS 542, 1990 WL 14146 (8th Dist. Ct. App. 1990); and *Babyak v. Alten*, 106 Ohio App. 191 (9th Dist. Ct. App. 1958). But see *Davis v. Willoughby*, 173 Ohio St. 338 (1962).

[41] Section 12(B) and R.C. 3509.01(B)(1), not in the act.

includes only the regular ballots cast on Election day and the absent voter's ballots received by the close of the polls. The board also must determine the total number of outstanding ballots, consisting of the provisional ballots cast at the election and the absent voter's ballots that have not been returned. Finally, the board must determine the automatic recount margin by adding the total number of ballots included in the preliminary canvass and the total number of outstanding ballots and multiplying the resulting number by 0.5%.

If the preliminary canvass indicates that the voters approved the ordinance by a margin larger than the total number of outstanding ballots plus the automatic recount margin, and no valid application for a recount or petition to contest the election is filed not later than the sixth day after the election, the board immediately must certify those facts to the legislative authority, and the ordinance must take effect on the seventh day after the election. (Essentially, if the counted votes show that the ordinance was approved by such a large margin that it would still be approved if all the outstanding ballots were "no" votes, and no automatic recount would be required, the board may presume that the ordinance is approved.) The board still must count the outstanding ballots and complete the official canvass of the election returns in accordance with Revised Code Title 35.

On the other hand, if either (a) the preliminary canvass indicates that the voters did not approve the ordinance, or that the voters approved the ordinance but the margin of approval is not larger than the total number of outstanding ballots plus the automatic recount margin, or (b) a valid application for a recount or petition to contest the election is filed not later than the sixth day after the election, the board must certify that fact to the legislative authority. The board then must count the outstanding ballots and complete the official canvass of the election returns and any required recount in accordance with Revised Code Title 35 as quickly as is practicable. If a petition to contest the election has been filed, the court must complete the trial of the contest and pronounce its judgment as quickly as is practicable. If the final results of the election indicate that a majority of those voting on the ordinance approved it, the ordinance takes effect immediately. If not, the ordinance must not take effect.[42]

No referendum election

If no referendum petition concerning the ordinance is filed with the village clerk not later than the 30th day after the ordinance is passed, or every petition filed is insufficient or invalid, the ordinance takes effect immediately, and the board must

[42] Section 12(C). See also R.C. 3515.011, not in the act.

cancel the special election and notify every voter who requested an absent voter's ballot of the cancellation.[43]

Current referendum procedure

Under the Revised Code, if a valid referendum petition is filed, the ordinance in question cannot take effect unless it is approved on the ballot at the next general election occurring at least 90 days after the village clerk certifies sufficiency and validity of the petition to the board of elections, and the clerk and the board have more time before then to verify the petition. Further, the board must complete the canvass of the election returns not later than 21 days after the election, and a recount or contest may extend the process even further. By contrast, the act allows a covered ordinance that is placed on the ballot for a referendum vote to take effect as early as 67 days after it is passed.[44]

Emergency clause

The act declares Section 12, concerning village ordinances, an emergency measure, and that Section 12 therefore takes effect immediately and is not subject to the referendum.[45]

Appropriations

The act requires or authorizes certain fund transfers, clarifies the use of certain capital appropriations, and makes various changes to operating and capital appropriations for the operating and capital biennia ending June 30, 2019, and June 30, 2020, respectively, as described more fully in LSC's fiscal note.[46]

COMMENT

A reviewing court might find that the provisions of Section 12 that set out special procedures for passing certain village ordinances do not apply to a village whose charter specifies different procedures, because the home rule provisions of the Ohio Constitution give municipal corporations the power to regulate all matters of local self-government. However, a village with no charter probably would be required to comply

[43] Section 12(D).

[44] R.C. 731.29, 3505.32, and Chapter 3515., not in the act.

[45] Section 16.

[46] Sections 4 through 11. The fiscal note is available at https://www.legislature.ohio.gov/download?key=9889&format=pdf.

because the Ohio Supreme Court has ruled that nonchartered municipal corporations must follow state laws that establish procedures for self-government, although their home rule powers allow them to deviate from certain state laws on substantive matters.[47]

HISTORY

ACTION	DATE
Introduced	06-27-17
Reported, H. Ways and Means	10-26-17
Passed House (92-1)	11-01-17
Reported, S. Way and Means	05-23-18
Passed Senate (32-0)	05-23-18
House concurred in Senate amendments (87-1)	06-07-18

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[47] Ohio Const., art. XVIII, secs. 2 and 3 and *Northern Ohio Patrolmen's Benevolent Association v. Parma*, 61 Ohio St.2d 375 (1980).