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S.B. 21
135th General Assembly

Bill Analysis

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SUMMARY

Appeals of administrative orders

- Restructures and modifies the current Administrative Procedure Act provisions regarding appeals by a party adversely affected by an order of an agency by:
 - Retaining current law that specifies that, subject to the provisions described below, an appeal from an order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, denying the issuance or renewal of a license or registration of a licensee, revoking or suspending a license, or allowing the payment of a forfeiture must be filed in the county in which the place of business of the licensee is located or the county in which the licensee is a resident.
 - Retaining and modifying current law that requires that appeals of orders of specified agencies must be to the Franklin County Court of Common Pleas or, as added, the county in which the place of business of the licensee is located or in which the licensee is a resident.
 - Retaining and modifying current law that requires, instead of permits, appeals from orders of the State Fire Marshal be to the court of common pleas of the county in which the aggrieved person's building is located.
 - Retaining current law pertaining to appeals from a decision of the State Personnel Board of Review or a municipal or civil service township civil service commission.
 - Requiring, instead of permitting as under current law, that appeals from specified administrative orders by any party who is not a resident of and has no place of business in Ohio must be to the Franklin County Court of Common Pleas.
 - Retaining and modifying current law providing that any party adversely affected by any agency order issued pursuant to any other adjudication may appeal to the

Franklin County Court of Common Pleas or, as added, the county in which the business of the party is located or in which the party is a resident.

- Modifies specific statutes governing adjudication orders of specified agencies to replace current provisions regarding appeals of the orders to the Franklin County Court of Common Pleas, the Environmental Division of the Franklin County Municipal Court, or the court of the county in which an appointing authority resides, with the bill's venue provision described in the first dot point.

Special court procedures

- Provides special court procedures regarding the consideration and determination of:
 - Cases that, prior to its effective date, would have been solely within the jurisdiction on appeal of the 10th District Court of Appeals, and that on that date are pending in a common pleas court and are not pending in the 10th District.
 - Matters that, on or after its effective date, are being considered by a court of appeals other than the 10th District or a common pleas court within the territory of a court of appeals other than the 10th District and that, prior to that date, would have been solely within the jurisdiction on appeal of the 10th District.

No claim preclusion in zoning appeals

- Provides that a final judgment on the merits by a court pursuant to its power of review of administrative orders on claims brought under the law regarding county rural zoning or the renewal of slums and blighted areas in a county, the Township Zoning Law, or the law regarding municipal zoning, regional and county planning commissions, or interstate regional planning commissions does not preclude later claims for damages.
- States that the General Assembly intends that the above provisions in the respective laws be construed to override the federal Sixth Circuit Court of Appeals decision in the case of *Lavon Moore v. Hiram Twp.*, 988 F.3d 353 (6th Cir. 2021).

Hamilton County Drug Court jurisdiction

- Replaces the statutory provisions that specify the types of cases that may be referred to the Drug Court of the Hamilton County Court of Common Pleas with a provision that specifies that:
 - Eligibility for admission of a case into the Drug Court is to be set forth in a local rule adopted by the Common Pleas Court; and
 - The local rule may not permit referral to the Drug Court of a case that involves a first or second degree felony, a violation of a prohibition contained in the Sex Offenses Chapter that is a third degree felony, or aggravated murder or murder.
- Authorizes the Municipal Court to refer a case to the Drug Court if the case is of a type eligible for admission into the Drug Court under the local rule adopted by the Common Pleas Court, as described above.

Jurisdiction of Tiffin-Fostoria Municipal Court and Bowling Green Municipal Court – Perry Township in Wood County

- Transfers Perry Township in Wood County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Bowling Green Municipal Court.

Jurisdiction of Tiffin-Fostoria Municipal Court and Findlay Municipal Court – Washington Township in Hancock County

- Transfers Washington Township in Hancock County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Findlay Municipal Court.

State involvement in legal actions

- Specifies that the General Assembly and each chamber may intervene as a matter of right at any time in any civil action or proceeding in state or federal court that involves a challenge to the validity, applicability, or constitutionality of the Ohio Constitution or the laws of Ohio.
- Creates exceptions to the law that requires the Attorney General to represent a state agency in any legal action.
- Allows the Speaker of the House and the Senate President to retain their own legal counsel to represent the House, the Senate, or the General Assembly, as applicable.
- Allows the Governor to retain separate legal counsel in any matter, action, or proceeding the Governor deems to be necessary and proper to protect the interests of the Office of the Governor.

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DETAILED ANALYSIS

Appeal of administrative agency order

Current law

Place of appeal

The current Administrative Procedure Act (R.C. Chapter 119, the APA) generally provides that a “party” (see below) adversely affected by any order of an “agency” (see below) issued pursuant to an adjudication denying an applicant admission to an examination, denying the issuance or renewal of a license or registration of a licensee, revoking or suspending a license, or allowing the payment of a forfeiture rather than suspending operations of a liquor permit holder by order of the Liquor Control Commission, may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident (the provisions do not apply to appeals from the Department of Taxation).¹

But other provisions regarding appeals of such an order specify that:²

1. An appeal of such an order issued by any of the following agencies must be made to the Franklin County Court of Common Pleas (Franklin County CCP): (a) Liquor Control Commission, (b) Ohio Casino Control Commission, (c) State Medical Board, (d) State Chiropractic Board, (e) Board of Nursing, and (f) Bureau of Workers’ Compensation regarding participation in the health partnership program administered by the Bureau.
2. If a party appealing from such an order is not an Ohio resident and has no place of business in Ohio, the party may appeal to the Franklin County CCP.
3. A party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the Franklin County CCP, except that: (a) appeals from orders of the State Fire Marshal issued under R.C. Chapter 3737 may be to the court of

¹ R.C. 119.12(A)(1) and (C).

² R.C. 109.12(A)(2), (A)(3), and (B).

common pleas of the county in which the building of the aggrieved person is located, and (b) appeals under R.C. 124.34(B) from a decision of the State Personnel Board of Review or a municipal or civil service township civil service commission must be taken to the court of common pleas of the county in which the appointing authority is located or, in the case of an appeal by the Department of Rehabilitation and Correction (DRC), to the Franklin County CCP.

Definitions

As used in the APA:³

1. “Agency” means, except as otherwise specified, any official, board, or commission having authority to promulgate rules or make adjudications in the Civil Service Commission, the Division of Liquor Control, the Department of Taxation, the Industrial Commission, the Bureau of Workers’ Compensation, the functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state specifically made subject to the APA, and the licensing functions of any administrative or executive officer, department, division, bureau, board, or commission of the government of the state having the authority or responsibility of issuing, suspending, revoking, or canceling licenses. The Act does not apply to certain specified government entities or certain specified types of conduct of government entities (e.g., the Public Utilities Commission; the Controlling Board; or certain actions of the Superintendent of Financial Institutions and the Superintendent of Insurance; etc.). “Agency” also means any official or work unit having authority to promulgate rules or make adjudications in the Department of Job and Family Services, but only with respect to both of the following: (1) the adoption, amendment, or rescission of rules required under R.C. 5101.09 to be adopted in accordance with the APA, and (2) the issuance, suspension, revocation, or cancellation of licenses.
2. “Party” means the person whose interests are the subject of an adjudication by an agency.

Operation of the bill

The bill modifies current law by providing that a party adversely affected by an order of an agency issued pursuant to an adjudication may appeal from the order to the court of common pleas of the county described in the next paragraph.⁴

Under the bill, an appeal by a party adversely affected by any order of an agency issued pursuant to an adjudication must be filed in the county designated as follows:⁵

³ R.C. 119.01, not in the bill.

⁴ R.C. 119.12(A).

⁵ R.C. 119.12(B).

1. Except as otherwise described below in (2), an appeal from an order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, denying the issuance or renewal of a license or registration of a licensee, revoking or suspending a license, or allowing the payment of a forfeiture rather than suspending operations of a liquor permit holder by order of the Liquor Control Commission must be filed in the county in which the place of business of the licensee is located or the county in which the licensee is a resident (current law states that such an appeal may be filed in the court of common pleas in either of the specified counties).
2. An appeal from an order issued by any of the following agencies must be made to the Franklin County CCP or the court of common pleas in the county in which the place of business of the licensee is located or the county in which the licensee is a resident: (a) Liquor Control Commission, (b) Ohio Casino Control Commission, (c) State Medical Board, (d) State Chiropractic Board, (e) Board of Nursing, and (f) Bureau of Workers' Compensation regarding participation in the health partnership program administered by the Bureau (currently, such an appeal must be made to the Franklin County CCP).
3. Appeals from orders of the State Fire Marshal issued under R.C. Chapter 3737 must be to the court of common pleas of the county in which the building of the aggrieved person is located (currently, those appeals may be to that court of common pleas or to the Franklin County CCP).
4. As under current law, appeals under R.C. 124.34(B) from a decision of the State Personnel Board of Review or a municipal or civil service township civil service commission must be taken to the court of common pleas of the county in which the appointing authority is located or, in the case of an appeal by DRC, to the Franklin County CCP.
5. If a party appealing from an order described above in (1) or (2) or described below in (6) is not an Ohio resident and has no place of business in Ohio, the party must appeal to the Franklin County CCP (current law states that such an appeal may be to the Franklin County CCP).
6. A party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the Franklin County CCP or the court of common pleas of the county in which the business of the party is located or in which the party is a resident (currently, the party may appeal to the Franklin County CCP).

Appeal from order of specific agencies

The bill's provision above that a party adversely affected by an order of an agency may appeal from the order to the court of common pleas of the county in which the place of business of the party is located or the county in which the party is a resident is expressly made applicable to any of the following appeals:

- In cases of removal or reduction in pay for disciplinary reasons, the appointing authority or the officer or employee in the classified service may appeal from the decision of the State Personnel Board of Review or the municipal civil service commission of the city or

city school district.⁶ The bill replaces current law that provides for the appeal to be made to the court of common pleas of the county in which the appointing authority is located, or to the Franklin County CCP.⁷

- In cases in which the Director of Agriculture or a designated representative impounds and seizes a dog from a high volume breeder or dog broker for violation of applicable law or rule, the high volume breeder's owner or operator or the person acting as a dog broker may appeal from such determination at an adjudication hearing.⁸ The bill replaces the existing provision that specifies that the appeal may be made only to the environmental division of the Franklin County Municipal Court.⁹
- In cases in which an application for a license as a high volume breeder or dog broker is denied or such license is suspended or revoked upon a determination of the Director of Agriculture at an adjudication hearing, the applicant or licensee may appeal from such determination.¹⁰ The bill replaces the existing provision that specifies that the appeal may be made only to the environmental division of the Franklin County Municipal Court.¹¹
- In cases in which a proprietor of a public place or place of employment or an individual against whom a finding of a violation of any prohibition under the Smoking Ban Law is made by the Director of the Department of Health or designee, the proprietor or individual may appeal the finding.¹² The bill replaces current law that provides that the proprietor or individual may appeal the finding to the Franklin County CCP.¹³
- In cases in which, after a public hearing, the Superintendent of Insurance issues an order of disapproval of any merger or other acquisition of control of a domestic insurer, the order may be appealed by filing a notice of appeal with the Superintendent and a copy of the notice of appeal with the court that will hear the appeal, within 15 calendar days after the transmittal of the copy of the order.¹⁴ The bill replaces current law that specifies that the order of disapproval may be appealed to the Franklin County CCP.¹⁵

⁶ R.C. 124.34(B).

⁷ *Id.*

⁸ R.C. 956.11(C).

⁹ *Id.*

¹⁰ R.C. 956.15(C).

¹¹ *Id.*

¹² R.C. 3794.09(C).

¹³ *Id.*

¹⁴ R.C. 3901.321(F)(2)(e).

¹⁵ *Id.*

- In cases in which the Superintendent of Insurance issues an order regarding the conversion of a domestic mutual life insurance company to a stock life insurance company, an adversely affected policyholder may appeal the order.¹⁶ The bill replaces current law that provides that a policyholder adversely affected by such order may appeal to the Franklin County CCP.¹⁷
- In cases in which the Superintendent of Insurance issues an order regarding the conversion of a domestic mutual insurance company other than life to a stock insurance corporation other than life, an adversely affected policyholder may appeal the order.¹⁸ The bill replaces current law that provides that a policyholder adversely affected by such order may appeal to the Franklin County CCP.¹⁹
- In cases in which an appellant who appeals an order of an agency administering a family services program, who is granted a state hearing, and who disagrees with the state hearing decision and generally makes an administrative appeal to the Department of Job and Family Services (JFS), the appellant may appeal from the JFS administrative appeal decision.²⁰ The bill replaces current law that provides that the person may appeal to the court of common pleas of the county in which the person resides, or to the Franklin County CCP if the person does not reside in Ohio.²¹ The bill's new venue provision described above and current law on an appeal by a nonresident to the Franklin County CCP would apply, and the eliminated provision regarding a nonresident would be duplicative.
- In cases in which an adversely affected party may appeal from the Medicaid Department's adjudication order regarding: (1) refusal to enter into a provider agreement with a Medicaid provider, (2) refusal to revalidate a Medicaid provider's provider agreement, (3) suspension or termination of a Medicaid provider's provider agreement, or (4) taking any action based upon a final fiscal audit of a Medicaid provider.²² The bill replaces current law that provides that any party who is adversely affected by the issuance of any such adjudication order may appeal to the Franklin County CCP.²³

¹⁶ R.C. 3913.13 and by reference to R.C. 3913.11(F), which is not in the bill.

¹⁷ *Id.*

¹⁸ R.C. 3913.23 and by reference to R.C. 3913.21(F), which is not in the bill.

¹⁹ *Id.*

²⁰ R.C. 5101.35(B), (C), and (E).

²¹ R.C. 5101.35(E)(1).

²² R.C. 5164.38(C) and (D).

²³ R.C. 5164.38(D).

Special court procedures

Related to the provisions described above in “**Appeal of administrative agency order**,” the bill specifies that:²⁴

1. All cases pending in the 10th District Court of Appeals on the bill’s effective date that were appropriately filed in that court are to be adjudicated by the 10th District;
2. All cases that, prior to the bill’s effective date, would have been solely within the jurisdiction on appeal of the 10th District Court of Appeals, and that on that effective date are pending in a common pleas court that is an appropriate venue and are not pending in the 10th District, are to be adjudicated by that common pleas court and remain solely within the jurisdiction on appeal of the 10th District, on and after that effective date;
3. If, on or after the bill’s effective date, a court of appeals other than the 10th District Court of Appeals or a common pleas court within the territory of a court of appeals other than the 10th District is considering a matter that, prior to that effective date, would have been solely within the jurisdiction on appeal of the 10th District, all of the following apply:
 - a. The court of appeals or common pleas court considering the matter may consider judicial decisions of the Franklin County Common Pleas Court and the 10th District that were decided prior to that effective date, in deciding the matter;
 - b. The judicial decisions of the Franklin County Common Pleas Court and the 10th District that were decided prior to that effective date are not binding on the court of appeals or common pleas court considering the matter; and
 - c. The court of appeals or common pleas court considering the matter is not required to issue any findings of fact explaining why the court, in deciding the matter, did not consider or follow any precedent on the matter set forth in any judicial decision of the Franklin County Common Pleas Court or the 10th District.

No claim preclusion in zoning appeals

The bill provides that a final judgment on the merits issued by a court of competent jurisdiction pursuant to its power of review of orders of administrative officers and agencies on claims brought under the law regarding county rural zoning or the renewal of slums and blighted areas in a county, the Township Zoning Law, or the law regarding municipal zoning, regional and county planning commissions, or interstate regional planning commissions does not preclude later claims for damages, including claims brought under 42 U.S.C. 1983, even if the common law doctrine of *res judicata* would otherwise bar the claim.²⁵

²⁴ Section 3(C) and (D).

²⁵ R.C. 303.65, 519.26, and 713.16.

The bill states that the General Assembly intends that the above provisions in the respective laws be construed to override the federal Sixth Circuit Court of Appeals' decision in the case of *Lavon Moore v. Hiram Twp.*, 988 F.3d 353 (6th Cir. 2021).²⁶

Hamilton County Drug Court jurisdiction

Generally

The Hamilton County Court of Common Pleas currently is served by a Drug Court, which was established by statute in December 1995. The judge of the Hamilton County Court of Common Pleas whose term began on January 3, 1997, and the successors to that judge, are elected and designated as the judge of the Drug Court. The Revised Code currently specifies the types of cases that may be referred to the Drug Court²⁷ (see below).

Current law, unchanged by the bill, specifies that if the administrative judge of the Hamilton County Court of Common Pleas determines that the volume of cases pending before the Drug Court judge does not constitute a sufficient caseload for that judge, the administrative judge, in accordance with the Rules of Superintendence for Courts of Common Pleas, must assign individual cases to the Drug Court judge from the Court's general docket. If the assignments so occur, the administrative judge must cease the assignments when the administrative judge determines that the volume of cases pending before the Drug Court judge constitutes a sufficient caseload for the Drug Court judge.²⁸

Current law also specifies that the Hamilton County Municipal Court may refer a case of the type that currently may be heard by the Hamilton County Drug Court (see below) to the Drug Court judge under that provision.²⁹

Operation of the bill

The bill modifies the existing provisions regarding the jurisdiction of the Drug Court of the Hamilton County Court of Common Pleas as follows:³⁰

1. It replaces the existing statutory provisions that specify the types of cases that may be referred to the Drug Court with a provision that specifies that: (a) eligibility for admission of a case into the Drug Court is to be set forth in a local rule adopted by the Court of Common Pleas, and (b) the local rule specifying eligibility may not permit referral to the Drug Court of a case that involves a first or second degree felony, a violation of a prohibition contained in R.C. Chapter 2907 (the Sex Offenses Chapter) that is a third degree felony, or aggravated murder or murder;

²⁶ *Id.*

²⁷ R.C. 2301.03(B)(3).

²⁸ R.C. 2901.03(B)(4).

²⁹ R.C. 1901.041(B).

³⁰ R.C. 1901.041 and 2301.03.

2. It replaces the existing statutory provision that authorizes the Hamilton County Municipal Court to refer a case to the Drug Court if the case is of a type covered under the existing statutory provisions replaced by the amendment, as described above in (1), with a provision that authorizes the Municipal Court to refer a case to the Drug Court if the case is of a type eligible for admission into the Drug Court under the local rule adopted by the Court of Common Pleas, as described above in (1).

Repealed provisions regarding jurisdiction

The existing statutory provisions that specify the types of cases that may be referred to the Drug Court of the Hamilton County Court of Common Pleas, which are repealed by the bill, specify that:³¹

1. The Drug Court judge may accept or reject any case referred to that judge under the provisions described in this paragraph and in (2) and (3), below. After the Drug Court judge accepts a referred case, that judge has full authority over the case, including the authority to conduct arraignment, accept pleas, enter findings and dispositions, conduct trials, order treatment, and if treatment is not successfully completed pronounce and enter sentence.
2. A judge of the general division of the Hamilton County Court of Common Pleas and a judge of the Hamilton County Municipal Court may refer to the Drug Court judge any case, and any companion cases, the referring judge determines meet the criteria described in (3)(a) and (b), below. If the Drug Court judge accepts referral of a referred case, the case, and any companion cases, are transferred to that judge. A judge may refer a case meeting the criteria described in (3)(a) and (b), below, that involves a violation of a condition of a community control sanction to the Drug Court judge, and, if the Drug Court judge accepts the referral, the referring judge and the Drug Court judge have concurrent jurisdiction over the case.
3. A judge of the general division of the Hamilton County Court of Common Pleas and a judge of the Hamilton County Municipal Court may refer a case to the Drug Court judge if the referring judge determines that both of the following apply:
 - a. One of the following applies: (i) the case involves a drug abuse offense, as defined in R.C. 2925.01, that is a third or fourth degree felony if committed prior to July 1, 1996, a third, fourth, or fifth degree felony if committed on or after July 1, 1996, or a misdemeanor, or (ii) the case involves a theft offense, as defined in R.C. 2913.01, that is a third or fourth degree felony if committed prior to July 1, 1996, a third, fourth, or fifth degree felony if committed on or after July 1, 1996, or a misdemeanor, and the defendant is drug or alcohol dependent or in danger of becoming drug or alcohol dependent and would benefit from treatment.

³¹ Repealed provisions of R.C. 2301.03(B)(3).

- b. All of the following apply: (i) the case involves an offense for which a community control sanction may be imposed or is a case in which a mandatory prison term or a mandatory jail term is not required to be imposed, (ii) the defendant has no history of violent behavior, (iii) the defendant has no history of mental illness, (iv) the defendant's current or past behavior, or both, is drug or alcohol driven, (v) the defendant demonstrates a sincere willingness to participate in a 15-month treatment process, (vi) the defendant has no acute health condition, and (vii) if the defendant is incarcerated, the county prosecutor approves of the referral.

Jurisdiction of Tiffin-Fostoria Municipal Court and Bowling Green Municipal Court – Perry Township in Wood County

Currently, Perry Township in Wood County, except for the municipal corporation of West Millgrove in Wood County, is within the territorial jurisdiction of the Tiffin-Fostoria Municipal Court. West Millgrove is within the territorial jurisdiction of the Bowling Green Municipal Court. Cases that arise in Perry Township, except for those arising within the municipal corporation of West Millgrove, are filed in the office of the special deputy clerk located in Fostoria. The bill transfers Perry Township in Wood County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Bowling Green Municipal Court.³²

Related to the transfer described above, the bill specifies that all cases arising in Perry Township in Wood County that are pending in the Fostoria branch of the Tiffin-Fostoria Municipal Court on the bill's effective date are to be adjudicated by the Fostoria branch of the Tiffin-Fostoria Municipal Court. All cases arising in Perry Township in Wood County on or after the bill's effective date are to be brought before the Bowling Green Municipal Court.³³

Jurisdiction of Tiffin-Fostoria Municipal Court and Findlay Municipal Court – Washington Township in Hancock County

Currently, Washington Township in Hancock County is within the territorial jurisdiction of the Tiffin-Fostoria Municipal Court. Cases that arise in Washington Township are filed in the office of the special deputy clerk located in Fostoria. The bill transfers Washington Township in Hancock County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Findlay Municipal Court.³⁴

Related to the transfer described above, the bill specifies that all cases arising in Washington Township in Hancock County that are pending in the Fostoria branch of the Tiffin-Fostoria Municipal Court on the bill's effective date are to be adjudicated by the Fostoria branch of the Tiffin-Fostoria Municipal Court. All cases arising in Washington Township in

³² R.C. 1901.02 and 1901.021.

³³ Section 3.

³⁴ R.C. 1901.02 and 1901.021.

Hancock County on or after the bill's effective date are to be brought before the Findlay Municipal Court.³⁵

State involvement in legal actions

Intervention by the General Assembly or the Governor

The bill specifies that the General Assembly, the House of Representatives and the Senate individually, and the Governor may intervene as a matter of right (that is, become a party to a court case) at any time in any civil action or proceeding that involves a challenge to the Ohio Constitution or the laws of Ohio and that is an important matter of statewide concern. However, continuing law prohibits any public official from entering into a legal agreement that nullifies, suspends, enjoins, alters, or conflicts with any provision of the Revised Code.

In intervening in such a case, the Speaker of the House of Representatives may act on behalf of the House; the Senate President may act on behalf of the Senate; and the Speaker and the President, acting jointly, may act on behalf of the General Assembly. Intervention must be in accordance with the Ohio Rules of Civil Procedure or the Federal Rules of Civil Procedure, as applicable.³⁶

Special counsel

The bill also creates exceptions to the law that requires the Attorney General to represent a state agency in any legal action, either through the Attorney General's office or by appointing special counsel, and that prohibits agencies from obtaining other counsel.³⁷

General Assembly

First, the bill allows the Speaker of the House and the Senate President to retain their own legal counsel, other than from the Attorney General, to intervene in a judicial proceeding, as described above, on behalf of the House, the Senate, or the General Assembly, as applicable. The Speaker and the President, individually or jointly, also may retain attorneys to provide advice and counsel to them on matters that affect the official business of the General Assembly. The House and the Senate may do so only in a civil proceeding, not in any criminal proceeding.

The Speaker and the President, as applicable, must approve all terms of representation and authorize payment for all financial costs incurred. Payment must be from the House's or Senate's operating expenses appropriation line item or from a separate appropriation made for those costs. But, the House, the Senate, or the General Assembly, as applicable, may rescind

³⁵ Section 3(B).

³⁶ R.C. 101.55 and 107.13. See also R.C. 9.58, not in the bill; Rule 24 of the [Ohio Rules of Civil Procedure](#) (PDF), available at supremecourt.ohio.gov under "Ohio Rules of Court"; and Rule 24 of the [Federal Rules of Civil Procedure](#) (PDF), available at uscourts.gov under "Rules & Policies."

³⁷ R.C. 109.02.

the retention of a particular legal counsel in a particular matter by adopting a resolution by a simple majority vote.

The provisions described above do not limit any authority of the General Assembly or its members that is granted under the Ohio Constitution or other provisions of the Revised Code. The bill also specifies that the provisions described above do not constitute a waiver of the legislative immunity or legislative privilege of the Speaker, the President, or any member, officer, or staff of either house of the General Assembly.³⁸

The concepts of legislative privilege and immunity come from the Speech and Debate Clause of the Ohio Constitution, which provides that, “for any speech, or debate, in either House, . . . [Senators and Representatives] shall not be questioned elsewhere.” The courts have interpreted this clause to mean that members of the General Assembly, and to some extent their staff, may not be prosecuted or sued for their legitimate legislative activities and that members of the General Assembly and sometimes their staff enjoy an evidentiary privilege that prevents certain legislative activities from being used in court as evidence against them.³⁹

Governor

Similarly, the bill allows the Governor to retain legal counsel, other than from the Attorney General, to intervene in a judicial proceeding, as described above, or to provide advice and counsel to the Governor on matters that affect the official business of the Office of the Governor. The Governor may do so only in a civil proceeding, not in any criminal proceeding.

The Governor must approve all terms of representation and authorize payment for all financial costs incurred from the Governor’s operating expenses appropriation line item or from a separate appropriation made for those costs. A representation agreement entered into under the bill is not subject to continuing-law requirements that agencies follow DAS contracting procedures and receive Controlling Board approval before awarding a contract worth \$50,000 or more without competitive bidding.

The provisions described above do not limit any authority of the Governor that is granted under the Ohio Constitution or other provisions of the Revised Code. Finally, the bill specifies that it does not constitute a waiver of any executive privilege of the Governor or any executive officer or staff.⁴⁰ Although the Ohio Constitution and the Revised Code do not mention executive privilege, the Ohio Supreme Court has recognized that a limited executive privilege applies under the common law. Under certain circumstances, executive privilege protects the confidentiality of communications between the Governor and executive agencies,

³⁸ R.C. 101.55.

³⁹ Ohio Constitution, Article II, Section 12. See also *Hicksville v. Blakeslee*, 103 Ohio St. 508 (1921) and *Dublin v. State of Ohio*, 138 Ohio App.3d 753 (10th Dist. Ct. App. 2000).

⁴⁰ R.C. 107.13. See also R.C. 125.05 and 127.16, not in the bill.

and might also protect the confidentiality of documents and other materials related to the deliberative process by which the Governor formulates policies and makes decisions.⁴¹

HISTORY

Action	Date
Introduced	01-11-23
Reported, S. Judiciary	02-16-23
Passed Senate (24-7)	02-22-23

ANSB0021PS-135/ar

⁴¹ *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364 (2006).