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Bill Analysis
Legislative Service Commission

H.B. 385

126th General Assembly
(As Introduced)

Reps. Brinkman, Seitz, Law, Schaffer, Webster

BILL SUMMARY

- Eliminates the general requirement of a second class mailing privilege for newspapers of general circulation used for legal publications.
- Removes the limitation on the number of additional deferred compensation programs townships may offer to their officers and employees.
- Allows emergency resolutions to take immediate effect in limited home rule townships.
- Authorizes urban townships to adopt a general parking authorization plan for subdivision entrances and certain township cul de sac streets.
- Makes changes to the law authorizing a charge for certain multiple false fire alarms in townships.
- Increases to an amount not to exceed \$150 the maximum registration fee for transient vendors in townships.
- Eliminates the ten-year duration limit and the competitive bidding requirements for township lighting contracts.
- Permits boards of township trustees to sell cemetery-related items, with the proceeds to go to the care and maintenance of their township cemeteries.
- Authorizes certain townships that have used tax increment financing to pay the proceeds from the sale of a permanent improvement into their general fund under certain circumstances.

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CONTENT AND OPERATION

Publishing legal notices

Current law

Under general current law, *generally* whenever any legal publication is required by law to be made in a newspaper *published* in a political subdivision, the newspaper must also be of general circulation in the political subdivision. This general law forbids any further restriction or limitation on the selection of the newspaper.¹ If no newspaper is published in the political subdivision, the legal

¹ *While this is a general requirement, the rules of statutory construction state: "If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is*

publication must be made in any newspaper *of general circulation* in the political subdivision. And, if there are less than two newspapers so published, any legal publication may be made in any newspaper regularly issued at stated intervals from a known office of publication located within the political subdivision ("known office of publication" being a public office where the business of the newspaper is trans acted during usual business hours). (R.C. 7.12, first paragraph.)

Under these requirements of general law, to be a newspaper of general circulation, a newspaper (with certain exceptions) must (1) bear a title or name, (2) be regularly issued as frequently as once a week for a definite price or consideration paid for by not less than 50% of those to whom distribution is made, (3) have a second class mailing privilege, (4) be not less than four pages, (5) be published continuously during the immediately preceding one-year period, and (6) be circulated generally in the political subdivision where it is published (R.C. 7.12, second paragraph).

Change made by the bill

The bill removes from the above list of characteristics of a newspaper "of general circulation" for purposes of the general law, the requirement that the newspaper have a second class mailing privilege (R.C. 7.12).

Deferred compensation plans for certain public employees

Current law

Current law creates a deferred compensation program for eligible public employees that is administered by the Ohio Public Employees Deferred Compensation (OPEDC) Board. That law permits municipal corporations, counties, townships, park districts, conservancy districts, sanitary districts, health districts, public libraries, county law libraries, public institutions of higher education, and school districts to provide separate authorized plans or programs for deferring compensation of their officers and employees in addition to the OPEDC Board's program; however, counties, *townships*, park districts, conservancy districts, sanitary districts, health districts, public library districts, and county law libraries are limited to no more than two additional deferred compensation programs. (R.C. 148.04 and 148.06.)

irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail." R.C. 1.51. See, for example, State ex rel. Daily Reporter v. Court of Common Pleas (1990), 56 Ohio St.3d 145.

Changes made by the bill

The bill permits townships, like municipal corporations, public institutions of higher education, and school districts under current law, to provide additional authorized deferred compensation plans or programs *without any limitation* on the number that can be offered. But similar to current law applicable to municipal corporations, public institutions of higher education, and school districts, a township must offer additional plans or programs that include a reasonable number of options to its officers or employees for the investment of deferred compensation--including annuities, variable annuities, regulated investment trusts, and other investments approved by the township--that will assure the desired tax treatment of their deferred compensation. (R.C. 148.04(E) and 148.06.)

Limited home rule townships

Emergency resolutions

Under the Limited Home Rule Township Law, an emergency resolution takes effect ten days after it is filed with the township fiscal officer, unless a later time is specified in the resolution. The bill eliminates this delay in effect for an emergency resolution of a limited home rule township and instead specifies that such an emergency resolution takes effect immediately upon its passage. (R.C. 504.11(B).)

Urban townships

Those limited home rule townships that have a population in the unincorporated territory of the township of at least 15,000 are called "urban townships." (R.C. 504.01--not in, but cross-referenced in, the bill). The bill permits the board of township trustees of an urban township to adopt a general parking authorization plan for subdivision entrances and township cul de sac streets that do not exceed 1,500 feet in length. All regulations and orders pertaining to the plan must be posted by the township fiscal officer in at least five conspicuous public places in the township for 30 days before becoming effective, and must be published in a newspaper of general circulation in the township for three consecutive weeks. In addition to these requirements, regulations and orders arising from the plan cannot take effect until permanent signs giving notice of the applicable parking limitations or prohibitions are properly posted, in accordance with any applicable standards adopted by the Department of Transportation, at subdivision entrances or at the beginning of any township cul de sac street that does not exceed 1,500 feet in length. (R.C. 504.23.)

False fire alarms in townships

Applicable false alarms

Under current law, a board of township trustees may assess a charge for responding to a false fire alarm if (1) the fire department of the township, township fire district, or joint fire district, or a private fire company that contracts with any of those political subdivisions for fire protection, responds to a false alarm from an automatic fire alarm system at a commercial establishment or residential building and (2) the board of township trustees gives a written notice to the premises' owner and lessee (if any) by certified mail that it may assess a stated charge of \$300 or less for each subsequent false alarm by that system that occurs "within a period of 30 days after any false alarm by that system." After that notice, the township may charge for a false alarm without further notice. (R.C. 505.391.)

The bill changes the false alarms for which a township may charge after the provision of the written notice, to subsequent false alarms occurring after three false alarms by the system within the same calendar year (R.C. 505.391(A)).

Lien procedure

Current law provides that if a charge for a subsequent false alarm is not paid within 60 days after the owner or lessee receives by certified mail a written notice that the charge has been assessed, the charge must be entered upon the real property tax list, becomes a lien upon the property, and must be collected as taxes are collected. Collected charges (whether by normal payment or through the lien procedure) are deposited into the township general fund. (R.C. 505.391.)

The bill changes the procedure for unpaid false alarm charges by providing a 30-day notice before an unpaid charge becomes a lien. Under the bill, if payment of the bill assessing a charge is not received within 30 days, the township fiscal officer must send a notice by certified mail to the manager and the owner of the real estate of which the commercial establishment is a part, or to the occupant, lessee, agent, or tenant and the owner of the real estate of which the residential building is a part, indicating that failure (1) to pay the bill within 30 days or (2) to show just cause why the bill should not be paid within 30 days will result in the assessment of a lien on the real estate in the amount of the bill. If payment is not received or just cause for nonpayment is not shown within those 30 days, the amount of the bill must be entered upon the tax duplicate, is a lien upon the real estate upon that entry, and must be collected as taxes. The bill requires charges so

collected, instead of being deposited into the township general fund, to be earmarked in the township treasury for use for fire services.² (R.C. 505.391(B).)

Fees for transient vendors in townships

Background law

Current law provides that a board of township trustees may require the registration of all transient vendors within the unincorporated territory of the township and regulate the time, place, and manner in which they may sell, offer for sale, or solicit orders for future delivery of goods. "Transient vendors" are persons who open a temporary place of business for the sale of goods or who, on the streets or while traveling about the township, either sell or offer for sale goods, or solicit orders for future delivery of goods where payment is required prior to the delivery of the goods. "Transient vendors" do not include (1) persons who represent any of certain Ohio tax-exempted entities that notify a board of township trustees that its representatives are present in the township for the purpose of either selling or offering for sale goods, or soliciting orders for future delivery of goods, or (2) licensed auctioneers. (R.C. 505.94(A) and (B)(2).)

Registration fee

Under current law, when registration is required of all transient vendors, a reasonable registration fee not to exceed \$75 may be charged for the registration period. The registration must be valid for at least a 90-day period. The bill increases the permissible fee to "not to exceed \$150" for such a registration period. (R.C. 505.94(A).)

Township lighting

Current law

Under current law, upon making certain determinations, a board of township trustees may provide artificial lights for any road, highway, public place, or building under its control or any of the unincorporated territory of the township. If the township procures lighting under a contract (rather than installing a lighting system itself) and if the total estimated cost of the contract exceeds \$25,000, the board must competitively bid the contract. A lighting contract cannot exceed a ten-year period. (R.C. 515.01.)

² *The bill repeals current law's general requirement that "charges collected" under R.C. 505.391 be deposited into the township general fund. Presumably, however, charges collected other than pursuant to the new lien procedure will continue to be deposited into the township general fund.*

Changes made by the bill

The bill eliminates the requirement to so competitively bid lighting contracts, although a township, on its own initiative, may choose to competitively bid a lighting contract. The bill also eliminates the ten-year limitation for the contract period. (R.C. 515.01 and 515.07.)

Township cemetery-related items sales

Current law

Under current law, townships may establish a township cemetery. In addition, the Township Law vests in the relevant board of township trustees the title to and control of all public cemeteries located in the township and outside a municipal corporation that have been dedicated as public cemeteries, and any grounds that have been used by the public as a public cemetery even though they have not been expressly dedicated as a cemetery--unless such a cemetery is owned or cared for by a religious or benevolent society or an incorporated company or association or is under the control of the authorities of a municipal corporation. (R.C. 517.01, 517.04, 517.05, 517.06, 517.08, and 517.10--not in the bill.)

A township is charged with the protection and preservation of these public cemeteries (R.C. 517.11--not in the bill). The board trustees may sell burial lots in them and use the proceeds for improving and embellishing a cemetery's grounds or, upon the board's unanimous consent, for the purchase of additional land for cemetery purposes (R.C. 517.07 and 517.08--not in the bill). Fences around these cemeteries are paid for from township funds, and a tax may be levied to pay for the fences and re-erecting fallen tombstones (R.C. 517.08 and 517.11--not in the bill).

A board of township trustees may create a permanent cemetery endowment fund for the purpose of maintaining, improving, and beautifying township cemeteries and burial lots in them. The moneys in this fund may come from gifts, devises, or bequests, from burial lot purchase add-on charges, from agreements with burial lot purchasers that part of the purchase price is to be used with respect to the particular lot for these purposes, and from contributions from the township general fund (R.C. 517.15--not in the bill).

Changes made by the bill

The bill permits a board of township trustees to sell cemetery-related items and use all the revenue from these sales to provide for the care and maintenance of any township cemetery in that township, in the manner approved by the board. "Cemetery-related items" include, but are not limited to, monuments, vaults, outer

burial containers, markers, and urns. "Cemetery-related items" do not include burial lots. (R.C. 517.16.)

Disposition of the proceeds from the sale of township permanent improvements

Overview

The Tax Levy Law provides that, if a political subdivision sells permanent improvements, other than utilities, the amount received from the sale must be paid into the sinking fund, the bond retirement fund, or a special fund for the construction or acquisition of permanent improvements. The bill carves an exception to this provision for certain townships. (R.C. 5705.10.)

New exception

Under the bill, a township that has a population greater than 20,000 according to the most recent federal decennial census and that has used township tax increment financing for real property in the township may pay proceeds from the sale of a permanent improvement of the township *into its general fund* if both of the following conditions are satisfied (R.C. 5705.10(F) and (G)):

(1) The township fiscal officer determines in writing that all foreseeable "public infrastructure improvements" to be made in the township in the ten years immediately following the date the permanent improvement is sold will have been financed through township tax increment financing on or before the date of the sale.³

(2) The permanent improvement being sold was financed entirely from moneys in the township's general fund.

³ *The bill's references to the township having "declared one or more improvements . . . to be a public purpose under section 5709.73" and to financing of permanent improvements "through resolutions adopted under section 5709.73" are to provisions of the Township Tax Increment Financing Law. Under that Law, by cross-reference to the Municipal Tax Increment Financing Law, a "public infrastructure improvement" is defined to include, but not be limited to, public roads and highways; water and sewer lines; environmental remediation; land acquisition, including acquisition in aid of industry, commerce, distribution, or research; demolition, including demolition on private property when determined to be necessary for economic development purposes; stormwater and flood remediation projects, including those projects on private property when determined to be necessary for public health, safety, and welfare; the provision of gas, electric, and communications service facilities; and the enhancement of public waterways through improvements that allow for greater public access (R.C. 5709.40(A)(7) and 5709.73(A)(5))--not in the bill).*

The township fiscal officer's written determination mentioned in (1) above must be certified to the Tax Commissioner before any of the proceeds from the sale of the permanent improvement are paid into the general fund (R.C. 5705.10(G)(2)).

HISTORY

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