



H.B. 606
127th General Assembly
(As Introduced)

Rep. Peterson

BILL SUMMARY

- Makes changes and adds requirements to what a developer must include in a petition to establish a new community district.
- Prohibits the kinds of community facilities that can be acquired or constructed by or for the new community authority from differing from the kinds itemized in the authority's plan and prohibits the cost of the community facilities and the portion financed with bonds from exceeding the cost or portion indicated in the plan, unless approved by the board of trustees.
- Requires a proposed new development district to be a blighted area.
- Specifies that a new community authority is a public body for the purposes of the Open Meetings Act.
- Makes changes to the appointment and election of members of the initial board of trustees and the board of trustees of a new community authority.
- Generally requires new community authorities to use competitive bidding procedures.
- Limits the ability of a new community authority to contract with the developer.

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CONTENT AND OPERATION

Petition to establish new community district

(R.C. 349.03 and 349.05)

Under continuing law, new community districts can be established by developers by petition to the board of county commissioners of a county in which all or part of the proposed new community district is located. Generally, the organizational board of commissioners¹ determines whether the petition complies with the requirements as to form and substance and, upon the determination that a petition is sufficient, the board must fix the time and place of a hearing on the petition and must provide appropriate notice of the hearing. Upon the hearing, if the organizational board of commissioners determines by resolution that the proposed new community district will be conducive to the public health, safety, convenience, and welfare, and is intended to result in the development of a new community, the board must declare the new community authority to be organized as a body politic and corporate with the corporate name designated in the resolution, and define the boundary of the new community district. In addition, the resolution must provide the method of selecting the board of trustees of the new community authority and fix the surety for their bonds.

Under current law, the petition must be signed by the developer and may be signed by each proximate city. The bill increases the number of local governments that may sign the petition creating a new community authority by including each township, city, or village having territory located within, or lying

¹ "Organizational board of commissioners" means, if the new community district is located in only one county, the board of county commissioners of the county; if the new community district is located in more than one county, "organizational board of commissioners" means a board consisting of the members of the board of county commissioners of each of the counties in which the district is located. If more than half of the new community district is located within the boundaries of the most populous municipal corporation in a county, "organizational board of commissioners" means the legislative authority of that municipal corporation. (R.C. 349.01(F).)

within 5,000 feet of, the new community district, including any such township or municipality that is located in an adjoining county.²

Under current law, a petition must contain:

- (1) The name of the proposed new community authority;
- (2) The address of the authority's principal office or the manner in which the location will be selected;
- (3) A map and a full and accurate description of the district's boundaries and a description of any properties within the boundaries, which will not be included in the new community district. Unless the district is wholly contained within municipalities, the total acreage included in the district must not be less than 1,000 acres, all of which acreage must be owned by, or under the control through leases of at least 75 years duration, options, or contracts to purchase, of the developer, if the developer is a private entity. The acreage must be developable as one functionally interrelated community.
- (4) A statement setting forth the proposed zoning regulations, and, if the area has been zoned, a certified copy of the applicable zoning regulations;
- (5) A current plan indicating the projected total population of the new community district, the proposed development program for the new community district, the land acquisition and land development³ activities, community facilities, and services which it is proposed the new community authority will undertake under the program, and the proposed method of financing the activities and services.
- (6) A suggested number of members for the board of trustees;

² Generally, the hearing on the petition is held not less than 95 nor more than 115 days after the petition was filed. Current law specifies, however, that when a petition has been signed by all proximate cities, the hearing must be held not less than 30 nor more than 45 days after the petition was filed. The bill specifies that the shorter time for holding the hearing applies when the petition has been signed by all the local governments that the bill authorizes to sign.

³ Under current law, "land development" means the process of clearing and grading land, making, installing, or constructing water distribution systems, sewers, sewage collection systems, steam, gas, and electric lines, roads, streets, curbs, gutters, sidewalks, storm drainage facilities, and other installations or work, whether within or without the new community district, and the construction of community facilities. The bill specifies that land development only includes land within the new community district (R.C. 349.01(H)).

(7) A preliminary economic feasibility analysis, including the area development pattern and demand, location and proposed new community district size, present and future socio-economic conditions, public services provision, financial plan, and the developer's management capability;

(8) A statement that the development will comply with all applicable environmental laws and regulations.

The bill adds that the acreage of the district must be a blighted area⁴ and must be contiguous or within 5,000 feet of the largest contiguous area of the district. Additionally, the bill requires the petition to include in the plan the total principal amount of bonds projected to be issued for community facilities. The plan's indication of community facilities⁵ must be itemized according to each kind of facility planned, the projected cost of each facility, and the portion of the projected cost of each facility to be financed with bonds. The petition must also include a statement that all proposed community facilities primarily benefit the new community district only.

After the organizational board of commissioners declares the new community authority to be organized, the kinds of community facilities that can be acquired or constructed by or for the new community authority must not differ from the kinds itemized in the plan, and the cost of the community facilities and the portion of that cost financed with bonds must not exceed the cost or portion indicated in the plan, unless the change or increase is approved by a majority of the board of trustees of the authority as constituted after the election of citizen

⁴ "Blighted area" means an area in which at least 70% of the parcels are blighted parcels and those blighted parcels substantially impair or arrest the sound growth of Ohio or a political subdivision of Ohio, retard the provision of housing accommodations, constitute an economic or social liability, or are a menace to the public health, safety, morals, or welfare in their present condition and use.

⁵ Under continuing law, "community facilities" means all real property, buildings, structures, or other facilities, including related fixtures, equipment, and furnishings, to be owned, operated, financed, constructed, and maintained, including public, community, village, neighborhood, or town buildings, centers and plazas, auditoriums, day-care centers, recreation halls, educational facilities, hospital facilities, recreational facilities, natural resource facilities, including parks and other open space land, lakes and streams, cultural facilities, community streets, pathway and bikeway systems, pedestrian underpasses and overpasses, lighting facilities, design amenities, or other community facilities, and buildings needed in connection with water supply or sewage disposal installations or steam, gas, or electric lines or installation. The bill specifies that "community facilities" does not include any project for which the geographic area primarily benefited extends beyond the new community district. (R.C. 349.01(I).)

members. If the authority increases the cost of a community facility or the portion to be financed with bonds, the principal amount of bonds that can be issued for community facilities is increased by not more than that amount. If the authority decreases the cost of a community facility or the portion to be financed with bonds, the principal amount of bonds that can be issued for community facilities is decreased by not less than that amount.

The bill specifies that a new community authority is a public body for the purposes of the Open Meetings Act.

Governance of new community authority

(R.C. 349.04)

Current law

Under current law, within ten days after the new community authority has been established, an initial board of trustees must be appointed as follows: the organizational board of commissioners must appoint by resolution between three and six citizen members to represent the interests of present and future residents of the new community district and one member to serve as a representative of local government, and the developer must appoint a number of members equal to the number of citizen members. Members serve two-year overlapping terms, with two of each of the initial citizen and developer members appointed to serve initial one-year terms. The organizational board of commissioners must by further resolution, within one year of the resolution establishing the initial board of trustees, adopt a method for selecting successor members which determines the projected total population of the new community and meets the following criteria:

(1) The appointed citizen members must be replaced by elected citizen members according to a schedule established by the organizational board of commissioners calculated to achieve one replacement each time the new community district gains a proportion, having a numerator of one and a denominator of twice the number of citizen members, of its projected total population until all of the appointed citizen members are replaced.

(2) Representatives of the developer must be replaced by elected citizen members according to a schedule established by the organizational board of commissioners calculated to achieve one replacement each time the new community district gains a proportion, having a numerator of one and a denominator equal to the number of developer members, of its projected total population until all of the developer's representatives are replaced.

(3) The representative of local government must be replaced by an elected citizen member at the time the new community district gains 75% of its projected total population.

Currently, elected citizen members of the board of trustees must be elected by a majority of the residents of the new community district voting at elections held on the first Tuesday after the first Monday in December of each year. Also, each citizen member except an appointed citizen member must be a qualified elector who resides within the new community district. Citizen members must not be employees of or have financial interest in the developer.

If a vacancy occurs in the office of a member other than a member appointed by the developer, the organizational board of commissioners can appoint a successor for the remainder of the unexpired term. Any appointed member of the board of trustees can be removed at any time by the organizational board of commissioners for misfeasance, nonfeasance, or malfeasance in office. Members appointed by the developer can also be removed at any time by the developer without a showing of cause.

Each member of the board of trustees, before entering upon official duties, must take and subscribe to an oath that the member will honestly and faithfully perform the duties of the member's office. Upon taking the oath, the board of trustees must elect officers. A majority of the board constitutes a quorum, and a concurrence of a majority of a quorum in any matter within the board's duties is sufficient for its determination, provided a quorum is present when such concurrence is had and a majority of those members constituting the quorum are trustees not appointed by the developer.

The bill

Under the bill, within ten days after the new community authority has been established, an initial board of trustees⁶ must be appointed as follows: the organizational board of commissioners must appoint by resolution one resident of each county in which the district is to be located to represent that county; the legislative authority of each proximate city must appoint one resident of the city to represent the city; if any part of the district is to be located within the limits of a municipal corporation that is not a proximate city, the legislative authority of the municipal corporation must appoint one resident of the municipal corporation to represent the municipal corporation; if any part of the district is to be located

⁶ "Initial board of trustees" means the board of trustees of a new community authority composed of members appointed for the sole purpose of arranging for the election of citizen members (R.C. 349.01(N)).

inside or within 5,000 feet of the unincorporated territory of a township, or inside or within 5,000 feet of the boundaries of a township whose boundaries have not been conformed with the limits of the municipal corporation, the board of township trustees of each such township must appoint one resident of the township to represent the township; and the developer must appoint one member to represent the developer.

Within 30 days after the new community authority has been established, the initial board of trustees must convene a meeting for the sole purpose of arranging for the initial election of citizen members of the board to serve as representatives of the present and future residents of the district. The arrangements must include the calling for nominations of persons whose names are to appear on the ballot, the printing of ballots, the time and place of the election, and the publication or distribution of information regarding such matters to all persons who are qualified to be a candidate or to vote at the election, and other matters as may be necessary to conduct the election. The requirement to publish or distribute the information can be satisfied by the publication of the information at least once per week for three consecutive weeks in a newspaper of general circulation⁷ in the county in which the majority of the territory of the new community district is located. If a newspaper of general circulation is not published in that county, publication must be in a newspaper of general circulation in an adjoining county. The developer must pay all expenses of conducting the election. The initial board of trustees can elect from among the appointed members a chairperson and such other officers, take such actions, and hold successive meetings, as are necessary to arrange for the election of citizen members, but must conduct no other business. The terms of officers so appointed must continue only until the elected citizen members enter upon their official duties on the board.

The number of citizen members of the board of trustees to be elected must at all times be equal to at least one more than the total number of members appointed to the board so that the number of citizen members constitutes the majority of the entire number of board members. The number of members on the

⁷ A newspaper of general circulation must be a publication bearing a title or name, 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, having a second class mailing privilege, being not less than four pages, published continuously during the immediately preceding one-year period, and circulated generally in the political subdivision in which it is published. Such publication must be of a type to which the general public resorts for passing events of a political, religious, commercial, and social nature, current happenings, announcements, miscellaneous reading matter, advertisements, and other notices.

board of trustees can be reduced as citizen members are elected to replace appointed members, as may be provided in the resolution creating the authority.

The initial election of citizen members must be held at a location open to the public and within the boundaries of the district or, if no such location exists, at a location open to the public within a township or municipal corporation within which the district is located. The election must be conducted within 90 days after the first meeting of the initial board of trustees. To be qualified to be a citizen member elected at the initial election under this division, a candidate must satisfy the qualifications of citizen members. To be qualified to vote at the election, a person must satisfy the qualifications of citizen members. To cast a vote, a person must be present at the location of the election. The seats on the board must be filled by the number of candidates, equal to the number of such seats, receiving the greatest number of votes cast at the election. Any business conducted by the initial board of trustees other than the appointment of officers or arranging for the election of citizen members is void and without effect.

Appointed members must serve a two-year term, and a member can be reappointed, except that the terms of appointed members terminate as explained below. Initially elected citizen members also serve two-year terms. The terms of the appointed members and of the initially elected citizen members are to be measured from the January 1 that follows the date of the election of the initially elected citizen members.

The organizational board of commissioners can remove an appointed member of the board of trustees for misfeasance, nonfeasance, or malfeasance in office. The developer can remove the developer's appointed member representative on the board without a showing of cause. (The bill removes existing language permitting a city or village that annexes land in a new community district to replace appointed citizen members (current R.C. 349.03(C)).⁸)

The appointed members representing the developer and the local governments must be replaced by elected citizen members at the time the

⁸ The number of trustees that could be replaced by an annexing municipal corporation was the number, rounded to the lowest integer, bearing the proportionate relationship to the number of existing appointed citizen members as the acreage of the new community district within the municipal corporation bears to the total acreage of the district. The municipal corporation made such a replacement by ordinance. The trustee to be replaced was determined by lot, and the trustee's term ended 30 days after passage of the ordinance. But a replacement trustee held office for the remainder of the replaced trustee's term.

population of the new community district equals 60% of the district's projected population. The seats of the members being replaced must be filled by the number of citizen member candidates, equal to the number of such seats, receiving the greatest number of votes. The election is to be held on the first Tuesday after the first Monday in December of each year beginning with the year in which the population of the district equals 60% of the district's projected population. The terms of the elected citizen members of the board of trustees are for two years.

Each appointed member must be a qualified elector.⁹ Each citizen member must be a qualified elector who resides and owns the fee of land situated in or within 5,000 feet of the new community district. An appointed member or elected citizen member of the board, except the member appointed by the developer, cannot be an employee of the developer, cannot have a financial interest in the developer, and cannot have sold, transferred, or leased real property located within the district to the developer. If, while serving as a member of the board, a person, other than the member appointed by the developer, sells, transfers, or leases to the developer real property located in the district or added to the district, the person's term must terminate immediately upon the sale or transfer or commencement of the lease, and the vacancy must be filled as explained below. Before assuming duties on the board, each member of the board, except the developer's representative, must execute an affidavit declaring those facts. A new affidavit must be executed each time a member is appointed or elected. The affidavits must be kept on file at the board's offices and must be made available during normal business hours for inspection by any resident of the district.

If a vacancy occurs in the office of a member other than a member appointed by the developer, the board of trustees can appoint a successor member for the remainder of the unexpired term.

Each member of the board of trustees, including a member of the initial board of trustees, before entering upon official duties, must take and subscribe to an oath that the member will honestly and faithfully perform the duties of the member's office. Once the initially elected citizen members have been elected, and after each election thereafter, the board of trustees must elect officers. A majority of the board, including at least one more elected citizen member than noncitizen members, constitutes a quorum, and a concurrence of a majority of a quorum in any matter within the board's duties is sufficient for its determination, provided a quorum is present when such concurrence is had.

⁹ "Qualified elector" means a person having the qualifications provided by law to be entitled to vote (R.C. 3501.01, not in the bill).

Contracting

(R.C. 349.06, 349.16, and 349.17)

Under current law, a new community authority can hire employees as may be appropriate in the exercise of the rights, powers, and duties conferred upon it. Additionally, a new community authority can make and enter into all contracts and agreements and execute all instruments relating to a new community development program, including contracts with the developer and other persons or entities related to the developer.

Competitive bidding

The bill requires new community authorities to let bids for most goods and services under a competitive bidding procedure. The procedure is modeled after the county bidding law (R.C. 307.87 to 307.91, not in the bill), with several county-specific provisions omitted. Also, the new community authority threshold is \$10,000 (by comparison, for counties, it is currently \$25,000). Additionally, the bill specifies that references in the county bidding law to a contracting authority's internet site or address do not apply unless the new community authority elects for those references to apply.

Specifically, anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including any product, structure, construction, reconstruction, improvement, maintenance, repair, or service by or on behalf of a new community authority at a cost of more than \$10,000 must be obtained through competitive bidding, except as follows:

(1) The board of trustees of the authority, by vote of two-thirds of its membership, determines that a real and present emergency exists because of actual physical damage to community facilities and that the estimated cost of repair or reconstruction is less than \$20,000.

(2) The service to be purchased is the service of an accountant, architect, appraiser, attorney at law, consultant, professional engineer, or surveyor.

(3) The purchase is of supplies or a replacement or supplemental part for tangible personal property of the authority and the only source of supply for the supplies or part is a single supplier.

(4) The purchase is of services related to information technology, such as programming services, that are proprietary or limited to a single source.

Contracting with developer

The bill also limits the authority of a new community authority to contract with the developer, in two ways. First, the new community authority is prohibited from contracting with the developer organized for the purpose of carrying out the authority's new community development program, or a member of an affiliated group¹⁰ including that developer, for the performance of any land development or for the construction or improvement of community facilities unless the developer or affiliated group member is the successful bidder for the contract under the competitive bidding provisions of the bill.

Second, any payments by a new community authority to a developer, or to a member of an affiliated group including the developer, for administrative or professional services rendered to or for the authority by the developer or affiliated group member must be paid only on the basis of an hourly rate approved by the authority as being reasonable within industry standards for the services performed. The developer or affiliated group member must submit to the authority for its approval a budget, for each calendar year, of the administrative or professional services to be provided and must provide to the authority, at least once per year at the time specified by the authority, the hourly records upon which such compensation is to be determined.

The total of all payments during any calendar year from a new community authority to a developer and to members of any affiliated group including the developer for administrative or professional services must not exceed 3% of the first \$5 million in cost of the new community development program, 2% of the next \$5 million in cost of the program, and 1% of such cost in excess of \$10 million in cost of the program. These limits on payments does not prohibit the developer or affiliated group member from incurring costs or investing money in excess of the limit to provide administrative or professional services to the new community authority, but the authority may not pay any amount in excess of the limit.

¹⁰ "Affiliated group" means two or more persons related in such a way that one person owns or controls the business operations of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than 50% of the other corporation's common stock with voting rights. The federal tax attribution rules apply so that ownership by, e.g., one spouse is attributed to the other spouse.

Liberal construction

The bill repeals a provision stating that the new community organization law should be liberally construed to effect its purposes.

HISTORY

ACTION	DATE
Introduced	08-07-08

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